EXHIBIT SS 7

ONICA MARTHA NGOYA

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

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FOR STATE CAPTURE COMMISSION PURPOSES ONLY

AFFIDAVIT

I, the undersigned,

ONICA MARTHA NGOYE

do hereby make oath and state:

1. I am an adult female. I am currently employed as the Group Executive: Legal, Risk and Compliance by the Passenger Rail Agency of South Africa ("PRASA") at 1040 Burnett Street, Hatfield, Pretoria.

2. Unless the context clearly shows the contrary is intended, the facts herein contained are within my own personal knowledge and are to the best of my belief both true and correct.

3. About PRASA

3.1. PRASA is a juristic person established as such in terms of section 22 of

the Legal Succession to the South African Transport Services Act, 1989, Act No. 9 of 1989 as amended.

3.2. The primary mandate of PRASA is to provide commuter and long distance rail services and long distance bus services in the Republic of South Africa. The secondary mandate of PRASA is to generate income by exploiting its assets which consists of the rail network and the land around it, the rolling stock, the buses and the train stations.

3.3. PRASA is an Organ of State as defined in section 239 of the Constitution of the Republic of South Africa ("the Constitution"), a public entity and a national government business enterprise as defined in the Public Finance Management Act, 1999 ("the PFMA"). It is listed in schedule 3B of the PFMA.

3.4. As a public entity and when procuring goods and services, PRASA is bound by section 217 of the Constitution. Section 217 obliges PRASA to contract for goods and services *"in accordance with a system which is fair, equitable, transparent, competitive and cost effective"*.

3.5. PRASA is a mass people mover that has become a grudge purchase only for those who cannot afford any other form of public transportation. The rolling stock has depleted to such an extent that PRASA is unable to

collect all the revenue due to it from commuters because of the unreliability of the service, overcrowding and lack of effective security. This has been as a result of corruption, sustained instability and a failure to observe the rule of law. The corruption in PRASA is now a matter of public record in the following reports that were either published or publicised:

3.5.1. the Public Protector report entitled Derailed and issued on 24 August 2015[1];

3.5.2. the forensic investigations commissioned by the Board of PRASA in August 2015 which led to the reporting of 40 transactions to the Directorate of Priority Crime and Investigation in terms section 34 of the Prevention and Combatting of Corrupt Activities Act:

3.5.3. the successful review application of the award to Swifambo Rail Leasing (Pty) Limited (In Liquidation) wherein the High Court and the Supreme Court of Appeal found fronting, corruption and other various procurement irregularities;

3.5.4. the forensic investigation commissioned by the National Treasury

[1] A Report on an Investigation into Allegations of Maladministration relating to Financial Mismanagement, Tender Irregularities and Appointment Irregularities Against the Passenger Rail Agency of South Africa (PRASA); Report No.: 3 of 2015/16

that found irregularities in more than 90% of the 213 transactions that were investigated by independent investigators commissioned by the National Treasury; and

3.5.5. the Management Reports issued by the Auditor-General.

4. About the Deponent:

4.1. I am an admitted attorney who was fortunate to serve her articles at one of the big five law firms of South Africa. After serving articles and being admitted as an attorney, I worked as a Legal Advisor for two of the big four banks of South Africa before taking up employment at Transnet as a Legal Advisor there. At Transnet, I was involved in, among others, the following key projects:

4.1.1. Disposal of non-core assets, which included the disposal of Metrorail, Main Line Passenger Services (now the rail businesses of PRASA) and the South African Airways;

4.1.2. Funding or treasury transactions, for example, swaps and derivatives.

4.2. After Transnet and from January 2011, I was employed as an Executive in

the Office of the Chief Executive Officer ("CEO") of Intersite Asset Investments (Pty) Limited ("Intersite"), a wholly owned subsidiary of PRASA. I was promoted to be the CEO of Intersite in August 2011. Intersite's mandate is mainly to carry out the secondary mandate of PRASA of generating income by exploiting the assets of PRASA. During my time at Intersite, the team that I managed and I achieve the following:

4.2.1. Changed the relationship between PRASA and companies selling advertising space on PRASA properties from a lessor/lessee relationship to a profit sharing relationship;

4.2.2. Successfully negotiated and concluded development leases for the development of retail and commercial spaces at PRASA's stations. Development leases are leases where a private developer agrees to develop retail and commercial spaces, pay rental for the land for an agreed period (about 15 to 20 years) and surrender the development to PRASA at the end agreed period to PRASA. This results in PRASA owning the entire development;

4.2.3. Raised R5 billion from the Development Bank of South Africa ("the DBSA") for the commercialization of PRASA's Apex stations;

4.2.4. Kept clean audits and made profit for Intersite and revenue for PRASA for consecutive years.

4.3. When the former Group Executive: Legal and Compliance of PRASA resigned from PRASA, the then Board of Control of PRASA ("the Board of PRASA") decided to expand the portfolio under that function from Group Legal and Group Compliance *to* Group Legal, Group Compliance, Group Business Continuity Management, Group Enterprise Risk Management and Group Insurance. The name of this new position became Group Executive: Legal, Risk and Compliance and I was requested to fill this position.

4.4. The position requires the incumbent to, amongst others:

4.4.1. advise PRASA and its subsidiaries on compliance with the laws and regulations that are applicable to PRASA;

4.4.2. drafting and vetting of contracts;

4.4.3. providing general legal advise and advise on litigation and disputes;

4.4.4. advising PRASA on establishing a system to identify risks and

reduce the effects of risks on the business of PRASA;

4.4.5. advising PRASA on improving its resilience and avoiding business interruption;

4.4.6. advising PRASA on improving its risk profile to improve its marketability to the insurance market.

4.5. In my experience, this position and the teams that fall under it are regarded as a:

4.5.1. necessity by those people who wish to act in the best interests of the entities and believe in the rule of law; or

4.5.2. nuisance by those who wish to perpertuate unlawfulness, render the business unsustainable and 'cut corners'. These people avoid consulting with us so that they are not told things that they don't want to hear.

4.6. The above reports have made it a matter of public record that leaders in PRASA have been found seriously wanting when it comes to upholding the law and propriety. As a result of the culture within PRASA, I have had a number of disagreements with a number of leaders in PRASA who saw

me and the teams that I lead as a nuisance. I have nevertheless endeavoured to maintain an independent mind in the advise provided to PRASA.

5. I have been requested by the Judicial Commission of Inquiry into State Capture to provide my understanding of the facts around the transaction between PRASA and the DBSA. This request came after an online publication called the Daily Maverick published an article captioned *"New Prasa Boss on the verge of Signing a murky Multibillion-Rand Deal"* under the hand of Messrs. Sikonathi Mantshantsha and Pieter-Louis Myburgh on 11 August 2019. A copy of this article is attached hereto and marked **"OMN1"**.

6. I deal with this article later after outlining my involvement in this transaction and what I have been told about this transaction.

Before Engagement with the Board of Control – Informal Discussions

7. The first time that the discussions between the PRASA and the DBSA were brought to the attention of the Legal Department was in January 2019 when the then acting Group Chief Executive Officer ("Group CEO"), Mr Sibusiso Sithole ("Mr Sithole") sent to Mr Mfanimpela Dingiswayo ("Mr Dingiswayo") what he referred to as a typical Memorandum of Agreement to be concluded between PRASA and the DBSA. At the time, Mr Dingiswayo was acting in my stead. Mr

Sithole did not pursue this and the "typical agreement" was not considered by the Legal Department, as it was not accompanied by the documents that must accompany a document of this nature. An e-mail from Mr Sithole to Mr Dingiswayo in this regard is annexed hereto and marked **"OMN2"**.

8. The normal manner in which an instruction of this nature is communicated to the Legal Department is through the Supply Chain Management ("SCM") Department. The instruction is accompanied by an SCM file. The SCM process follows one of two scenarios:

8.1. A contract requested after an open tender:

8.1.1. The SCM file includes a submission that narrates and shows the open tender process that was followed, that is, the advert, the recommendation by the Bid Evaluation Committee ("the BEC") and the approval by the Bid Adjudication Committee ("the BAC"). Where Board approval is necessary, a recommendation by the Finance, Capital Investment and Procurement Committee of the Board and the approval by the Board is also included.

8.1.2. The submission will also include the approved scope of work, the payment schedule and as much information on the project as will be necessary to understand the details of the project and the risks

that require management.

8.1.3. All these documents and any other necessary documents are necessary for the Legal Department to understand the works or services contemplated or goods to be supplied and the respective rights and obligations of both parties.

8.2. A contract requested without an open tender process (a deviation):

8.2.1. This is a deviation from the prescribed open tender prescripts that are a default requirement. The SCM file contain a request from the Chief Procurement Officer ("the CPO") that state the reasons for the deviation and the legal instruments relied upon for the deviation. This request will be approved by a duly authorised official. For example, in case of a sole source supplier, an approved motivation with the reasons why the proposed supplier is regarded to be a sole supplier. This will also show the market research that was undretaken to come to the conclusion that the envisaged contractor is a sole-source. This is the first stage of the deviation, that is, making out a case for a deviation within the prescripts of the SCM Policy and having that case approved by the duly authorised official.

8.2.2. Once the deviation has been approved by the duly authorised official, there will be an engagement with the party that is approved so that project-related matters are discussed in preparation for the request for an agreement.

8.2.3. The instruction to the Legal Department will therefore show that the deviation has been duly authorised and indicate the details of the project so that an appropriate contract may be drafted. Where the counterparty wishes to propose a draft agreement, this draft agreement comes with the SCM file for vetting by the Legal Department.

9. The request from Mr Sithole did not come from the SCM Department and did not contain any documents that show how PRASA is at a place where it is negotiating an agreement with the DBSA, therefore it did not follow the normal process of a request to draft or vet an agreement by the Legal Department.

10. On 1 March 2019, Dr Nkosinathi Sishi ("Dr Sishi") was appointed as the acting Group CEO of PRASA.

11. This matter came up again as an informal discussion between Dr Sishi, Mr Piet Sebola ("Mr Sebola") (the Group Executive: Strategic Asset Development – which is the department that is in charge of capital projects) and Mr Dingiswayo

(then acting Group Company Secretary and General Manager: Group Legal Services) at the end of March 2019. Mr Dingiswayo indicated to me that he does not know why Mr Sebola was in the office of Dr. Sishi. Mr Dingiswayo was there to be briefed about a visit by the Togolese Railways to PRASA and the question of the DBSA only came up as if Dr Sishi was thinking out loud. It could be that Mr Sebola was there for that discussion. In these informal discussions Messrs Dingiswayo and Sebola raised the following concerns:

11.1. The need for a procurement process before the appointment of the DBSA;

11.2. No indication of what projects the DBSA will be appointed to undertake and the reasons for appointing the DBSA for these projects;

11.3. The negative impact, as in, possible redundancy of procurement officials and project managers, or the negative impact to PRASA's institutional capacity to deliver PRASA's critical projects;

11.4. The possibility that this appointment may cause PRASA to incur fruitless and wasteful expenditure as the DBSA is not known to have any experience in rail projects; the DBSA will, in all probability, have to appoint project managers that have rail experience to manage the projects.

12. After this discussion, Messrs Sebola and Dingiswayo were told that Dr Sishi was

rushing to meet the DBSA accompanied by Dr Mandisa Mokwena ("Dr Mokwena"), then acting General Manager: Corporate Security. It seemed to Mr Dingiswayo that Dr Sishi had some security related meeting with the DBSA and, in preparation for that meeting, he thought that he would have some 'off-the-cuff' discussions about projects. It was still strange to Mr Dingiswayo that he would not ask Mr Sebola if he was available for this part of the discussions. With the benefit of hindsight, it appears to Mr Dingiswayo that Dr Sishi's expectation was that the response would be that his idea of engaging the DBSA was a good idea. When this was not the response, he did not take the discussion further.

13. Dr Mokwena's position at the time was the acting General Manager: Corporate Security and her role was general management of the security department overseeing internal and external security personnel. The security department is responsible for ensuring the security of PRASA's commuters, staff and assets. This is a very important department in PRASA that has had serious performance challenges and that requires consistent focus.

14. Evidence has emerged that shows irregularities in the appointment of Dr Mokwena.

Before Engagement with the Board of Control – Formal Internal Discussions

15. On 30 April 2019, Dr Mokwena requested me to have a look at a draft agreement

and a draft letter *"and see if* [I was] *in agreement that the GCEO signs so that the Group CEO may sign them"*. This request therefore meant that once I indicated my agreement with draft agreement and the draft letter, the acting Group CEO would sign the letter and the agreement. The draft letter and the draft agreement are attached hereto and marked **"OMN3"** and **"OMN4"**.

15.1. The draft letter (OMN3) that was prepared for Dr Sishi stated the following:

15.1.1. *"Following the interactions with your organisation regarding the planning, implementation and delivery of infrastructure programmes for PRASA, we are pleased to advise you of your appointment as a Programme Implementing Agent"*.

[emphasis added]

15.1.2. The indicative allocations are R1,117,033,333 for the 2019/20 financial year, R1,650.454,601 for the 2020/21 financial year and R1,949,481,878 for the 2021/22 financial year. A total of R4,716,969,812 over the Medium-Term Expenditure Framework period.

15.2. The draft agreement (OMN4) states the following, amongst others:

15.2.1. That the DBSA is appointed to *"[c]arry out the full Implementing Agent Role for the PRASA Train modernisation Infrastructure Building Programme for the new and existing identified infrastructure in 2019/20, 2020/21, 2021/22 financial years"*[2].

15.2.2. *"The IMPLEMENTING AGENT shall be responsible for the following in terms of each project: Contracting with suitably qualified, experienced and capable consultants and contractors to ensure the efficient and timeous completion of each project in a proper and workmanlike manner"*[3].

[emphasis added]

16. On 30 April 2019, Dr Mokwena sent another e-mail to me (annexure **"OMN5"**):

16.1. The covering e-mail was forwarding an e-mail from Ms. Maria Mwafulirwa[4] to Dr Mokwena dated 3 April 2019 (annexure **"OMN6"**) and stating the following:

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[2] Clause 4.1 of the draft agreement
[3] Clause 10.2 and 10.2.1 of the draft agreement
[4] Personal Assistant: Infrastructure Delivery Division

"Dear Mandisa,

Please find attached for your attention, DBSA response to PRASA letter of intent to engage.

Kind regards"

16.2. An unsigned and undated letter from Dr Sishi to Mr Dlamini[5] named "PRASA Letter March 2019" (annexure **"OMN7"**) which states the following:

"Dear Mr Dlamini

LETTER OF INTENT TO ENGAGE THE DEVELOPMENT BANK OF SOUTHERN AFRICA (DBSA) TO ACT AS IMPLEMENTING AGENT IN SUPPORT OF THE INTERVENTION TO IMPROVE THE DELIVERY OF INFRASTRUCTURE OF THE PASSNGER RAIL AGENCY OF SOUTH AFRICA (PRASA)

Passenger Rail Agency of South Africa is a South African state-owned enterprise responsible for passenger rail services in the country. The Agency has been experiencing challenges of capacity to implement and rollout its capital expenditure programme over years resulting in roll over of infrastructure consequently affecting negatively on service delivery.

[5] CEO of the DBSA

*We have noted the role played by the DBSA in the infrastructure delivery space, where we noted the implementing agency service provided to government departments such as Departments of Basic Education, Public Works, **the dti** etc. The delivery challenges we face prompted us as PRASA to seek alternative infrastructure delivery model including exploring implementing agency agreement with the DBSA.*

This letter serves to request the consideration of the DBSA to engage concerning the following:

(i) Supporting the planning and design of the train station infrastructure and facilities within the country;

(ii) Programme and project management of new infrastructure delivery on behalf of PRASA;

(iii) Refurbishment, upgrade as well as maintenance of prioritised train stations infrastructure and facilities;

(iv) The designing and programme management of specific depots; and

(v) Any other programme we may deem critical to enable service delivery

We therefore request an urgent engagement to discuss on how DBSA is able to support our infrastructure delivery programme over a three-year

period and the possibility of the Memorandum of Agreement being initiated and finalized.

The proposed date for an engagement is 28 March 2019 at PRASA. Regards"

16.3. A letter from Mr Dlamini to Dr Sishi dated 1 April 2019 (annexure **"OMN8"**) and stating the following:

"Dear Dr Sishi

RE: LETTER OF INTENT TO ENGAGE THE DEVELOPMENT BANK OF SOUTHERN AFRICA (DBSA) TO ACT AS IMPLEMENTING AGENT IN SUPPORT OF THE INTERVENTION TO IMPROVE THE DELIVERY OF INFRASTRUCTURE OF THE PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA)

Your letter dated 26 March 2019 and subsequent meeting of 28 March 2019 at the DBSA offices refers.

The DBSA expressly extends appreciation of the engagement with PRASA regarding accelerated ways to deliver infrastructure pertinent for PRASA performance. As schedule 2 entity, the request to assist PRASA with the

planning, design, refurbishments, upgrades and maintenance of infrastructure resonates well with our mandate as a development finance institution.

The DBSA understood your needs from the discussion and proposes the following process activities:

- *Signing of the Memorandum of Agreement (MoA)*
- *PRASA allocation of priority projects and budgets for DBSA implementation*
- *Inception meeting between PRASA and DBSA Technical teams*
- *DBSA submission of the Infrastructure Programme Implementation Plan (IPIP) for approval*
- *Programme Initiation*

Central to the Memorandum of Agreement (MoA) will be the following pillars:

- *Supporting the planning and design of the train station infrastructure facilities within the country;*
- *Programme and project management of new infrastructure delivery on behalf of the PRASA;*
- *Refurbishment, upgrade as well as maintenance of prioritised train*

stations infrastructure and facilities;

- *Preparations of new projects including conducting feasibility studies; and*
- *Any other programme PRASA may deem critical to enable service delivery.*

I therefore allocate ***Mr Chuene Ramphele – Group Executive: Infrastructure Delivery*** *to work with* ***Dr Mandisa Mokwena*** *from PRASA as the team lead. For any further enquiry, please contact the office of Mr Ramphele on (011) 313 3422 and email:chuener@dbsa.org.*

Looking forward to a developmental and progressive relationship.

P.K. Dlamini"

16.4. The other attachment is the proposed agreement.

17. The view expressed by the Legal Department on the documents 6 May 2019 (annexure **"OMN9"**) is, amongst others, the following:

17.1. The documents don't show that any SCM process was followed, whether an open tender or deviation;

17.2. The risk of litigation from other service providers to have this transaction reviewed and set aside – this related to service providers engaged for some of the station improvement projects that were included in the proposed agreement and service providers that may be interested in doing the work. The proposed projects would essentially exclude service providers that are already appointed and those that can provide the services but are not appointed yet;

17.3. The uncertainty around the relationships between PRASA and the consultants that are already appointed in respect of some of the projects, particularly the station modernisation projects; and

17.4. The redundancy of PRASA employees who are project managers. This project sought to outsource procurement and projet management. PRASA has employees who's daily function is procurement and others who's daily duties involve project management;

18. Before these documents which sought to confirm whether Dr Sishi could sign were shared with the Legal Department, this matter had not been presented to the Board of PRASA and there was no open tender process or approved motivation to deviate from following an open tender processes. This is the reason for the concerns that were raised by the Legal Department from a compliance perspective.

19. After receiving this view from the Legal Department, Dr. Mokwena and I agreed to meet to deal with the matter on 7 May 2019. In the exchange of e-mails between Dr. Mokwena and I, she indicated the following, (annexure **"OMN10"**):

"DBSA as a government implementing agency, falls in the National Treasury dispensation.

They are thus excluded from the procurement process.

They on the other hand will , when appointing the service providers are expected to comply with the PFMA appointment procedures.

This is my understanding on the procurement part of the legal argument"

20. I requested to be provided with the National Treasury dispensation referred to and I was provided was the Standard for Infrastructure Procurement and Delivery Management ("the SIPDM") issued by National Treasury (annexure **"OMN11"**). In my view this document could not assist as it could not be relied upon to legally justify the deviation from an open tender processes. The SIPDM is a standard that shows how best to procure infrastructure and manage the delivery of the infrastructure, it does not provide for the exemption of the DBSA from being engaged through an open tender process. In fact, because a substantial part of PRASA`s procurement is infrastructure, PRASA has adopted the SIPDM for infrastructure procurement and delivery as part of its Supply Chain Management

Policy.

21. The proposed meeting of the 7th May 2019 did not happen and the queries raised in OMN9 were never responded to. On 22 May 2019, I was placed on special leave.

22. Therefore, when the Legal Department was instructed, Dr Sishi was indeed on the verge of signing a contract with the DBSA without the knowledge of the Board and without the necessary approvals.

23. What Dr Sishi appears to have gleaned from the memorandum from the Legal Department is that there was a need for better planning around this project and the seeking of the necessary approvals including taking the Board into his confidence. However, it appears that Dr Sishi did not know what the basis for this approval would be and how to go about asking for same.

24. Dr Sishi, in pursuing the matter both legally and procedurally correctly, ought to have embarked on the following process:

24.1. Instruct the SCM and/or the Strategic Asset Development ("SAD") Departments (led by Piet Sebola) and/or PRASA Technical and/or PRASA CRES (Corporate Real Estate Solutions) to propose to him ways of expediting the expenditure of capital, including looking for public entities

that could assist with this and what form of assistance this would take. SAD, PRASA Technical and PRASA CRES are responsible for capital projects.

24.2. On the basis of this advise and to the extent that it is necessary, to request approval, or approval be sought for whatever solution is seen to be appropriate in the circumstances.

24.3. In my assessment of the above circumstances, Dr Sishi did not follow due process in this matter.

Communications relating to special leave

25. The exchange of correspondence relating to this special leave is annexed hereto. From this it will be clear that:

25.1. My special leave was published in PRASA and my name was associated with corruption (annexure **"OMN12"**). This was communicated as a decision taken by the *"Board and the Group CEO"*.

25.2. I wrote to the Board to point out that there is no legally justifiably reason to place me on special leave and therefore that this constituted fruitless and wasteful and irregular expenditure. I also pointed out that the association of my name with corruption in the manner that it was done, was

defamatory to me.

25.3. After some reminders I received a letter written on the letterhead of the Chairperson but signed by the Group CEO (Dr Sishi) indicating that this was not a decision of the Board (annexure **"OMN13"**). No explanation was contained in this letter on why the Board countenanced the placing of very senior employees on special leave when I advised them that it is unlawful to do so and that this constituted fruitless and wasteful and irregular expenditure. I was the fifth member of PRASA's Group EXCO to be placed on special leave. When I was placed on special leave, Group EXCO had only one member who was not in an acting or interim capacity. Therefore at this stage, Group EXCO was led by a Group CEO who had very little knowledge and experience of the rail business and had only one member of EXCO who was not in an acting or interim capacity.

25.4. After receiving this letter, I submitted a grievance to the Chairperson of the Human Capital Management and Remunerations Committee of the Board of PRASA against Dr Sishi for defaming me in annexure **"OMN14"**. To date, I have received neither an acknowledgment of receipt nor a response.

26. I believe that a Board that provides proper oversight *and* was not party to the decision to place executives on special leave should have satisfied itself that:

26.1. there were good reasons to place executives on special leave when the first three Group Executives were placed on special leave in April 2019, literally a few days after the Board appointed Dr Sishi as the acting Group CEO;

26.2. the placing of executives on special leave was legally justifiable. The Board was aware as at April 2019 that a complaint had been submitted to the Public Protector and that the placing of executives on special leave was one of the matters under investigation by the Public Protector;

26.3. the placing of executives on special leave is not an excuse to make irregular appointments of replacements of those executives;

26.4. the placing of executives on special leave does not adversely affect the operations of PRASA.

27. There is no indication of the reasons that led to the decision to decimate EXCO. The coincidence of decimating Group EXCO and then justifying the appointment of the DBSA on the basis of there being no internal capacity appears rather convenient and contrived. The failure of the Board to prevent the decimation of Group EXCO in the circumstances is most concerning.

28. Therefore at this stage, the only reasonable explanation is that I was placed on special leave and had my character besmirched because I raised concerns about the DBSA transaction and that I would repeat these concerns should the matter be raised at Group EXCO and at meetings of Board Committees at which I was a permanent invitee.

Engagements with the Board of Control

29. The engagements with the Board are within the knowledge of Mr Dingiswayo who advises me that:

29.1. the matter came before the Board for the first time at a special meeting of the Board that was held on the 10th May 2019. It was included under the item "Any Other Business" and was only included under this item for the first time at the Board meeting.

29.2. When the time came for this item to be discussed, the discussion was very vague and even cryptic. All that the Group CEO said was that he proposed the inclusion of this item in order to indicate that he wished to discuss the appointment of the DBSA as an implementing agent with the Chairperson of the Board and in order to obtain an in-principle agreement with the Chairperson before taking the matter through the normal approval processes. This should have raised a red flag with the Board, but

apparently did not.

29.3. At that meeting, members of the Board asked why the DBSA was the only public entity that was considered. The Group CEO did not say anything about the engagements with the Legal Department and did not refer to the SIPDM. The Board agreed that, as much as they were in agreement with the principle, it was necessary to invite other public entities to propose what the DBSA would be asked to propose to PRASA. The members of the Board directed that the following entities be also invited to propose the contemplated services:

29.3.1. the Gautrain Management Agency ("GMA");

29.3.2. the South African National Roads Agency Limited ("SANRAL"); and

29.3.3. the Airports Company of South Africa ("ACSA").

29.4. I pause to state that, for this to be effected, it would have had to have been preceded by a request for a closed bid that is fully substantiated and approved by the authorised official. This request would have clearly indicated the contemplated scope of work and/or the projects to be placed under the management of the DBSA. This was not done. The discussion

simply focused on the identity of the closed bidders and was without any properly substantiated and written justification for the closed bid. In my view this is irregular and a form of poor governance.

29.5. On 23 May 2019 and pursuant to the outcomes of the meeting of the Board, presentations were made at the meeting of the Finance, Capital Investment and Procurement Committee[6] that was held after this Board meeting.

29.6. The presentations of SANRAL and ACSA focused on how these two institutions built institutional capacity to deal with their SCM challenges. The GMA presentation indicated how they deliver their projects programatically. The presentation of the DBSA is the only one that indicated how the DBSA can deliver projects for PRASA and the cost that PRASA will have to pay for the appointment of the DBSA. One of the members of the Committee raised a concern that it appeared that the bidders were given different briefs. There was no direct denial of this assertion by the Dr Sishi. This should have raised another red flag, but appears not to have concerned the Committee enough to pursue it further. At the very least it should have raised concerns for the Committee that the direction of the Board was not carried out. Notwithstanding that, the Committee went ahead to recommend to the Board that the DBSA be appointed as an implementing agent. Discussions at this point were around

[6] A committee of the Board

the criteria for the selection of the projects in relation to the expertise and experience of the DBSA.

29.7. The Board deliberated on the matter on 31 May 2019, 21 June 2019 and 31 July 2019. During this time, the Board obtained a legal opinion on the matter and this legal opinion essentially stated that PRASA would require an approved deviation from procurement processes. The first opinion indicated some doubt as to whether the DBSA can pass the test of rationality and suggested that a better fit would be Transnet. The Board members requested a meeting with counsel and a second opinion was requested. The second opinion was essentially the same as the first opinion; the only notable difference is that reference to Transnet as a better fit than the DBSA had been removed.

29.8. On 31 July 2019, the Board approved the engagement of the DBSA as an implementing agent of PRASA for projects with an estimated value of R5,4 billion over the Medium Term Expenditure Framework. The Board also resolved to request approval of this appointment by the Minister of Transport as well as National Treasury.

29.9. The Board has approved the appointment of the DBSA for the following projects:

29.9.1.	120 km/h perway program	R3,002,664,255.00
29.9.2.	Fencing Programme	R335,540,700.00
29.9.3.	11 Station Modernisation Projects	R2,108,056,098.00
	Total	*R5,446,261,053.00*
	Fees Payable to the DBSA	R326,775,663.18

The Letter seeking the Minister's Approval

30. I have had sight of a letter that is signed by the Chairperson of the Board and Dr Sishi and addressed to the Minister of Transport, Honourable Fikile Mbalula, seeking the Minister's approval of this transaction. This letter is attached hereto and marked annexure **"OMN15"**. Having seen the letter that has been drafted to the Minister there are some concerns that come out of it. The intention is not to critique all the contents of the letter (as this letter is somewhat difficult to follow), I only wish to raise those matters that I believe are substantial and will attempt to give the letter the meaning I believe it is intended to convey:

30.1. Paragraph 3 deals with Compliance and states that PRASA complied because it invited the DBSA, SANRAL, GMA and ACSA *"to present to the FCIP"* and makes reference to the SIPDM. The impression sought to be created is that some competitive process (albeit limited) was undertaken between DBSA, SANRAL, GMA and ACSA. As stated above and as can be gleaned from the letter, the presentations from these 4 entities focused

on different things and can therefore not be regarded as competitive. Reference to the SIPDM culminates in a statements that says: *"The DBSA is permitted, in terms of the PFMA and the* [SIPDM] *... to act as an implementing agent to PRASA in executing PRASA's infrastructure projects."*[7] There is nothing in the SIPDM or the PFMA that 'permits' the DBSA to act as an implementing agent to PRASA. This was indicated to the the Group CEO.

30.2. The contemplated development of the Infrastructure Programme Implementation Plan ("IPIP") after the approval is granted as stated in paragraph 4.2.1 of the letter appears to be placing the cart before the horse. This is something that should have informed PRASA as to whether the DBSA can deliver the projects. For example, if PRASA and the DBSA deadlock on the IPIP, that will be the end of the relationship and render the entire exercise a waste of time. This also shows that there was no competitive process. A competitive process would have also looked at which of the IPIPs from the competitors would be most efficient and cost effective.

30.3. There is no indication as to why the initiatives stated in 5.12.2 of the letter are inadequate. It appears that these initiatives should obviate the need for the DBSA and save R327 million for PRASA.

[7] Paragraph 3.9 of the Letter to the Minister

30.4. A very important and unattended weakness that makes PRASA the author of this need is ensconced in paragraph 7.1 of the letter. Paragraph 7.1 states that on 31 August 2018, the current Board of PRASA resolved to establish a Programme Management Office ("PMO") in the office of the Group CEO. It is clear from the reading of paragraph 7 that this PMO has still not been established more than a year after it was approved and there are no reasons indicated for the failure to establish this office.

30.5. The Board states that the DBSA will be charging a management fee of 6% (for managing the program) and that the industry norm is 6% to 10% per project. This appears to be a failure to compare like with like: the management of a program is different from the management of a project and the management of a program is not based on the fee payable for the construction or the project. PRASA has had examples of this in the re-signaling projects where payment is an agreed monthly fee that is based on the resources required and the length of the oversight.

30.6. No reference is made to any annexures to this letter. It appears that the Minister is asked to give approval without all the information that he would need to make the decision.

31. I therefore confirm that the Daily Maverick article is substantially correct. In this article, the journalists state that:

31.1. *"The board and the train operator's executive committee seem to be in the dark about the project, the need for it and how it was developed."* The first time I heard about this intention was from Dr Mokwena, the matter had not been presented to EXCO.

31.2. *"the Prasa CEO first drafted a memorandum of agreement with DBSA, committing the cash-strapped train operator to a vague agreement in which DBSA will take over the development and maintenance of the railway operator's infrastructure."* This is correct and was one of the concerns that were raised about the draft agreement.

31.3. *"In a letter to Patrick Dlamini, the DBSA chief executive officer, in April, Sishi writes that, "Following interactions with your organisation regarding the planning, implementation and delivery of infrastructure programmes for Prasa, we are pleased to advise you of your appointment as programme implementing agent for the 2019/20 and MET [medium expenditure term] period". That covers the financial years ending in March 2022."* Although this letter is unsigned and is undated, the letter from the DBSA of 1 April 2019 appears to respond to this letter.

31.4. The article further quotes excerpts from a memorandum that was prepared by Mr Benedict Khumalo who was assisting me with advising the Group CEO with the documents that had been furnished to me by Dr Mandisa

Mokwena.

32. I do not believe that a case can be made out for a deviation from procurement processes by reason of the following:

32.1. The idea of involving the DBSA was conceived, at the latest, in January 2019, however the requests for its approval are only being attended to more than 7 months later – this is more than enough time to build any lacking internal technical and procurement capacity at PRASA. If this is brought to the attention of National Treasury, National Treasury would know that PRASA has created this need and now seeks to meet the need through a deviation. This would amount to perversion of the deviation process.

32.2. The DBSA does not have any track record in delivering rail related projects or projects in a rail environment. There are other public entities that have a proven track record in the delivery of rail related projects and projects in the rail environment that were not asked to propose these services.

32.3. The fees payable to the DBSA, about R327 million are excessive in the context of managing the implementation of a program. It appears that the parties used the standard of consultants who manage projects (which

typically includes architects, quantity surveyors and project managers) to appoint a program manager (which only requires project managers).

Conclusion

33. The following are the major riks of this transaction:

33.1. With respect, the internal program manager and champion of this transaction knows little, if anything, about procurement processes, project and program management. This is based on the views expressed by Dr Mokwena as appears from her e-mails. Documents from the Human Capital Management Department of PRASA show that Dr Mokwena's contract terminates at the end of September 2019. These are substantial risks to the program. The person championing the program should be someone who is knowledgeable on project and program management and should not be someone who is transient.

33.2. The external program manager is not known for having knowledge and expertise in industrial scale rail-related projects. These are projects that are undertaken along a live 3 and 25 kilovolt lines and that must be undertaken without cancelling the operations.

34. The above risks show that PRASA will be better served streamlining its own

processes and proceeding with the projects that have consultants/project managers who have demonstrated that they have the necessary experience and expertise appointed already or appointing appropriately qualified project managers to the projects that do not have appropriately qualified project managers appointed therefor.

35. Intersite has had experience in being Project Implementation Agents for government departments. In this role, Intersite came into the shoes of its clients, appoints consultants (that is, the designers, architects and quantity surveyors) on the one hand and a construction company on the other hand. PRASA, through Intersite, has learned that the appointment of Project Implementation Agents is more profitable to the Agent than it is to the Agent's client. It would be much cheaper for PRASA to employ capable programme managers, than to spend R327 million giving rail experience and expertise to programme managers employed by the DBSA.

36. I attach hereto the confirmatory affidavit of Mr Dingiswayo.

Onica Martha Ngoye

I certify that this affidavit was signed and sworn to before me at Johannesburg on this the 16th day of September 2019, by the deponent after the deponent declared that

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she knew and understood the contents of this declaration, that the deponent had no objection to taking the prescribed oath and has taken the prescribed oath which the deponent considered binding on her conscience, having complied with regulations contained in Government Notice R1258 of 21 July 1972, as amended.

COMMISSIONER OF OATHS

Name:
Address:
Designation:

ELIYAHU REUVEN KARP
COMMISSIONER OF OATHS
EX OFFICIO
PRACTISING ATTORNEY (R.S.A.)
61 OXFORD ROAD
CORNER ELFINWOLD ROAD
SAXONWOLD
JOHANNESBURG

SS7-OMN-039

"OMN I"

OMNI

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Daily Maverick

Sunday, 11 August 2019

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SS7-OMN-041

New Prasa boss on verge of signing a murky multibillion-rand deal

By Sikonathi Mantshantsha and Pieter-Louis Myburgh

The acting chief executive of SA's cash-strapped train operator Prasa, Nkosinathi Sishi, is on the verge of signing an agreement that not only flouts all statutes governing the utility, but will also expose the firm to almost R5-billion of unauthorised and irregular expenditure.

Nkosinathi Sishi, who was seconded from the department of transport to take over the Passenger Rail Agency of SA (Prasa) from yet another

SSZ-CMN-042

departed interim chief executive, Sibusiso Sithole, in February 2019, immediately hit the ground running. He unilaterally and secretly negotiated an agreement that allows the Development Bank of Southern Africa (DBSA) to extract management fees in excess of R400 -million for proposing and developing infrastructure projects for Prasa.

The board and the train operator's executive committee seem to be in the dark about the project, the need for it and how it was developed. Insiders question the need for the project, and why Sishi, a newcomer with only two months at the company at the time, would commit a cash-strapped Prasa to such expenditure.

In an agreement that seems eerily similar to Eskom's infamous agreement with global management consultancy McKinsey in 2016, the Prasa CEO first drafted a memorandum of agreement with DBSA, committing the cash-strapped train operator to a vague agreement in which DBSA will take over the development and maintenance of the railway operator's infrastructure.

A similar agreement put together by McKinsey, Trillian Capital Partners, the purported BEE supplier development partner, and executives at Eskom cost the power utility at least R1.6-billion. Under public scrutiny, Eskom later admitted it had not derived any value from the work. (This was part of a bigger plan to extract more than R9 -billion in fees from Eskom.) The contract was annulled by a high court in 2019, which ruled that Trillian must pay back its R600-million portion of the fees. Earlier in 2019, McKinsey paid back the R1 -billion it had received from Eskom.

Not only is the Prasa's agreement with DBSA in breach of the governance statutes regulating the train agency and all state-owned entities, but it specifically violates the most basic requirements of the Public Finance Management Act (PFMA), which insists on a competitive tender process for all major expenditures. The budgeted expenditure under the contract is three times the annual revenue of Prasa. Not only does that amount exceed the delegated authority of

the CEO, but it also requires a resolution of the board of directors, which Sishi ignored.

In a letter to Patrick Dlamini, the DBSA chief executive officer, in April, Sishi writes that, "Following interactions with your organisation regarding the planning, implementation and delivery of infrastructure programmes for Prasa, we are pleased to advise you of your appointment as programme implementing agent for the 2019/20 and MET [medium expenditure term] period". That covers the financial years ending in March 2022.

DBSA will be allocated billions for its help in "asset protection, fencing programme, station upgrade programme, depot modernisation, station improvement, and renewable energy programme." The budgeted expenditure will be R1.17-billion in the first year ending March 2020, R1.65-billion the following year and R1.95-billion in financial 2022.

A separate memorandum drafted by Sishi on behalf of Prasa, and by Chuene Ramphele, DBSA's executive for infrastructure delivery, shows DBSA will charge a minimum of R200-million on "funds under management", which will increase to more than R400-million, or 9% of the total budget, according to a draft agreement seen by Daily Maverick.

Among other red flags, the agreement allows DBSA to propose investment projects, and then execute them for a fee, inducing fears of a conflict of interest. There is no oversight mechanism spelt out in the contract, which exposes Prasa to runaway expenditure. Other than mentioning "improvements" to 135 train stations, it is not clear what exactly is the need for the agreement.

Prasa ignored 16 questions sent by Daily Maverick on 6 August 2019, as well as follow-up emails.

"I did forward the email to the executive, but there has been no response," spokesperson Nana Zenani said in a telephone call on 8 August.

SSZ-OMN-044

Although the DBSA admitted it had had discussions with Prasa on the matter, it pleaded ignorance of the details contained in the agreement that would net it more than R400-million in three years.

"Although the DBSA has had discussions with Prasa, we are unaware of the details that you put forward in your email such as a pending appointment or contract and the terms thereof. We therefore recommend that you direct those questions to Prasa as they are best positioned to respond," said spokesperson Sebolelo Matsoso in an email on 8 August.

Asked if the organisation possessed any capacity to implement railway infrastructure, the DBSA said:

"In terms of the services that the DBSA provides, the DBSA is a development finance institution that operates across the whole infrastructure value chain. In addition to financing, we offer planning, project preparation as well as infrastructure delivery and implementation support through the bank's Infrastructure Delivery division. The DBSA is an organ of state and listed in Schedule 2 of the PFMA, 1999 as a major public entity."

Some of the members of the Prasa executive committee claim they have no knowledge of how this proposed agreement came about. One insider said Prasa executives found out about the proposed appointment only after Sishi gave a copy of his letter to DBSA's CEO to the train operator's legal head, Martha Ngoye, for legal clearance.

Benedict Khumalo, a senior manager in the legal department was tasked with dealing with the correspondence. Khumalo's responding memo on 6 May was scathing of Sishi's letter:

"The correspondence between the chief executives suggests that there was no procurement process followed that resulted in the draft agreement. If there was a procurement process it has not been shared with the legal department for the purposes of advice," wrote Khumalo, adding that there is nothing that allows Prasa "to dispense with the

procurement requirements in terms of the PFMA and the Constitution".

Such deviations are permissible only in an emergency. "A three-year contract cannot be said to be an emergency, nor can DBSA be a single-source supplier," advised Khumalo. Given the amounts involved in the project, said Khumalo, the process to enter into such an agreement should have been an open and competitive tender process.

Sishi's letter binding Prasa to outsource all its infrastructure work to DBSA raised more questions than it provided answers.

Among the shortcomings identified in the document were its vague nature about the status of current Prasa contractors already doing some of the work now being outsourced to the DBSA.

"In essence, the DBSA will carry out work similar to [what] is normal [ly] performed by consultants. Will the current contracts be terminated? If so, how is the risk of obvious litigation on damages and loss of profit claims mitigated? How is the potential duplication of fees mitigated?" asked Khumalo.

As the agreement envisaged that DBSA would appoint all contractors to service Prasa's requirements over the three years, it was not clear how existing contractors would be treated. Further, as the contract was worth billions of rand, Khumalo said the fees payable to DBSA alone would "at least exceed [a] hundred million during the term of the agreement".

As such, the value of the contract agreement would be in excess of the executive delegation of authority. Thus it would require the approval of the board of directors.

"I have not been furnished with any board resolution authorising that the agreement be entered into," said Khumalo. "If the board has not approved this agreement it can be said to be irregular based on the delegated authority in terms of value."

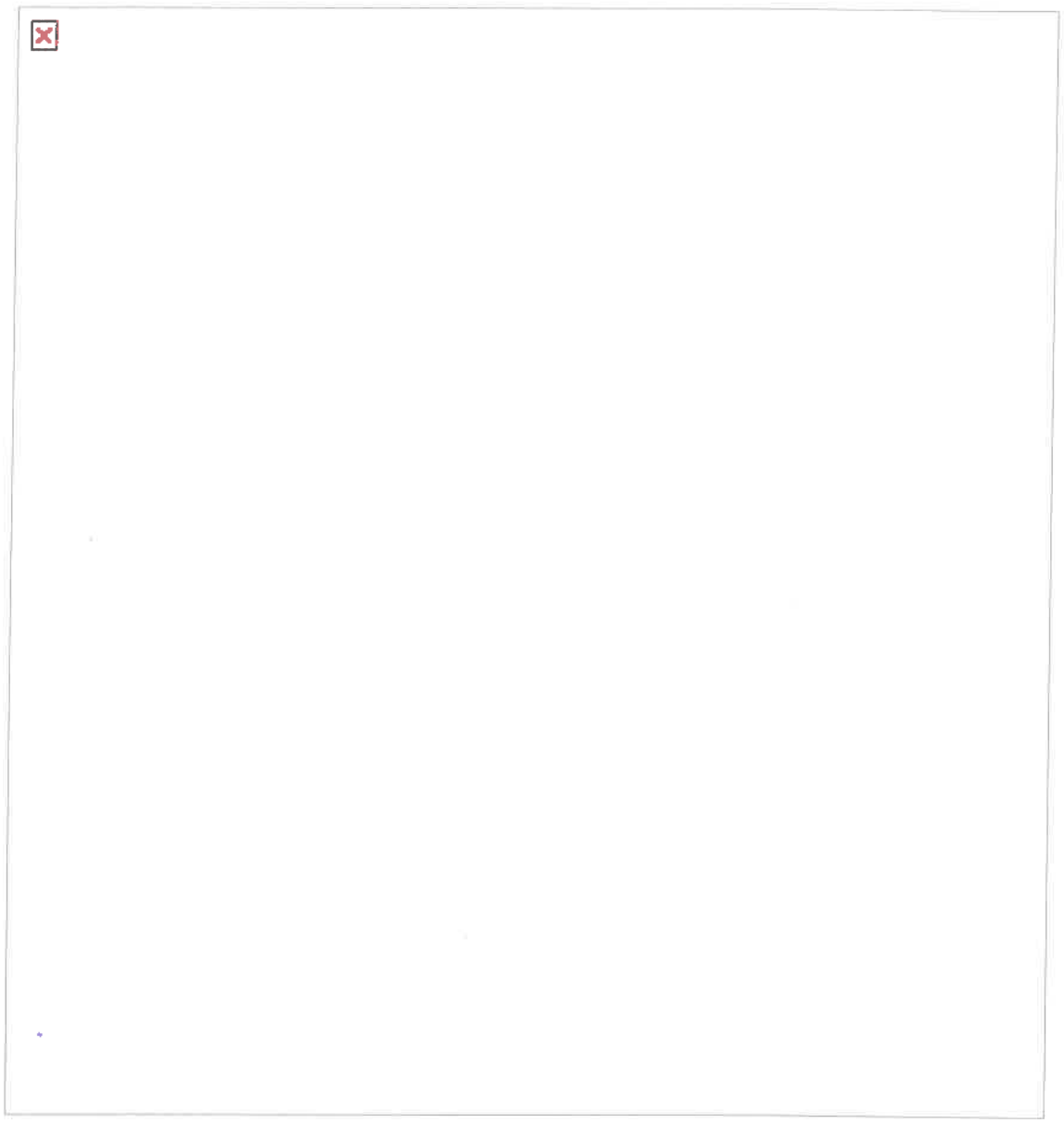
Khumalo had other concerns regarding the proposed agreement: "Taken overall, the effect of the agreement will be that all Prasa

employees with the project space may be rendered redundant. Most will be reduced to administration at the very least."

Ngoye, in her capacity as legal head, risk and compliance, declined to clear the letter to DBSA. Soon after Sishi received this advice from the legal department, Ngoye was put on special leave, together with Tiro Holele, an executive responsible for strategy in the chief executive's office. Sources close to Prasa say the two were placed on special leave to remove them from office in order to clear the way for Sishi and some board members to conclude transactions whose only purpose is to illegally divert funds to individuals at the expense of Prasa.

Almost three months later, they have not been charged with any offence, and remain on full pay. **DM**





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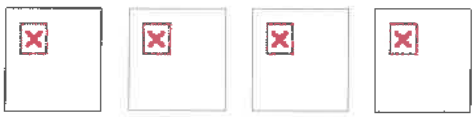

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SS7-OMN-048

"OMN 2"

Verda van den Berg

From: Sibusiso Sithole
Sent: Saturday, 19 January 2019 17:22
To: Chuene Ramphele
Cc: Fani Dingiswayo
Subject: Re: Typical Memorandum of Agreement (MOA)

Dear Mr Ramphele please note that I have received the document sent to me and further that I have directed our Head of Legal, Mr Dingiswayo to liaise with you in developing an MOU that is specific to PRASA context and needs.

Sibusiso Sithole
PRASA GCEO

On 16 Jan 2019, at 16:42, Chuene Ramphele <ChueneR@dbsa.org> wrote:

> Dear Mr Sithole
>
> Attached please find a sample Memorandum of Agreement that we typical sign with clients. Obviously the agreement initiators becomes PRASA in this case. The discussions to ensue will entail dealing with the details.
>
> Please contact me if there any further clarity required.
>
> **Mr Chuene Ramphele**
> Group Executive: Infrastructure Delivery Division
> Development Bank of Southern Africa (DBSA)
> T.+27 11 313 3422 (W)
> C.+27 83 644 3963
> F.+27 11 206 3422
> E. chuener@dbsa.org
>
> The Development Bank of Southern Africa is one of the leading development financial institutions on the continent. We offer an integrated value chain which includes e.g. project consulting, project preparation, deal syndication, finance, implementation and maintenance solutions for socio-economic infrastructure developments in (South) Africa. Our areas of focus include Education, Energy, Health, Housing, ICT, Transport and Water.
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>
> <DOD MOA with DBSA DRAFT.doc>

SS7-OMN-050

"OMN34

Office of **Dr. N Sishi**
Group Chief Executive Officer

www.prasa.com

"OMN3"

prasa
PASSENGER RAIL AGENCY OF SOUTH AFRICA

PRASA HOUSE
1040 Burnett Street
Hatfield
Pretoria

Private Bag X101
Braamfontein, 2017
T: +27 12 748 7010

Mr. Patrick Dlamini
Chief Executive Officer
Development Bank of Southern Africa
PO Box 1234
Halfway House
Midrand
1685

Dear Mr. Dlamini

APPOINMENT AS IMPLEMENTING AGENT FOR THE PRASA INFRASTRUCTURE PROGRAMME

Following the interactions with your organisation regarding the planning, implementation and delivery of infrastructure programmes for Passenger Rail Agency of South Africa (PRASA), we are pleased to advise you of your appointment as a Programme Implementing Agent for the 2019/20 financial year and MTEF period.

The allocation is for the following programmes, which have been indicated together with their 2019/20 financial year budget. Indicative allocations for outer years are provided for ensuring continuity of projects.

Infrastructure Category (R'000)	**2019-2020 Allocation**	**Indicative Allocation 2020/21 – 2021/22**	
Asset Protection	264 794 091	280 681 736	297 522 641
Fencing Programme	114 100 000	190 500 300	201 930 318
Station upgrade programme (135 stations)	109 433 319	225 200 110	238 712 117
Depot Modernization	285 452 098	590 223 400	825 636 804
Station Improvement Programme	238 253 825	252 549 055	267 701 998
Energy Renewable Programme	105 000 000	111 300 000	117 978 000
Grand Total	**1 117 033 333**	**1 650 454 601**	**1 949 481 878**

Members of the Board of Control
K Kweyama (Chairperson), S Ntsaluba, I Wessie, J Schreiner, N Alli, D Tshepe, X George, M Matlala, P Setai

Group Chief Executive Officer
Dr. N Sishi

Acting Group Company Secretary
F. Dingiswayo

prasa
PASSENGER RAIL AGENCY OF SOUTH AFRICA

1. The total budget allocation from PRASA for the 2019/20 financial year is R1 117 033 333.00 and note that the management fee must be calculated according to the sliding scale as incorporated in the Memorandum of Agreement.

2. You are requested to ensure that your organisation does not exceed the allocated budget for 2019/20. You are also reminded to only implement projects contained in the attached Annexure A

3. Your cash-flows and activities planned for the 2019/20 financial year must be aligned to the programmes/projects allocations (summarised above) so as to avoid possible over/under expenditure for 2019/20 financial year.

4. Your organisation is required to ensure that prior permission is sought before projects are advertised and awarded to contractors and consultants; this is mainly done to manage cashflows.

5. You are requested, where applicable, to use standard plans and pre-prepared designs, cost norms, tender documentation and bills of quantities and an approved procurement strategy to minimise professional fees.

6. The budget figures in the enclosed priority lists are fully inclusive of all professional fees, disbursements and VAT, and are not to be exceeded under any circumstances. Should the actual project costs exceed the budget, advance written notice must be sent to our office, together with a written motivation clearly outlining the reasons for requiring the additional budget. Such motivation must be submitted in the context of your appointment in terms of managing the respective programmes and has to be documented in your Implementation Plan;

7. You are also reminded that monthly and quarterly reporting on the programme and project expenditure must be as per the format required by PRASA and /National Treasury.

8. In terms of monitoring the delivery process, you are required to include these projects in an Infrastructure Programme Implementation Plan (IPIP) which is to be submitted to PRASA before 01 May 2019. This Plan will be used to identify and implement the

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controls which will ensure efficient delivery as well as provide the basis for monitoring the performance of organisation as the Implementing Agent.

9. In this regard, please note that responsibility for service delivery, once the IPIP has been completed and approved by ourselves, lies with yourselves to ensure that our expectations are met and delivery occurs within the specified budget and time frames.

10. You are reminded that you are to ensure that all procurement and tender documentation is in compliance with all relevant and appropriate legislation (for example the Supply Chain Management Act, Construction Industry Development Board Act, Occupational Health and Safety Act, and the latest Treasury Instruction 4 of 2015/2016 – Standard for Infrastructure Procurement and Delivery Management (SIPDM).

11. All variation orders exceeding allowable contingency amounts need approval from the variation orders committee and delegated authority prior to implementation.

12. Extension of time must also be approved by PRASA prior to implementation.

13. You are also reminded that the CIDB Act prescribes that all infrastructure projects be registered using the prescribed protocol. This applies to current and planned projects.

Your cooperation and commitment towards service delivery is greatly appreciated.

Yours sincerely;

Dr. Nkosinathi Sishi **Date**
Group Chief Executive Officer

SS7-OMN-054

"OMN 4"

"OMN4"



prasa
PASSENGER RAIL AGENCY OF SOUTH AFRICA



MEMORANDUM OF AGREEMENT

Entered into between

PASSENGER RAIL AGENCY OF SOUTH AFRICA

(Hereinafter referred to as the "PRASA")

Represented by DR NKOSINATHI SISHI

duly authorised in his capacity as the Group Chief Executive Officer

AND

DEVELOPMENT BANK OF SOUTHERN AFRICA

herein represented by MR C RAMPHELE

in his capacity as Group Executive: Infrastructure Delivery Division duly authorised thereto

(Collectively the "Parties")

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PREAMBLE

WHEREAS, the Development Bank of South Africa Limited is a development finance institution wholly owned by the South African Government wherein the Infrastructure Delivery Division ("IDD") primarily focuses on accelerating the delivery of quality social and economic infrastructure planning and delivery, acting as an implementing agent for organs of state.

WHEREAS, the **CLIENT**, is the **PASSENGER RAIL AGENCY OF SOUTH AFRICA,** and requires capacity development, technical support and implementation of new and existing infrastructure projects.

WHEREAS, the **IMPLEMENTING AGENT** is a Schedule 2 public entity, as stipulated in the Public Finance Management Act, 1999 (Act No. 1 of 1999) ("the PFMA"):

i. has the expertise and capacity to manage and complete the projects as specified in the agreement;

ii. has the financial structures, systems and controls to comply with the provisions of this agreement, the National Treasury's Standard for Infrastructure Procurement and Delivery Management (SIPDM) and the PFMA (including any and all Treasury Regulations; and

iii. is prepared to support the **CLIENT** with the PROGRAMME planning, procurement and execution or to conduct the services required during the PROGRAMME.

WHEREAS the implementing agent has agreed to collaborate with the CLIENT in respect of its infrastructure program

WHEREAS, the Parties undertake to engage in a co-operative relationship in rendering to each other assistance, guidance and advice, and to deliver infrastructure with the principles of co-operation, good governance, transparency and consultation;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1 INTERPRETATION

In this Agreement, the following rules of interpretation shall apply unless otherwise indicated:

1.1 All words and expressions to any one gender shall include the other gender;

1.2 The words signifying the singular shall include the plural and vice versa;

1.3 A reference to a natural person shall include a juristic person and vice versa;

1.4 Headings shall be for reference purposes only;

1.5 The rule of construction that the Agreement shall be interpreted against the party responsible for the drafting or preparation of the Agreement, shall not apply.

1.6 In the event of a conflict between the provisions of this Agreement and its annexures, the provisions of this Agreement will supersede those of the annexures.

2 DEFINITIONS

In this Agreement, unless clearly inconsistent with or otherwise indicated by the context:

2.1	**"Implementing Agent"**	means Development Bank of Southern Africa Limited being the **IMPLEMENTING AGENT** (Implementing Agent) who will carry out the infrastructure delivery services on behalf of the **CLIENT** in terms of the PROGRAMME.
2.2	**"Agreement"**	means this Agreement together with all annexures and addendums thereto.
2.3	**"Implementing Agent"**	means Development Bank of Southern Africa Limited being the **IMPLEMENTING AGENT** (Implementing Agent) who will carry out the infrastructure delivery services on behalf of the **CLIENT** in terms of the PROGRAMME.

2.4	**"Implementing Agent"**	means Development Bank of Southern Africa Limited being the **IMPLEMENTING AGENT** (Implementing Agent) who will carry out the infrastructure delivery services on behalf of the **CLIENT** in terms of the PROGRAMME.
2.5	**"Agreement"**	means this Agreement together with all annexures and addendums thereto.
2.6	**"CIDB"**	means the Construction Industry Development Board.
2.7	**"Client"**	means the Passenger Rail Agency of South Africa (PRASA)
2.8	**"Construction Management Services"**	shall mean coordinating the on-site activities of all contractors and/or providing technical or entrepreneurial training to contractors or individuals.
2.9	**"Consultant"**	shall mean a professional architect, engineer, quantity surveyor, or any other technical expert needed for the implementation of a component of the project, commissioned by the **IMPLEMENTING AGENT**.
2.10	**"Contractor"**	means any contractor appointed by the **IMPLEMENTING AGENT** to carry out any work in respect of a component of the project.
2.11	**"Day"**	means working day.
2.12	**"DoRA"**	means the Division of Revenue Act as amended.
2.13	**"Effective Date"**	means the date of signature of this agreement.
2.14	**"Infrastructure Delivery Management (IDM) Toolkit"**	means version 11 ,March 2012(of the IDM Toolkit (or the most recently published thereafter), as developed by the Construction Industry Development Board (CIDB).

2.15	**"Infrastructure Programme Implementation Plan" ("IPIP")**	means the approved document prepared by the **IMPLEMENTING AGENT** in response to the PROGRAMME/SUB-PROGRAMMEs.
2.16	**"Infrastructure Delivery Management System"("IDMS")**	means the model that describes the processes that make up public sector delivery and procurement management as it applies to the construction industry.
2.17	**"Tranche payment"**	means the payment made to the **IMPLEMENTING AGENT** by the **CLIENT**, based on the cash flow as specified in the **IMPLEMENTING AGENT's** IPIP.
2.18	**"Parties"**	means the **CLIENT** and the **IMPLEMENTING AGENT.**
2.19	**"PCMP"**	means the Project and Construction Management Professions Act, 2000 (Act No 48 of 2000) as amended.
2.20	**"Period of Agreement"**	means the period specified in the Agreement, commencing on date of signature of the Agreement
2.21	**"PFMA"**	means the Public Finance Management Act No 1 of 1999, as amended.
2.22	**"Programme"**	means the infrastructure service delivery PROGRAMME of the **CLIENT**, made up of the sub-PROGRAMMES defined in the **CLIENT's** capital investment, maintenance and asset management plan.
2.23	**"Programme Budget"**	means the amount which the **CLIENT** will allocate for purpose of implementing the PROGRAMME.
2.24	**"Project Management Services"**	means the assessment and supervision of projects, appointment of consultants and contractors, financial management, hand-over and project completion.

2.25 "Projects"	means projects agreed upon by the parties in writing to be planned and implemented by the **IMPLEMENTING AGENT** in terms of the **CLIENT's** requirements and the **IMPLEMENTING AGENT's** IPIP as approved by the **CLIENT**.
2.26 "SACPCMP"	means the South African Council for the Project and Construction Management Professions.
2.27 "SCM"	means Supply Chain Management.
2.28 "SETA"	means the relevant Sectoral Education and Training Authority.
2.29 "Standard for Infrastructure Procurement and Delivery Management (SIPDM)"	means National Treasury's Standard for Infrastructure Procurement and Delivery Management, effective from 1 July 2016.

3 APPOINTMENT OF THE IMPLEMENTING AGENT

3.1 The **CLIENT** appoints the **IMPLEMENTING AGENT** for the purpose of implementing the PROGRAMME and the **IMPLEMENTING AGENT** accepts the appointment on the terms and conditions stated herein, **Annexure A**.

3.2 The **IMPLEMENTING AGENT** shall act as an independent party, and has no authority to enter into agreements binding the **CLIENT** outside the terms of this agreement.

3.3 In so far as it is necessary for the **IMPLEMENTING AGENT** to perform its functions in terms hereof, the **CLIENT** hereby delegates to the **IMPLEMENTING AGENT** authority necessary to carry out the Programme Management and Implementation Functions.

3.4 The **CLIENT** agrees to pay the **IMPLEMENTING AGENT** a management fee in terms of the undertakings made in this Agreement.

4 THE SCOPE OF THE AGREEMENT

4.1 Carry out the full Implementing Agent Role for the PRASA Train modernisation Infrastructure Building Programme for new and existing identified infrastructure in **2019/20, 2020/21, 2021/22** financial years;

4.1.1 The Programme entails:

4.1.1.1 Supporting the planning and design of the train station infrastructure and facilities within the country

4.1.1.2 Programme and project management of station modernization infrastructure programme delivery on behalf of the PRASA

4.1.1.3 Refurbishment, upgrade as well as maintenance of prioritised train stations infrastructure and facilities;

4.1.1.4 Carrying out any other additional projects as agreed to in writing between the two parties.

4.1.2 The Projects included in the Programme will be implemented when a signed Instruction to Proceed with Works (IPWs) is issued by PRASA to the DBSA.

4.1.3 The Programme will consist of the Projects identified by PRASA in a form of Project List to be provided to the DBSA not later than one month into the beginning of a financial year and allocated through IPWs for execution thereof. The DBSA shall be obliged to prepare the Infrastructure Programme Implementation Plan after receipt of the Project list referred to above within one month of receipt thereof.

4.1.4 The draft Implementation Plan shall be a high-level overview of the approach to be followed by the DBSA in the implementation of the Programme and submitted to PRASA for approval. However, the overview will need to provide for the following:

4.1.4.1 Details of the skills component needed for the DBSA's planning, procurement, construction and monitoring and reporting process;

4.1.4.2 A preliminary action plan setting out the projects, contracting and procurement arrangements and timelines for the procurement of contractors; and

4.1.4.3 The PRASA shall be entitled to request amendments to the draft Implementation Plan. Once approved the Implementation Plan will form part of this Agreement, must be initialled, by the Parties, and must be read in conjunction with this Agreement.

4.1.5 The DBSA shall conduct all activities in respect of the implementation of the Programme strictly in accordance with the contents of the Implementation Plan.

4.2 Assist the PRASA in implementing capacity building initiatives related to infrastructure delivery

4.2.1 The DBSA will assist the PRASA by sourcing suitably qualified technical skills to perform the functions of the PMO as specified by the company – as well as specialised professional services providers as and when required.

4.2.2 The PRASA will determine the terms of reference in consultation with the DBSA.

4.2.3 The technical professionals sourced through the DBSA in terms of the agreement will be available to serve on a full time basis and contracted by the DBSA for a period as determined by the DBSA.

4.2.4 The cost of the procured PMO team will be borne by PRASA and the PMO will be accountable to the PRASA.

4.2.5 The DBSA will, where appropriate, leverage and crowd in support from its existing partnerships to the benefit of PRASA.

5 PROGRAMME BUDGET

5.1 The CLIENT hereby agrees and undertakes to provide the PROGRAMME BUDGET specified in CLIENT's approved letter of allocation which shall be utilised and be disbursed strictly in accordance with the final IPIP approved by the CLIENT.

5.2 The PROJECT and PROGRAMME BUDGETS contained in the final approved IPIP are fully inclusive of all construction costs, professional fees, management fees, disbursements and Value Added Tax. The final approved IPIP PROGRAMME and PROJECT BUDGETS are not to be exceeded under any circumstances, unless specific permission has been granted in writing by the **CLIENT.**

5.3 The **CLIENT** hereby agrees and undertakes to transfer the approved PROGRAMME BUDGETS in tranches based on the **IMPLEMENTING AGENT** submitted and approved cash flows as per IPIP.

6 PURPOSE OF PROGRAMME BUDGET

6.1 The PROGRAMME BUDGET shall be applied and expended exclusively to implement the PROGRAMME within the project area.

6.2 The PROGRAMME BUDGET shall be used for no other purpose whatsoever without the CLIENT's prior written consent.

7 PERIOD OF THIS AGREEMENT

7.1 This Agreement commences on **the date of signature of this agreement**, and shall terminate on **28 April 2022** or at the logical conclusion of the Projects allocated to the **IMPLEMENTING AGENT**, as agreed between the Parties.

7.2 The Parties may renew or extend this Agreement for such period of time and on such additional terms and conditions as may be negotiated between them and agreed in writing, unless this Agreement is terminated prior to termination date.

7.3 Notwithstanding clause 7.1 either party may terminate this agreement in accordance with the breach clause at 28 below.

8 PROGRAMME MANAGEMENT

8.1 The Parties acknowledge the importance of efficiency of implementation of the PROGRAMME, and the **IMPLEMENTING AGENT** hereby warrants accordingly, that it shall do all things reasonably necessary, and use its best endeavours to ensure that the projects are implemented in accordance with the **CLIENT's** requirements as recorded in the approved IPIP.

8.2 The project management of the PROGRAMME must be carried out in accordance with best practice as documented in the IDM Toolkit, the National Treasury "Standard for Infrastructure Procurement and Delivery Management", the **CLIENT's** Infrastructure Plan and the **IMPLEMENTING AGENT's** IPIP.

8.3 A list of envisaged projects identified by the **CLIENT** as forming part of the PROGRAMME shall be presented to the **IMPLEMENTING AGENT** to enable the **IMPLEMENTING AGENT** to prepare its IPIP.

9 RESPONSIBILITIES OF THE CLIENT

9.1 Notwithstanding the responsibilities outlined elsewhere in this document, it shall be the responsibility of the **CLIENT** to:

9.1.1 Issue a Letter of Allocation for the PROGRAMME BUDGET and inform the **IMPLEMENTING AGENT** of the funds available before the end of April each year,

9.1.2 Appoint a Programme Manager within 5 (five) days of the issuing of a Letter of Appointment to the **IMPLEMENTING AGENT**. The Programme Manager shall be the official representative and contact person in all meetings and communications with the **IMPLEMENTING AGENT**;

9.1.3 Approve the **IMPLEMENTING AGENT's** Infrastructure Programme Implementation Plan (IPIP),

9.1.4 Pay tranche payments defined in clause 2.15 to the IMPLEMENTING **AGENT** in accordance with cash flows and subsequently base payments on reconciliation of invoices submitted to the **CLIENT** within 30 (thirty) days of submission of such invoices, subject to the correctness and validity of said invoices;

9.1.5 Approve any proposed technology to be utilised by the **IMPLEMENTING AGENT** to ensure its appropriateness within the local context of the project;

9.1.6 Provide approved standard designs and specifications in hard and electronic format to the **IMPLEMENTING AGENT**, in accordance with which all infrastructure shall be constructed and/or supplied. Any alteration to the designs, construction methods and/or materials for a specific project must be confirmed with the written approval of the **CLIENT** and the **IMPLEMENTING AGENT**, before work on such design, construction or maintenance begins;

9.1.7 In respect of each project, within 5 (five) days of request by the **IMPLEMENTING AGENT**, ensure:

9.1.7.1 that each site is identified;

9.1.7.2 that the known boundaries thereof are pointed out to the **IMPLEMENTING AGENT**;

9.1.7.3 that all Stakeholders and Communities are notified of the project;

9.1.7.4 unrestricted access to sites;

9.1.7.5 that legal title and occupation rights are secured in respect of each site.

9.1.8 Conduct all liaisons with the local community in respect of the implementation of the projects;

9.1.9 Approve the scope of work, specifications and site services layout for each project;

9.1.10 Approve plans through the **CLIENT"s** delegated plans approval structures, for all projects requiring new infrastructure;

9.1.11 Approve disposal (demolition, dismantling or disposal of unwanted, redundant or surplus materials, plant and/or equipment) when necessary;

9.1.12 Approve construction variations, compliant with clause 15 below, where deemed necessary.

9.1.13 Attend monthly Programme Management/Coordination meetings, and any other meetings deemed necessary for the successful completion of the projects. All such meetings will be attended by the **CLIENT's** appointed Programme Manager, who shall be authorised to act on behalf of the **CLIENT;**

9.1.14 Ensure that either their Programme Manager or other authorised representative shall be present at all delivery/handover meetings;

9.1.15 Formally appoint a third party to act as a technical advisor and/or quality control inspector during the construction phase of any project. Should the **CLIENT** implement this option, the roles and responsibilities of the third parties' authorised representative shall be made known to the **IMPLEMENTING AGENT**. The appointment of the third party shall in no way relieve the **IMPLEMENTING AGENT** of its responsibility in terms of this Agreement or construction supervision and quality control of any component of any project.

9.2 At the request of the **IMPLEMENTING AGENT**, the **CLIENT** shall give such technical and other general assistance as it may be able to provide, in order to facilitate the effective implementation of this Agreement within the period; however, in so doing it shall in no way relieve the **IMPLEMENTING AGENT** of its obligations and responsibilities in term of this Agreement.

10 RESPONSIBILITIES OF THE IMPLEMENTING AGENT

10.1 Notwithstanding the responsibilities outlined elsewhere in this document, it shall be the responsibility of the **IMPLEMENTING AGENT** to:

10.1.1 Prepare and submit to the **CLIENT** an Infrastructure Programme Implementation Plan (IPIP), within 30 days;

10.1.2 Do all such things necessary to manage the implementation and successful completion of the PROGRAMME in terms of the approved IPIP;

10.1.3 Prepare detailed and accurate budgets, cash flow statements, and maintain proper accounting procedures and financial records, in order to facilitate the preparation of regular financial statements and exercise proper financial discipline that will pass Auditor General scrutiny;

10.1.4 The financial administration of the PROGRAMME BUDGET shall be undertaken through the financial management system of the **IMPLEMENTING AGENT**.

10.2 The **IMPLEMENTING AGENT** shall be responsible for the following in terms of each project:

10.2.1 Contracting with suitably qualified, experienced and capable consultants and contractors to ensure the efficient and timeous completion of each project in a proper and workmanlike manner;

10.2.2 Obtain geotechnical reports in respect of each project, where this is not already available from the **CLIENT**, for use in determining ground conditions which shall be used for positioning and specification of new infrastructure facilities;

10.2.3 Obtain property Land Survey and Surveyor General diagrams in respect of each project, where this is not available from the **CLIENT**, for use in identifying site boundaries;

10.2.4 Prepare Bills of Quantities to be included in tender documentation, for each project as identified in the approved IPIP;

10.2.5 Manage consultants in the preparation of construction plans and specifications specific to the individual projects, utilising standard designs and specifications provided by the **CLIENT**, where applicable;

10.2.6 Obtain necessary plans approvals from the **CLIENT"s** delegated plans approval structures, for all projects requiring new infrastructure;

10.2.7 Obtain necessary approvals from the **CLIENT** for disposal (demolition, dismantling or disposal of unwanted, redundant or surplus materials, plant and/or equipment);

10.2.8 Prepare and obtain approvals from the **CLIENT** for construction variations as indicated in clause 15 below.

10.2.9 Prepare project contract documentation in accordance with the CIDB Toolkit, specifically, CIDB Board Notice 94 of 2006 (Standard for Uniformity in Construction Procurement) and/or any practice notes issued in respect of it;

10.2.10 Manage each project to ensure that the work is executed timeously, according to the agreed specifications and in a proper and professional manner and with due diligence;

10.2.11 Attend technical and site meetings for projects to ensure the work is executed timeously, according to the agreed specifications and in a proper and professional manner and with due diligence;

10.2.12 Ensure that project design, procurement and execution philosophy shall at all times comply with the principles of value for money, fair competition, fair dealing and ethics, accountability and equity;

10.2.13 Notify the **CLIENT** by way of written notice, not less than 10 (ten) days prior to the first and final site meetings and inspections, to enable the **CLIENT's** representatives to attend. The **IMPLEMENTING AGENT** shall not be responsible for the costs incurred by the **CLIENT** at such meetings;

10.2.14 Arrange for the taking of minutes and distribute minutes of all the meetings held in relation to the PROGRAMME and distribute the same within 10 (ten) days after the meetings.

10.3 The **IMPLEMENTING AGENT** shall receive and disburse funds to projects in accordance with the procedures and requirements set down in this Agreement.

10.4 The **IMPLEMENTING AGENT** shall attend and actively participate in monthly co-ordination meetings with the **CLIENT** and other stakeholders as the **CLIENT** directs.

10.5 The **IMPLEMENTING AGENT** shall provide adequate resources to the satisfaction of the **CLIENT** in order to effectively manage planning and implementation of the PROGRAMMES' projects in terms of this agreement.

10.6 As it is a requirement of the PCMP Act that all persons acting as project managers be registered with the SACPCMP, the **IMPLEMENTING AGENT** shall ensure, to its best endeavours, that Programme and Project Managers meet legislative requirements and have SACPCMP registration or an acceptable equivalent registration thereof, as outlined under Section 18 of the PCMP Act.

10.7 The **CLIENT** will ensure that any person engaged on its behalf and who has been disqualified from registration in terms of sections 20(1) (a)(i) and 19(3)(v) of the PCMP Act will not be engaged in the **CLIENT's** PROGRAMME.

10.8 The **IMPLEMENTING AGENT** shall only appoint employees without a criminal record or poor credit record, particularly for the positions of Project Accountant and Programme Manager.

10.9 The assets constructed with the PROGRAMME BUDGET will become the property of the **CLIENT** who will be responsible for the ongoing operation and maintenance of the assets after the defects liability period. The **IMPLEMENTING AGENT** will ensure that all defects that appear during this period are brought to the attention of the contractors and are duly attended to.

10.10 The **IMPLEMENTING AGENT** agrees that in the execution of the projects in terms of this Agreement, it shall ensure that the **IMPLEMENTING AGENT's** SCM's policies and procedures shall apply which is in accordance to benefiting historically disadvantaged consultants and contractors where opportunities are created for.

10.11 The **IMPLEMENTING AGENT** agrees that, in executing the projects, it shall ensure the employment and training of unskilled and unemployed members of communities in the area where a project is situated is in terms of the principles of the Extended Public Works Programme (EPWP).

10.12 The **IMPLEMENTING AGENT** shall ensure that all work shall be carried out strictly in accordance with the requirements of the Occupational Health and Safety Act (Act No. 85 of 1993) and the regulations promulgated there under and in this regard the **IMPLEMENTING AGENT** shall be compelled to ensure that an Occupational Health and Safety Plan is approved and enforced for each and every project. The status of compliance with the Act shall be monitored and reported on

in the monthly reports submitted by the **IMPLEMENTING AGENT**.

10.13 The **IMPLEMENTING AGENT** hereby accepts an appointment in terms of Section 16.2 of the Occupational Health and Safety Act and accepts responsibility for discharging all related duties with reference to the PROGRAMME in terms of the aforesaid Act.

10.14 The **IMPLEMENTING AGENT** shall ensure that the **CLIENT** or **CLIENT's** authorised representative has, at all reasonable times, access to records, books, accounts, financial statement or any other accounting documents related to the PROGRAMME to satisfy itself that the **IMPLEMENTING AGENT** is complying with the terms of this Agreement.

10.15 The **IMPLEMENTING AGENT** shall at all times act in the best interest of the **CLIENT**.

11 THE PROGRAMME BUDGET

11.1 The **CLIENT** hereby agrees and undertakes to transfer to the **IMPLEMENTING AGENT** a portion of the PROGRAMME Budget to the specified account as per clause 11.6 below.

11.2 The PROGRAMME BUDGET is to be utilised by the **IMPLEMENTING AGENT** in the manner and for the purposes stipulated in this Agreement only. The PROGRAMME BUDGET is to be disbursed strictly in accordance with the approved IPIP.

11.3 The parties agree to meet no later than 3 (three) months prior to the commencement of each financial year, for the purpose of finalising agreement on the implementation of the PROGRAMME in the new financial year and to discuss the PROGRAMME BUDGET for the next financial year.

11.4 The **CLIENT** shall inform the **IMPLEMENTING AGENT** by a Letter of Allocation the indicative allocated PROGRAMME BUDGET for the forthcoming financial year and the **IMPLEMENTING AGENT** shall prepare its IPIP based on the said letter.

11.5 The **IMPLEMENTING AGENT** shall ensure that a bank account is opened for the sole purpose of accepting and disbursing funds for the **CLIENT's** PROGRAMME.

11.6 The **IMPLEMENTING AGENT** shall communicate the bank details of this account to the **CLIENT** in writing within 21 (twenty-one) days of signing of this agreement. All interest earned on money in this account is for the credit of the **CLIENT** after all bank costs and charges have been deducted from it.

11.7 It shall be the responsibility of the **IMPLEMENTING AGENT** to utilise the PROGRAMME BUDGET for the implementation of the Project/s. The implementation of the Project/s is to be

carried out strictly in terms of the Project Implementation Plan/s which must be compiled and drafted by the **IMPLEMENTING AGENT** and approved by the **CLIENT**.

11.8 The PROGRAMME BUDGET and individual project budgets are fully inclusive of all construction costs, professional fees, disbursements, **IMPLEMENTING AGENT** Management Fees and Value Added Tax and are not to be exceeded under any circumstances unless specific permission has been granted in writing by the **CLIENT**.

12 DBSA MANAGEMENT FEES AND CLAIM STRUCTURE

12.1 DBSA shall recover the cost for management and personnel fees in terms of its undertakings and will be paid as follows:

12.1.1 Management Fees: The DBSA will charge the PRASA a management fee on a sliding scale of 6-9% calculated on the total project budget value per annum (**Annexure C** – Management Fee Sliding Scale)

12.1.2 The parties agree that the DBSA will claim the Management Fee from PRASA in accordance with the structure as reflected in Table 1:

Table 1: DBSA Management Fee Claim Structure

Project Stage	Stage Description	% Claim on Fees
S1: Inception	Development of Project Brief, Project Assessment, Infrastructure Programme Implementation Plan (IPIP), Procurement Plan/Strategy	10%
S2: Concept & Viability	Procurement of Consultants/Professional Service Providers, Signing of Consultant Agreements	5%
S3: Design Development	Detailed design and documentation, Indicative Construction Programme, Procurement documentation	10%
S4: Documentation & Procurement	Tender specification procurement of contractors, recommendation by client to proceed, Signed Contractor Agreements	10%
S5: Construction	Construction Supervision, Monthly Progress Reports, Cost Reports, Social Facilitation, Schedules, Practical Completions	55%
S6: Close Out	Works and Final Completion, Final Accounts, Close Out Report	10%

13 DISBURSEMENT OF PROGRAMME EXPENDITURE

13.1 Tranche payments will be paid into a dedicated PRASA account opened by the **IMPLEMENTING AGENT** and subsequent payments will be made upon the **IMPLEMENTING AGENT** submitting invoices for the work actually done and verified as correct, accompanied by all supporting documents and in the **CLIENT's** specified format.

13.2 Only projects which have been approved in terms of the **IMPLEMENTING AGENT's** approved IPIP and an instruction letter for additional projects may be included in the **IMPLEMENTING AGENT's** invoices.

13.3 The **IMPLEMENTING AGENT** shall render a statement of account, in accordance with the **CLIENT's** requirements, as at the end of each month by the 10th day of each following month reflecting:

13.3.1 The balance available in the bank account on the last day of the previous month;

13.3.2 Interest accrued in the bank account;

13.3.3 Disbursements in respect of projects managed in terms of this agreement during the reporting period, including a short description of the services giving rise to the disbursement. All relevant documentation will be made available for inspection by the **CLIENT**, on request;

13.3.4 The management and administration fee charged by the **IMPLEMENTING AGENT** during the reporting period;

13.3.5 Expenditure and progress reports in the format as required by the **CLIENT**.

13.4 The **IMPLEMENTING AGENT** accepts that the **CLIENT** may vary the format set out in clause 13.3.5, above, by giving the **IMPLEMENTING AGENT** one month's written notice.

13.5 Retentions withheld from contractors for the purpose of guarantee on their deliverables, will at all times be regarded as monies not expensed in line with capital commitment. For the purpose of reporting to the **CLIENT**, such retentions will however be shown separately in capital commitment template.

13.6 The **CLIENT** undertakes, after consulting and verifying the supporting documents, to ensure that payment is effected by no later than 30 (thirty) days from date of receipt of the invoice.

13.7 The **IMPLEMENTING AGENT** shall supply to the **CLIENT** on request, copies of any of the

financial records requested by the **CLIENT**.

13.8 The **IMPLEMENTING AGENT** shall account to the **CLIENT** at the end of each financial year in respect of all funds transferred to it, funds used, the balance thereof if any and any accrued interest. Such accounts shall be verified by the **IMPLEMENTING AGENT's** auditors.

13.9 The **CLIENT** at the end of a financial year reserves the right to recall any or all of the **CLIENT's** funds held in the **IMPLEMENTING AGENT's** bank account that has not been expended and the **IMPLEMENTING AGENT** must refund such funds within 15 (fifteen) days of such request.

13.10 The **CLIENT** may, at the **CLIENT's** cost, request an audit to be performed on the PROGRAMME at any time. The **IMPLEMENTING AGENT** is required to co-operate with the auditor so appointed by the **CLIENT**.

13.11 Surplus funds, including interest, held in the **IMPLEMENTING AGENT's** bank account shall upon final closure of all projects be refunded forthwith to the **CLIENT**.

14 PROGRAMME FINANCIAL MANAGEMENT

14.1 The **IMPLEMENTING AGENT** will ensure that there is full compliance with all the provisions of the Public Finance Management Act applicable to it as a Public Entity as well as all other legislation, in particular, the Municipal Finance Management Act that may be applicable in terms of implementation of this Agreement.

14.2 The **IMPLEMENTING AGENT** shall estimate the cost of the work to be done in respect of each project and provide the **CLIENT** with such estimates in respect of each project, which shall be included in the **IMPLEMENTING AGENT's** IPIP.

14.3 The **IMPLEMENTING AGENT** shall adjust the estimated cost of each project after the award of tenders (if work or portion thereof is tendered) and shall advise the **CLIENT** of any adjustments within 7 (seven) days of such adjustments. The **IMPLEMENTING AGENT** will retain copies of its submissions to its tender committee and forward to the **CLIENT** at the **CLIENT's** request and cost.

14.4 The **IMPLEMENTING AGENT** shall only incur expenditure or make payments for work actually done by contractors and consultants appointed by the **IMPLEMENTING AGENT**, for costs actually incurred and for the management and administration of the PROGRAMME.

14.5 The fees for all professional consultants will be based on the prevailing Government Gazette Tariffs applicable at the time of their appointments by the **IMPLEMENTING AGENT**. Disbursements will be paid in accordance with the prevailing Department of Public Works rates.

14.6 Where the **IMPLEMENTING AGENT** provides accredited training in construction management and other disciplines to contractors or individuals, the direct cost thereof, if not reimbursable from the relevant SETA, shall be charged as a cost by the **IMPLEMENTING AGENT** to the specific project/s.

14.7 The **CLIENT** shall, at all times and through the procedure documented in the IPIP, verify on a sample basis, all claims submitted by the **IMPLEMENTING AGENT**.

15 CONSTRUCTION VARIATION

15.1 Once tender prices have been concluded by the **IMPLEMENTING AGENT**, the **CLIENT** shall accept the award as the final price.

15.2 A variation of more than 10% (ten *per centum*) of the original project budget must be approved by the **CLIENT** prior to any work being done, this must be approved in line with the delegation of authority of the **IMPLEMENTING AGENT.** Any variation order above 20% would require the approval of the National/Provincial Treasury.

15.3 The **IMPLEMENTING AGENT** is to inform the **CLIENT** of extension of contract periods and indicate the associated financial implications.

15.4 In the event where it is proved that the **IMPLEMENTING AGENT** has neglected or failed to cost properly for the project, the **CLIENT** will withhold payment of the portion of management fee related to that specific project, in respect of the varied amount resulting from such neglect or failure by the **IMPLEMENTING AGENT**. This amount can be recovered by the **IMPLEMENTING AGENT** from the negligent service provider.

16 INSURANCES AND LIMITATION OF LIABILITY

16.1 The **IMPLEMENTING AGENT** is required to ensure that insurance covers are provided by contractors and consultants within each project with respect to:

16.1.1 Workman's Compensation;

16.1.2 Contractors' Risk;

16.1.3 Public Liability;

16.1.4 Professional Indemnity.

16.2 Notwithstanding anything to the contrary contained herein, the **IMPLEMENTING AGENT** indemnifies the **CLIENT** and holds the **CLIENT** harmless against all claims which may be made

against the **IMPLEMENTING AGENT**, and against all losses, damages and costs which the **IMPLEMENTING AGENT** may incur or suffer arising out of or in connection with anything carried out by the **IMPLEMENTING AGENT** in terms of this Agreement, provided that the claims, loss or damages are not attributable to any negligence on the part of the **CLIENT**.

17 PENALTIES

17.1 In the event that the **IMPLEMENTING AGENT**, as a result of its own negligence, omission or breach of any material condition of this agreement, and such failure is not caused or attributed by a failure of the **CLIENT** to comply with its obligations and duties in terms of this Agreement, the **CLIENT,** subject to compliance and provisions of clause 28, below, may enforce a penalty of not more than 3% (three *per centum*) of the programme management fee for each and every event that constitutes a material breach of this agreement.

17.2 In the event that the programme funds are not paid to the **IMPLEMENTING AGENT** by the **CLIENT** in terms of clause 13.1, the **CLIENT** shall be liable to pay interest associated with the unpaid invoices or claims lodged by the contractors or Professional Services Providers against the **IMPLEMENTING AGENT**.

18 CO-ORDINATION MECHANISM

18.1 The Parties undertake to attend monthly Infrastructure Delivery Committee (IDC), district liaison meetings any other meetings that may be required, the purpose and function of which shall be outlined in the IPIP.

18.2 The **IMPLEMENTING AGENT** shall report every month on the progress of the projects in accordance with the **CLIENT's** requirements as stipulated in the IPIP and to other stakeholders, if directed to do so by the **CLIENT**.

18.3 The **IMPLEMENTING AGENT** is required to co-ordinate all role players, in order to ensure effective implementation of the PROGRAMME.

19 PROCUREMENT

19.1 The **IMPLEMENTING AGENT** shall utilise its own procurement procedures and policies to procure and manage all duly appointed Programme Creditors. The **IMPLEMENTING AGENT** shall, upon request, provide the **CLIENT** with copies of its procurement procedures and policies.

19.2 The **IMPLEMENTING AGENT** will utilise duly appointed members for Bid Committees.

19.3 The procurement policy of the **IMPLEMENTING AGENT**, which shall be applied in the

procurement of all Programme Creditors, shall comply with the requirements of the PPPFA, the Supply Chain Management Guidelines as contained in the Treasury Regulations to the PFMA and MFMA, National Treasury's Standard for Infrastructure Procurement and Delivery Management and with the requirements of the Construction Industry Development Board.

19.4 The **IMPLEMENTING AGENT** in consultation with **CLIENT** shall develop framework contracts to deal with emergency work and maintenance work (planned and reactive) which shall comply with requirements of the PPPFA, the Supply Chain Management Guidelines as contained in the Treasury Regulations to the PFMA and MFMA, National Treasury's Standard for Infrastructure Procurement and Delivery Management and with the requirement of the Construction Industry Development Board.

19.5 The **IMPLEMENTING AGENT** agrees that it shall use its best endeavours to create the opportunities for:

19.5.1 Historically disadvantaged Programme Creditors to compete for the award of contracts.

19.5.2 The employment and training of unskilled and unemployed members of communities in the area where a project is situated in terms of principles of the Extended Public Works Programme.

19.6 The **CLIENT** may nominate suitable senior personnel to act as observers at any of the **IMPLEMENTING AGENT's** Bid Committees. The members will be notified at least seven (7) days prior to any meeting of such committees and provided with agendas and supporting documents.

19.7 The **IMPLEMENTING AGENT** will inform the **CLIENT** of all the Programme Creditors procured under this Agreement and the **CLIENT** will ensure that such appointments are entered into their database.

19.8 The **IMPLEMENTING AGENT** shall not under any circumstances, appoint or engage the service of any Programme Creditor for the programme:

19.8.1 unless the budget for the payment of that Programme Creditor has been agreed to in writing by the **CLIENT**; and

19.8.2 if the **IMPLEMENTING AGENT** is aware of any non/poor performance of such Programme Creditor in respect of any other service that it provides to an Organ of State.

20 MANAGEMENT OF SCOPE CHANGE

20.1 Change to Projects

20.1.1 In the event the **IMPLEMENTING AGENT** identifies a need for a scope change, the **IMPLEMENTING AGENT** will quantify and submit the same to the **CLIENT** for approval.

20.1.2 The technical scope change will be considered by the **CLIENT** within 10 (ten) days of submission by the **IMPLEMENTING AGENT** and the financial approval will be obtained from the **CLIENT** within 10 (ten) days of submission by the **IMPLEMENTING AGENT**.

20.2 Variation Orders

20.2.1 All variation orders must be considered (approved or rejected) by the **CLIENT**, in writing, within 14 (fourteen) business days.

20.2.2 For emergencies, the **IMPLEMENTING AGENT** may recommend or approve a variation order if the cost of work is less than or equal to 20% (twenty *per centum*) of the original contract value provided that necessary approval is obtained and granted by the **CLIENT**.

20.3 Allocation, addition and/or deletion of Projects and/or Programmes

20.3.1 Any allocation, addition and/or deletion of projects will be dealt with through a letter to be signed by the parties.

20.3.2 The **IMPLEMENTING AGENT** shall only commence work on the allocated Projects/ Programme when budgets for the same have been confirmed in writing by the **CLIENT**.

21 MONITORING AND REPORTING

21.1 The **IMPLEMENTING AGENT** shall submit the following reports to the **CLIENT**:

21.1.1 Monthly expenditure and progress reports in terms of the Programme Implementation Plan on or before the 5th day of the following month.

21.1.2 Quarterly reports, which will include financial reporting;

21.1.3 *Ad hoc* reports within reasonable time as and when requested by the **CLIENT** and/or the Programme Steering Committee;

21.1.4 Close-out reports not later than 60 days from completion of a project;

21.1.5 Commitments report; (Commitment Template).

21.1.6 Accrual report

21.1.7 Work in progress reports;

21.1.8 Declaration of retention as provision; and

21.1.9 Delayed and/or problematic project reports.

22 WARRANTIES AND INDEMNITIES

22.1 Warranties

22.1.1 The **CLIENT** warrants that:

22.1.1.1 it will carry out its obligations in terms of this Agreement timeously.

22.1.1.2 it will comply with all the legislative and regulatory requirements that may be applicable to it.

22.1.2 The **IMPLEMENTING AGENT** warrants that:

22.1.2.1 it will carry out the implementation of the Programmes with promptness, and in accordance with the Detailed Implementation Plans and Specifications.

22.1.2.2 it is able and has the necessary systems, skills and expertise to implement the Programmes and it will comply with all the legislative and regulatory requirements that may be applicable to it.

22.1.3 Non- compliance with any of the warranties by either Party will constitute a material breach of this Agreement.

22.2 Indemnity

22.2.1 To the fullest extent permitted by law, the **IMPLEMENTING AGENT** shall indemnify and hold harmless the **CLIENT** and its officers, **IMPLEMENTING AGENTs** and employees from and against any and all claims, actions, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by, or for which liability may be asserted against, the **CLIENT** or any of its officers, **IMPLEMENTING AGENTs** or employees arising out of any activities undertaken by, for, or on behalf of the **CLIENT** in the execution or implementation of this Agreement, including, but not limited to, the performance of any contract or obligation directly or indirectly related to the Project. Such obligation shall not be construed to negate or abridge any other obligation of indemnification running to the **CLIENT** which would otherwise exist.

22.2.2 The **CLIENT** shall indemnify and hold harmless the **IMPLEMENTING AGENT** and its officers, **IMPLEMENTING AGENTs** and employees from and against any and all claims,

actions, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by, or for which liability may be asserted against, the **IMPLEMENTING AGENT** or any of its officers, **IMPLEMENTING AGENTs** or employees arising from the cancellation or suspension of the Programme and/ or relating to or incidental to the delay in the transfer of the Programme Budget or cancellation of this agreement. Such obligation shall not be construed to negate or abridge any other obligation of indemnification running to the **IMPLEMENTING AGENT** which would otherwise exist.

22.2.3 In the event that legal action or claim is instituted against the **IMPLEMENTING AGENT** by the third parties and/or Programme Creditors, due to the **CLIENT's** failure to perform any of its responsibilities or obligations in terms of this Agreement, the **CLIENT** shall be liable for legal costs and the **IMPLEMENTING AGENT** must:-

22.2.3.1 Furnish the **CLIENT** with the copies of all pleadings;

22.2.3.2 Be entitled to recover the legal costs from the Programme Budget, subject to the **CLIENT's** approval, on written presentation to the **CLIENT**; or

22.2.3.3 Invoice the **CLIENT** for legal costs, which invoice shall be accompanied by supporting documents (i.e. attorneys' invoices).

22.2.4 The invoice in terms of clause 22.2.3.3, above, shall be paid by the **CLIENT** within fourteen (14) days of receipt.

22.2.5 The provisions of this clause will survive the termination or expiry of this Agreement.

23 FORCE MAJEURE

23.1 If any Party should be prevented or restricted, directly or indirectly, from performing all or any of its obligations under this Agreement by reason of strike, labour dispute, lockout, fire, explosion, flood, riot, war, accident, Act of God, embargo, legislation, regulation or directive having the force of law, civil commotion, unrest or disturbance, compliance with any order or instruction of any authority or, without limitation, any other cause beyond its control, all or any of which shall constitute *force majeure* for the purpose hereof, the Party which is so affected (the affected Party) shall be relieved of the performance of its obligations hereunder during the period that such event and its consequences shall continue, but only to the extent so prevented, and shall not be liable for any delay or failure in the performance of any of its obligations hereunder, or loss or damage whether general, special or consequential, which the other Party (the unaffected Party) may suffer due to or resulting from such delay or failure, provided always that written notice shall be given by the affected Party to the unaffected Party at the earliest possible opportunity by telex, telefax, or telephone of the occurrence of the event constituting the *force*

majeure, together with details thereof and an estimate of the period of time for which it will endure.

23.2 The affected Party will use reasonable endeavours to terminate the circumstances giving rise to the *force majeure*, and upon termination of the *force majeure* will forthwith give notice thereof, by telex, telefax, or telephone to the unaffected Party.

23.3 This Agreement will not, unless otherwise agreed in writing, be terminated by the intervention of *force majeure*, provided that if such *force majeure* continues for a period in excess of 6 (six) calendar months, either Party may cancel this Agreement by 14 (fourteen) business days written notice to the other Party.

24 NO PARTNERSHIP

24.1 The relationship of the Parties in terms of this Agreement shall involve a close collaboration between two independent contracting parties, and in the circumstances shall not imply any partnership in the legal sense, nor shall it constitute either Party being the authorised representative of the other Party, particularly so with regard to the **IMPLEMENTING AGENT's** dealing with third parties.

25 LIMITATION ON CESSION

25.1 The rights and obligations for the Parties in terms of this Agreement shall not be ceded, assigned or delegated by either party to a third party or any other person, save with the prior written consent of the other Party.

26 INDULGENCES

26.1 No extension of time, latitude or other indulgence which may be given or allowed by either Party to the other, shall constitute a waiver of this Agreement, or affect any party's rights, or prevent such Party from strictly enforcing due compliance with each and every provision of this Agreement.

27 MEDIA LIAISON

27.1 The **IMPLEMENTING AGENT** undertakes that it will make no statement of any kind, whether written or verbal, to the media in connection with the PROGRAMME or any project, without first obtaining the **CLIENT's** approval of such statement.

27.2 In liaising with, and making statements to the media, the **IMPLEMENTING AGENT** undertakes, insofar as it is reasonably practical, to emphasise that funding for the projects has been provided

by the **CLIENT** via the PROGRAMME.

28 BREACH

28.1 In the event of any breach by the **IMPLEMENTING AGENT** of the terms and conditions of this Agreement, and in the event that the **IMPLEMENTING AGENT** fails to rectify such breach within 14 (fourteen) days of written notice calling for rectification of the breach, the **CLIENT** shall be entitled to exercise all or any of the following rights:

28.1.1 Itself, or through a third party of its choice, assume and take control of the completion of any uncompleted work;

28.1.2 The **IMPLEMENTING AGENT** agrees to permit the **CLIENT** or its nominee to assume responsibility for all contracts in place for the work in question where there is agreement in place between the **IMPLEMENTING AGENT** and third parties;

28.1.3 The **CLIENT** reserves the right to recall any or all of the **CLIENT's** PROGRAMME funds held in the **IMPLEMENTING AGENT's** bank account that has not been expended and the **IMPLEMENTING AGENT** must refund such funds within 15 (fifteen) days of such request.

28.1.4 Should the **IMPLEMENTING AGENT** dispute the existence of a breach entitling the **CLIENT** to the above mentioned rights and remedies, the matter/s in issue may be referred, the matter shall be dealt with in terms of clause 29 below.

28.2 In the event of any breach by the **CLIENT** of the terms and conditions of this Agreement, and in the event of the **CLIENT** remaining in default after 14 (fourteen) days written notice, calling for rectification of the relevant matter, the **IMPLEMENTING AGENT** shall be entitled:

28.2.1 To suspend all work in respect of any project affected by such breach; and/or

28.2.2 To enforce strict compliance with the terms and conditions of this Agreement; or

28.2.3 To cancel this Agreement.

28.3 The provisions of clause 28.2 shall apply *mutatis mutandis*, in the event of the **CLIENT** disputing the existence of a breach entitling the **IMPLEMENTING AGENT** to the rights and remedies envisaged in clause 28.1.

28.4 Neither party shall be liable to the other for any failure to perform its obligations under this Agreement, where such performance is rendered impossible by circumstances beyond its control: Provided that nothing in this Agreement shall limit the obligations of the parties to use

their best endeavours to fulfil their obligations under this Agreement.

29 DISPUTE RESOLUTION

29.1 Settlement

29.1.1 The parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to this Agreement and may not initiate further proceedings until either party has, by written notice to the other, declared that such negotiations have failed.

29.2 Further Dispute Resolution Mechanism

29.2.1 In the event that the dispute remains unresolved as envisaged in clause 29.1, above, the dispute shall be settled in terms of the legislated provisions of the Intergovernmental Relations Framework Act 13 of 2005.

30 TERMINATION OF THE AGREEMENT

30.1 Save for instances of breach of the Agreement where less notice is required, either party may terminate this agreement by giving 2 (two) months written notice to the other.

30.2 Should either party give notice of termination of this agreement, then, the **IMPLEMENTING AGENT** shall:

30.2.1 deliver to the **CLIENT**, within fourteen (14) days of signature of the Cession Agreement, all records, agreements with Project Creditors, accounts and other information generated pursuant to this Agreement;

30.2.2 transfer back to the **CLIENT**, all uncommitted funds in the projects bank account plus interest, within thirty (30) days of signing the Cession agreement, save for estimated legal costs (if there is pending litigation on any of the project);

30.2.3 deliver all pending litigations files and letters of demand relating to the projects/projects in question, within fourteen (14) days of signature of the Cession agreement;

30.2.4 notify all Projects Creditors, including any party to any litigious matters, about the Cession agreement, within fourteen (14) days of signature of the Cession agreement.

30.2.5 transfer to the **CLIENT**, save for information which is proprietary to the **IMPLEMENTING AGENT** at the Commencement Date, any copyright or intellectual property right (reviewing, amending, development, drafting, creation and design) developed under the instructions of the **CLIENT** or within the scope of works of the **IMPLEMENTING AGENT** under this Agreement.

30.3 Should either Party terminate this agreement for whatever reason, the **CLIENT** shall:

30.3.1 Immediately assume the **IMPLEMENTING AGENT's** rights and obligations in the programme;

30.3.2 be liable for the payment of the programme creditor's invoices including **IMPLEMENTING AGENT** invoices, for services rendered up and till the date of termination;

30.3.3 immediately take over the implementation of the project;

30.3.3.1 be liable for the **IMPLEMENTING AGENT's** Management Fees up and till the date of termination.

30.4 In the event the **CLIENT** cancels the implementation of the projects during planning stage, the **IMPLEMENTING AGENT** shall quantify the applicable costs relating to the direct project costs as well as **IMPLEMENTING AGENT's** management costs. The **IMPLEMENTING AGENT** shall submit the same to the **CLIENT** for approval and recovery from the programme budget and/or from the **CLIENT** within 30 days.

31 WHOLE AGREEMENT

31.1 This Agreement constitutes the entire Agreement between the Parties in respect of the subject matter hereof and neither Party shall be bound by any undertakings, representatives, warranties or promises not recorded in this Agreement.

32 SEVERABILITY

32.1 Any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from this Agreement, without invalidating the remaining provisions.

33 APPLICABLE LAW

33.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

34 DOMICILIUM CITANDI ET EXECUTANDI

34.1 The **CLIENT** chooses as its *domicilium citandi et executandi* for all purposes arising from this Agreement:

PRASA House

1040 Burnett Street, Hatflied, Pretoria, 0001

Tel: 012 748 2017

The **IMPLEMENTING AGENT** chooses as its *domicilium citandi et executandi* for all purposes arising from this Agreement:

The Development Bank of Southern Africa

1258 Lever Road, MIDRAND, 1685

Tel: 011 313 3422

34.2 Either party may change its *domicilium citandi et executandi* by means of a written notice to the other party, provided that such *domicilium* shall be a physical address within the Republic of South Africa.

34.3 All notices contemplated under this Agreement shall be delivered by hand or sent by pre-paid registered post, in which event such notice shall be deemed to have been received by the addressee 14 (fourteen) days after the proven date of posting.

35 SIGNATURES AND EXECUTION

THUS DONE AND SIGNED AT _____ ON THIS _____ DAY

OF_____ 2019.

_____

DR N SISHI

GROUP CHIEF EXECUTIVE OFFICER

PASSENGER RAIL AGENCY OF SOUTH AFRICA

AS WITNESSES:

1. _____ _____
   FULL NAME SIGNATURE

2. _____ _____
   FULL NAME SIGNATURE

THUS DONE AND SIGNED AT _____ ON THIS _____ DAY

OF_____ 2019.

_____

MR C RAMPHELE

GROUP EXECUTIVE: INFRASTRUCTURE DELIVERY

DEVELOPMENT BANK OF SOUTHERN AFRICA

AS WITNESSES:

1. _____ _____
   FULL NAME SIGNATURE

2. _____ _____
   FULL NAME SIGNATURE

ANNEXURE A

Letters of Allocation and Appointment of Development Bank of Southern Africa as IMPLEMENTING AGENT

ANNEXURE B

Table 1: End of stage deliverables

(Extracted from Standard for Infrastructure Procurement and Delivery Management)

Stage		End-of-stage deliverable
No.	**Name**	
0	Project initiation	An initiative which outlines the high-level business case together with the estimated project cost and proposed schedule for a single project or a group of projects having a similar high-level scope.
1	Infrastructure planning	An infrastructure plan which identifies and prioritises projects and packages against a forecasted budget over a period of at least five years.
2	Strategic resourcing	A delivery and/or procurement strategy which, for a portfolio of projects, identifies the delivery strategy in respect of each project or package and, where needs are met through own procurement system, a procurement strategy.
3	Prefeasibility	A prefeasibility report which determines whether or not it is worthwhile to proceed to the feasibility stage.
	Preparation and briefing	A strategic brief which defines project objectives, needs, acceptance criteria and client priorities and aspirations, and which sets out the basis for the development of the concept report for one or more packages.

4	Feasibility	A feasibility report which presents sufficient information to determine whether or not the project should be implemented.	
	Concept and viability	A concept report which establishes the detailed brief, scope, scale, form and control budget, and sets out the integrated concept for one or more packages.	
5	Design development	A design development report which develops in detail the approved concept to finalise the design and definition criteria, sets out the and contains the cost plan and schedule for one or more packages.	
6	Design documentation	6A Production information	Production information which provides the detailing, performance definition, specification, sizing and positioning of all systems and components enabling either construction (where the constructor is able to build directly from the information prepared) or the production of manufacturing and installation information for construction.
		6B Manufacture, fabrication and construction information	Manufacture, fabrication and construction information produced by or on behalf of the constructor, based on the production information provided for a package which enables manufacture, fabrication or construction to take place.
7	Works	Completed works which are capable of being occupied or used.	

8	Handover	Works which have been taken over by the user or owner complete with record information.
9	Package completion	Works with notified defects corrected, final account settled and the close out report issued.

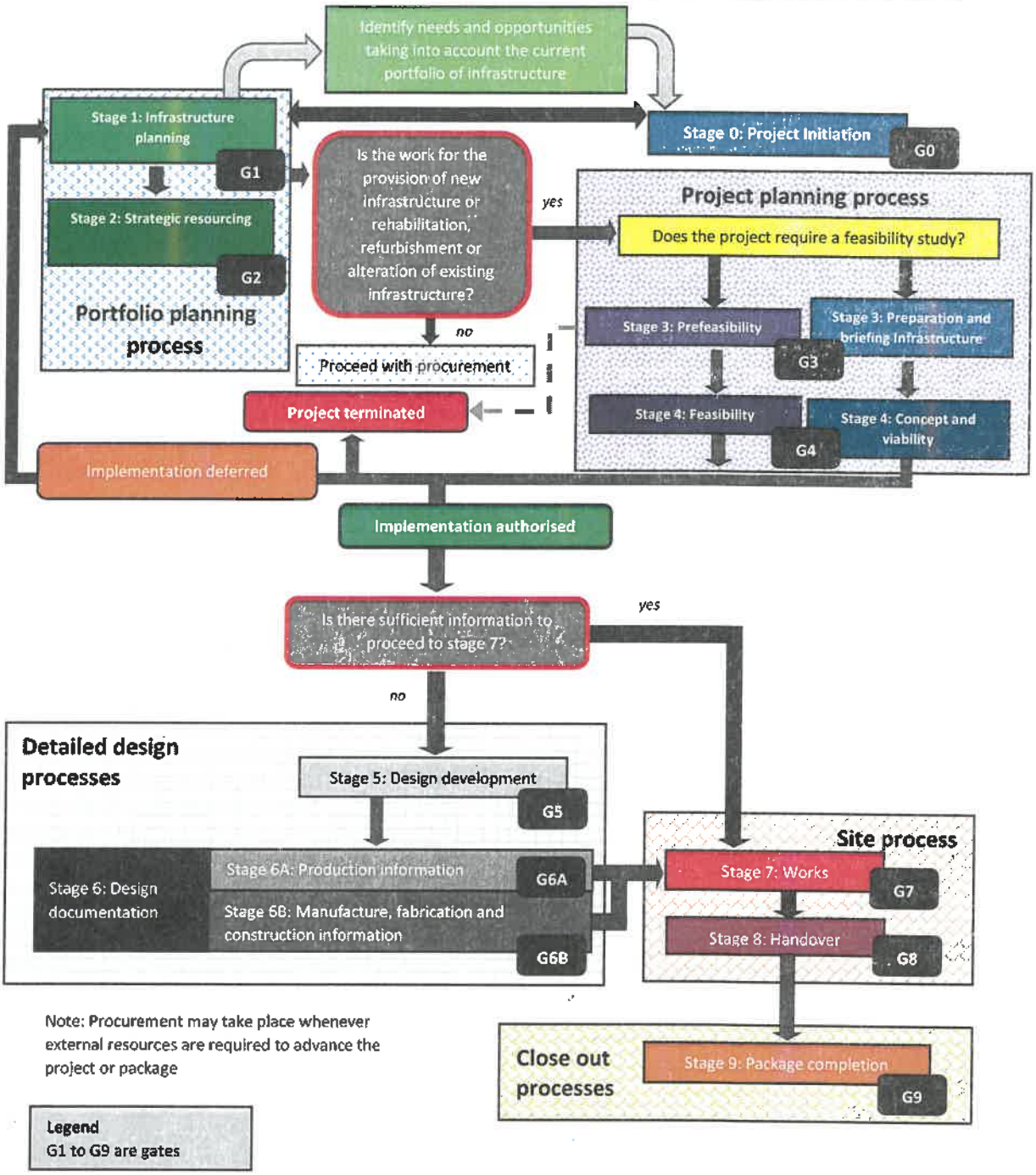
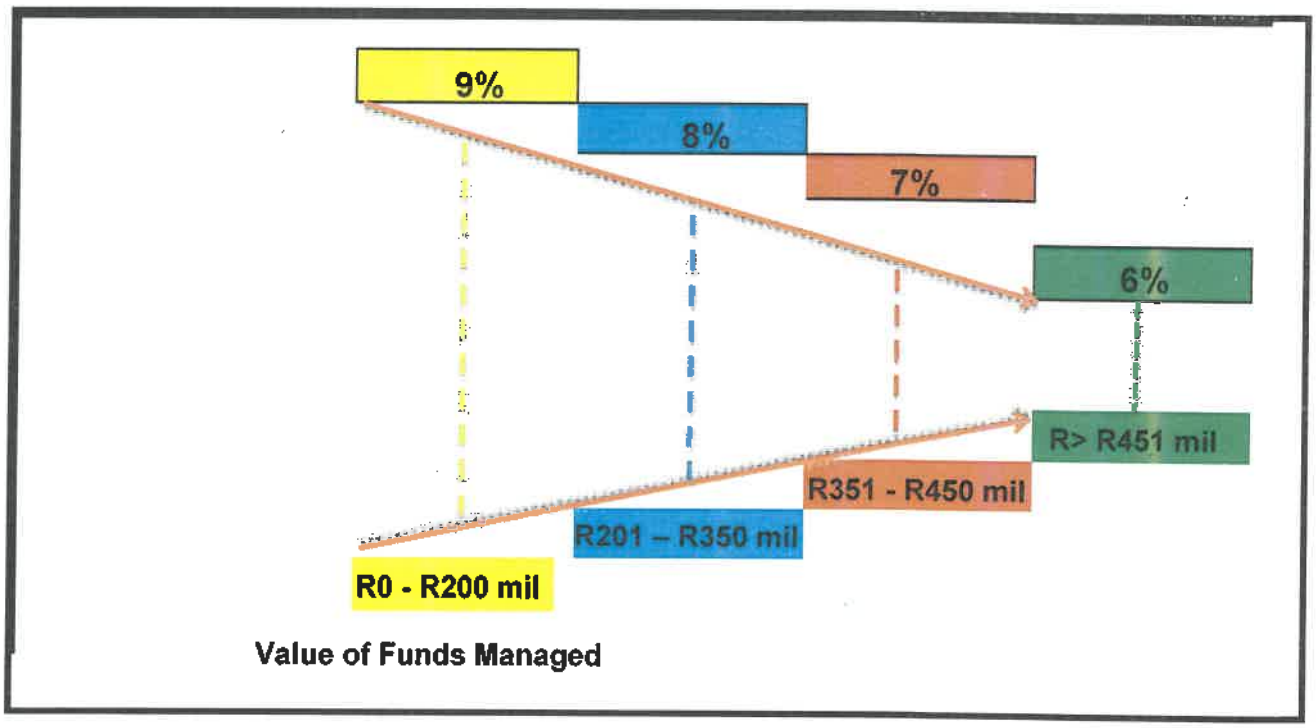


Figure 1: Stages and gates associated with the control framework for infrastructure delivery management

ANNEXURE C

Management Fee Sliding Scale

Management Fees



SS7-OMN-092

"OMNS"

Verda van den Berg

From: Martha Ngoye
Sent: Monday, May 6, 2019 5:44 PM
To: Verda van den Berg
Subject: FW: Emailing: Letter to DBSA from PRASA April 2019
Attachments: Letter to DBSA from PRASA April 2019.docx; PRASA MOA with DBSA DRAFT V1.doc

Importance: High

Please create a file for me.
Ta

Martha Ngoye
Group Executive: Legal, Risk and Compliance

PRASA House
1040 Burnett Street
Hatfield
Pretoria

Private Bag x101
Marshaltown
2107

Tel: +27 12 748 7000
Cell: +27 71 482 1951

Email: martha.ngoye@prasa.com

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On 2019/04/30, 08:47, "Mandisa Mokwena" <Mandisa.Mokwena@prasa.com> wrote:

Dear Martha

Kindly check these two documents from DBSA / PRASA, and see if you are in agreement that the GCEO signs them.

-----Original Message-----
From: Ramagoganye Ngakane
Sent: 28 April 2019 21:33
To: Mandisa Mokwena <Mandisa.Mokwena@prasa.com>

Subject: Emailing: Letter to DBSA from PRASA April 2019
Importance: High

Dear Doc

Please find attached as promised.

Kind regards

Office of Dr. N Sishi
Group Chief Executive Officer

www.prasa.com

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

PRASA HOUSE
1040 Burnett Street
Hatfield
Pretoria

Private Bag X101
Braamfontein, 2017
Tr +27 12 748 7010

Mr. Patrick Dlamini
Chief Executive Officer
Development Bank of Southern Africa
PO Box 1234
Halfway House
Midrand
1685

Dear Mr. Dlamini

APPOINMENT AS IMPLEMENTING AGENT FOR THE PRASA INFRASTRUCTURE PROGRAMME

Following the interactions with your organisation regarding the planning, implementation and delivery of infrastructure programmes for Passenger Rail Agency of South Africa (PRASA), we are pleased to advise you of your appointment as a Programme Implementing Agent for the 2019/20 financial year and MTEF period.

The allocation is for the following programmes, which have been indicated together with their 2019/20 financial year budget. Indicative allocations for outer years are provided for ensuring continuity of projects.

Infrastructure Category (R'000)	**2019-2020 Allocation**	**Indicative Allocation 2020/21 – 2021/22**	
Asset Protection	264 794 091	280 681 736	297 522 641
Fencing Programme	114 100 000	190 500 300	201 930 318
Station upgrade programme (135 stations)	109 433 319	225 200 110	238 712 117
Depot Modernization	285 452 098	590 223 400	825 636 804
Station Improvement Programme	238 253 825	252 549 055	267 701 998
Energy Renewable Programme	105 000 000	111 300 000	117 978 000
Grand Total	**1 117 033 333**	**1 650 454 601**	**1 949 481 878**

Members of the Board of Control
K Kweyama (Chairperson), S Ntsaluba,
I Wessie, J Schreiner, N Alli, D Tshepe,
X George, M Matlala, P Setai

Group Chief Executive Officer
Dr. N Sishi

Acting Group Company Secretary
F. Dingiswayo

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

1. The total budget allocation from PRASA for the 2019/20 financial year is R1 117 033 333.00 and note that the management fee must be calculated according to the sliding scale as incorporated in the Memorandum of Agreement.

2. You are requested to ensure that your organisation does not exceed the allocated budget for 2019/20. You are also reminded to only implement projects contained in the attached Annexure A

3. Your cash-flows and activities planned for the 2019/20 financial year must be aligned to the programmes/projects allocations (summarised above) so as to avoid possible over/under expenditure for 2019/20 financial year.

4. Your organisation is required to ensure that prior permission is sought before projects are advertised and awarded to contractors and consultants; this is mainly done to manage cashflows.

5. You are requested, where applicable, to use standard plans and pre-prepared designs, cost norms, tender documentation and bills of quantities and an approved procurement strategy to minimise professional fees.

6. The budget figures in the enclosed priority lists are fully inclusive of all professional fees, disbursements and VAT, and are not to be exceeded under any circumstances. Should the actual project costs exceed the budget, advance written notice must be sent to our office, together with a written motivation clearly outlining the reasons for requiring the additional budget. Such motivation must be submitted in the context of your appointment in terms of managing the respective programmes and has to be documented in your Implementation Plan;

7. You are also reminded that monthly and quarterly reporting on the programme and project expenditure must be as per the format required by PRASA and /National Treasury.

8. In terms of monitoring the delivery process, you are required to include these projects in an Infrastructure Programme Implementation Plan (IPIP) which is to be submitted to PRASA before 01 May 2019. This Plan will be used to identify and implement the

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controls which will ensure efficient delivery as well as provide the basis for monitoring the performance of organisation as the Implementing Agent.

9. In this regard, please note that responsibility for service delivery, once the IPIP has been completed and approved by ourselves, lies with yourselves to ensure that our expectations are met and delivery occurs within the specified budget and time frames.

10. You are reminded that you are to ensure that all procurement and tender documentation is in compliance with all relevant and appropriate legislation (for example the Supply Chain Management Act, Construction Industry Development Board Act, Occupational Health and Safety Act, and the latest Treasury Instruction 4 of 2015/2016 – Standard for Infrastructure Procurement and Delivery Management (SIPDM).

11. All variation orders exceeding allowable contingency amounts need approval from the variation orders committee and delegated authority prior to implementation.

12. Extension of time must also be approved by PRASA prior to implementation.

13. You are also reminded that the CIDB Act prescribes that all infrastructure projects be registered using the prescribed protocol. This applies to current and planned projects.

Your cooperation and commitment towards service delivery is greatly appreciated.

Yours sincerely;

Dr. Nkosinathi Sishi
Group Chief Executive Officer

Date

SS7-OMN-098

"OMN 6"

Veronica Malangeni

From: Verda van den Berg
Sent: 13 September 2019 03:09 PM
To: Veronica Malangeni
Subject: FW: DBSA RESPONSE LETTER TO PRASA
Attachments: DBSA_PRASA Response Letter April 2019.pdf; PRASA Letter March 2019.pdf; PRASA MOA with DBSA DRAFT V1.doc

Importance: High

Please just print the email, not the attachments, thanks

From: Mandisa Mokwena
Sent: Tuesday, 30 April 2019 08:51
To: Martha Ngoye
Cc: Ramagoganye Ngakane; Lebogang N. Matsemela; Dr. Nkosinathi Sishi
Subject: FW: DBSA RESPONSE LETTER TO PRASA
Importance: High

Dear Martha

Please note previous correspondence with DBSA for ease of reference.

Thank you in advance

From: Maria Mwafulirwa <MariaMw@dbsa.org>
Sent: 03 April 2019 12:47
To: mandisa.mokwena@prasa.com; nkosinathi.sishi@prasa.com
Cc: Chuene Ramphele <ChueneR@dbsa.org>; Charlene Boshoff <CharleneB@dbsa.org>
Subject: DBSA RESPONSE LETTER TO PRASA
Importance: High

Dear Mandisa

Please find attached for your attention, DBSA response to PRASA letter of intent to engage.

Kind regards

Maria Mwafulirwa
Personal Assistant
Infrastructure Delivery Division
email: mariamw@dbsa.org
tel: +27 11 313 3162
fax: +27 11 206 3162
Cell: + 27 82 809 3156

1258 Lever Rd, Headway Hill, Midrand
P.O. Box 1234, Halfway House, Midrand 1685,
Gauteng
www.dbsa.org

The Development Bank of Southern Africa is one of the leading development financial institutions on the continent. We offer an integrated value chain which includes e.g. project consulting, project preparation, deal syndication, finance, implementation and maintenance solutions for socio-economic infrastructure developments in (South) Africa. Our areas of focus include Education, Energy, Health, Housing, ICT, Transport and Water.

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SS7-OMN-101

"OMN 7"

DBSA
Development Bank
of Southern Africa

Date: 01 April 2019

Dr N Sishi
Group Chief Executive Officer
Passenger Rail Agency of South Africa (PRASA)
Private Bag X101
Braamfontein
2017

Dear Dr Sishi

RE: LETTER OF INTENT TO ENGAGE THE DEVELOPMENT BANK OF SOUTHERN AFRICA (DBSA) TO ACT AS IMPLEMENTING AGENT IN SUPPORT OF THE INTERVENTION TO IMPROVE THE DELIVERY OF INFRASTRUCTURE OF THE PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA)

Your letter dated 26 March 2019 and the subsequent meeting of 28 March 2019 at the DBSA offices refers.

The DBSA expressly extends appreciation of the engagement with PRASA regarding accelerated ways to deliver infrastructure pertinent for PRASA performance. As schedule 2 entity, the request to assist PRASA with the planning, design, refurbishments, upgrades and maintenance of infrastructure resonates well with our mandate as a development finance institution.

The DBSA understood your needs from the discussion and proposes the following process or activities:

- Signing of the Memorandum of Agreement (MoA)
- PRASA allocation of priority projects and budgets for DBSA implementation
- Inception meeting between the PRASA and DBSA Technical teams
- DBSA submission of the Infrastructure Programme Implementation Plan (IPIP) for approval

M Swilling (Chairman), PK Diamini (Chief Executive), Z Monnakgotla,
B Mosako, G Mtetwa, B Mudavanhu, B Ndamase, L Nematswerani,
L Noge-Tungamirai, P Nqeto, A Sing
Executive
Bathobile Sowazi (Company Secretary)

Development Bank of Southern Africa
T: +27 11 313 3911 1258 Lever Road Headway Hill, Midrand
F: +27 11 313 3086 PO Box 1234 Halfway House, Midrand
www.dbsa.org 1685, South Africa, Gauteng

RE: LETTER OF INTENT TO ENGAGE THE DEVELOPMENT BANK OF SOUTHERN AFRICA (DBSA) TO ACT AS IMPLEMENTING AGENT IN SUPPORT OF THE INTERVENTION TO IMPROVE THE DELIVERY OF INFRASTRUCTURE OF THE PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA)

- Programme Initiation

Central to the Memorandum of Agreement (MoA) will be the following pillars:

- Supporting the planning and design of the train station infrastructure and facilities within the country;
- Programme and project management of new infrastructure delivery on behalf of the PRASA;
- Refurbishment, upgrade as well as maintenance of prioritised train stations infrastructure and facilities;
- Preparation of new projects including conducting feasibility studies; and
- Any other programme PRASA deem critical to enable service delivery

I therefore allocate **Mr Chuene Ramphele – Group Executive: Infrastructure Delivery** to work with **Dr Mandisa Mokwena** from PRASA as the team lead. For any further enquiry, please contact the office of Mr Ramphele on (011) 313 3422 and email: chuener@dbsa.org.

Looking forward to a developmental and progressive relationship.

Regards

P.K. Diamini
Chief Executive & Managing Director

cc. Dr Mandisa Mokwena - PRASA

M Swilling (Chairman), PK Diamini* (Chief Executive), Z Monnakgotla,
B Mosako*, G Mtetwa, B Mudavanhu, B Ndamase, L Nematswerani*,
L Noge-Tungamirai, P Nqeto, A Sing
*Executive
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SS7-OMN-104

"OMN 84

DBSA
Development Bank of Southern Africa

Date: 01 April 2019

Dr N Sishi
Group Chief Executive Officer
Passenger Rail Agency of South Africa (PRASA)
Private Bag X101
Braamfontein
2017

Dear Dr Sishi

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Looking forward to a developmental and progressive relationship.

Regards

P.K. Dlamini
Chief Executive & Managing Director

cc. Dr Mandisa Mokwena - PRASA

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SS7-OMN-107

"OMN 9"

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Pretoria

Private Bag X101
Braamfontein, 2017
T: +27 12 748 7000

www.prasa.com

MEMORANDUM

To: Ms Martha Ngoye

Executive: Legal, Risk and Compliance

From: Mr Benedict Khumalo

Senior Manager: Legal Services

Date: 06 May 2019

MEMORANDUM OF AGREEMENT BETWEEN PRASA AND DBSA APPOINTING DBSA TO ACT AS IMPLEMENTING AGENT IN SUPPORT OF THE INTERVENTION TO IMPROVE THE DELEIVERY OF INFRASTRUCTURE OF PRASA.

Dear Martha

1. I refer to the above matter and your request for me to legally vet the proposed agreement between the Passenger Rail Agency of South Africa (PRASA) and the Development Bank of Southern Africa (DBSA).

2. For vetting purposes I received the draft Memorandum of Agreement (Agreement) and the correspondence between PRASA Group Chief Executive Officer (GCEO) and Chief Executive & Managing Director of DBSA. The correspondence sets out the background that resulted in the draft agreement.

Members of the Board of Control
K Kweyama (Chairperson),S Ntsaluba,
I Wessie, J Schreiner, B Mthembu, D Tshepe,
X George, R Khan, P Setai, E Nchabeleng

Group Chief Executive Officer
Dr. N Sishi

Acting Group Company Secretary
F. Dingiswayo

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

3. On perusing these documents, I found preliminary issues that must be addressed as we continue to vet the agreement itself.

PRELIMINARY ISUES

4. The correspondence between the Chief Executives suggests that there was no procurement process followed that resulted in the draft agreement. If there was a procurement process it has not been shared with the legal department for the purposes of advice.

5. There is nothing that suggests that this is an emergency procurement allowing PRASA to dispense with the procurement requirements in terms of the PFMA and the Constitution. Given the value of the projects under the agreement, the process should have been an open and competitive tender process. The only permissible deviation will be in the case of emergency and a single source supplier. A three year contract cannot be said to be an emergency nor can DBSA be a single source supplier.

6. The agreement will be found wanting for lack of compliance with procurement law and policy.

7. There is huge risk of litigation from other service providers in the market who will feel that the process was or is not fair, transparent and cost effective. The risk is further compounded by the possibility that existing contracts could potentially be terminated.

8. The object of the agreement is to appoint DBSA as Implementing Agent for all or most of the PRASA Train Modernisation Infrastructure Building Programme. This will include new and existing infrastructure projects from 2019 to 2022.

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9. There is no clarity on what will happen to the existing Consultants currently engaged by PRASA on various projects. In essence, the DBSA will carry out the work similar to that is normally performed by Consultants. Will current contracts be terminated? If so, how is the risk of obvious litigation on damages and loss of profit claims mitigated? How is the potential duplication of fees mitigated?

10. The agreement also envisages the appointment of Contractors by DBSA. Again, it is not clear how the existing Contractors will be dealt with when the agreement comes into effect. Will the existing Contractors be terminated? The legal risk relating to termination must be addressed as the Contractors will be within their legal rights to enforce premature termination of their contracts. Will their Contractors be ceded to DBSA, at least for the management thereof?

11. I have not been furnished with the value of the projects that DBSA will implement. However, the current Capex programme runs into billions of rands. It is unlikely that this value will decrease. The fees (implementing fees) payable under the agreement will at least exceed hundred million during the term of the agreement.

12. Therefore the value of the contract (Agreement) will be in excess of the Executive (GCEO) delegation of authority thus requiring approval by the Board of Control (Board). I have not been furnished with any Board resolution authorising that the agreement be entered into. If the Board has not approved this agreement it can be said to be irregular based on the delegate authority in terms of the value.

13. Taken overall the effect of the agreement will be that all PRASA employees within the project space maybe rendered redundant. Most will be reduced to do administration at the very least. The agreement does not fully articulate the roles of PRASA project managers in relation to DBSA who will oversee all the programmes. If the possibility exists that jobs may be affected, it will be prudent that the affected

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parties are engaged sooner rather than later when the agreement is being implemented.

14. I will continue to vet the agreement while the above issues are given attention at an appropriate level.

Kind regards

Benedict Khumalo
Senior Manager: Legal Services

SS7-OMN-112

"OMN 10"

Thursday, August 22, 2019 at 11:33:13 AM South Africa Standard Time

Subject: RE: DBSA Implementing Agent Agreement
Date: Monday, 06 May 2019 at 17:31:27 South Africa Standard Time
From: Mandisa Mokwena
To: Martha Ngoye
CC: Fani Dingiswayo, Benedict Khumalo, Dr. Nkosinathi Sishi, Ramagoganye Ngakane
Attachments: image001.png, image002.png

I thank you, will request that from treasury immediately

From: Martha Ngoye
Sent: 06 May 2019 17:12
To: Mandisa Mokwena <Mandisa.Mokwena@prasa.com>
Cc: Fani Dingiswayo <fani.dingiswayo@prasa.com>; Benedict Khumalo <bmkhumalo@prasa.com>; Dr. Nkosinathi Sishi <Nkosinathi.Sishi@prasa.com>; Ramagoganye Ngakane <RNgakane@prasa.com>
Subject: Re: DBSA Implementing Agent Agreement

Dear Mandisa

We can discuss that and process so that we are all on the same page. Please can you share the National Treasury Dispensation so that we can consider same. I guess the other issues relating to Board approvals etc will also have to be clarified. If we do have these approvals, perhaps we can get them in the interim so that we close that loop as well.

Ta

Kind regards

Martha Ngoye
Group Executive: Legal, Risk and Compliance

PRASA House
1040 Burnett Street
Hatfield
Pretoria

Private Bag x101
Marshaltown
2107

Tel: +27 12 748 7000
Cell: +27 71 482 1951

Email: martha.ngoye@prasa.com

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From: Mandisa Mokwena <Mandisa.Mokwena@prasa.com>
Date: Monday, 06 May 2019 at 17:00
To: Martha Ngoye <martha.ngoye@prasa.com>
Cc: Fani Dingiswayo <fani.dingiswayo@prasa.com>, Benedict Khumalo <bmkhumalo@prasa.com>, "Dr. Nkosinathi Sishi" <Nkosinathi.Sishi@prasa.com>, Ramagoganye Ngakane <RNgakane@prasa.com>

Subject: RE: DBSA Implementing Agent Agreement

Dear Martha

I just added the GCEO , so as to fast track the debate for tomorrows discussion , so that when we meet we are all in the same wavelength.

DBSA as a government implementing agency, falls in the National Treasury dispensation.
They are thus excluded from the procurement process.
They on the other hand will , when appointing the service providers are expected to comply with the PFMA appointment procedures.

This is my understanding on the procurement part of the legal argument

From: Martha Ngoye
Sent: 06 May 2019 16:43
To: Mandisa Mokwena <Mandisa.Mokwena@prasa.com>
Cc: Fani Dingiswayo <fani.dingiswayo@prasa.com>; Benedict Khumalo <bmkhumalo@prasa.com>
Subject: DBSA Implementing Agent Agreement

Dear Mandisa

Please find attached the preliminary issues that have been raised in a memo that has been sent to me. Please can we schedule some time so that the issues raised can be clarified before we finalise the matter.

I hope that this is in order.

Kind regards

Martha Ngoye
Group Executive: Legal, Risk and Compliance

PRASA House
1040 Burnett Street
Hatfield
Pretoria

Private Bag x101
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Tel: +27 12 748 7000
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Email: martha.ngoye@prasa.com

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Thursday, August 22, 2019 at 11:33:42 AM South Africa Standard Time

Subject: RE: DBSA Implementing Agent Agreement
Date: Monday, 06 May 2019 at 17:00:41 South Africa Standard Time
From: Mandisa Mokwena
To: Martha Ngoye
CC: Fani Dingiswayo, Benedict Khumalo, Dr. Nkosinathi Sishi, Ramagoganye Ngakane
Attachments: image001.png

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Subject: RE: DBSA Implementing Agent Agreement
Date: Monday, 06 May 2019 at 16:53:21 South Africa Standard Time
From: Mandisa Mokwena
To: Martha Ngoye
CC: Fani Dingiswayo, Benedict Khumalo
Attachments: image001.png

Dear Martha

We may find tomorrow, I will be at Umjantshi, thanks

From: Martha Ngoye
Sent: 06 May 2019 16:43
To: Mandisa Mokwena <Mandisa.Mokwena@prasa.com>
Cc: Fani Dingiswayo <fani.dingiswayo@prasa.com>; Benedict Khumalo <bmkhumalo@prasa.com>
Subject: DBSA Implementing Agent Agreement

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SS7-OMN-117

"OMN 11"

" OMN "

SS7-OMN-118

Annexure A

Standard for Infrastructure Procurement and Delivery Management

First edition

October 2015

Effective Date: 1 July 2016



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

INTRODUCTION

Public infrastructure

South African citizens are surrounded by public infrastructure. Offices and facilities provide places of work for officials. Schools, hospitals and clinics provide essential services. Roads and railways not only enable travel, but also distribute goods and services. Border posts, harbours and airports are the physical links with neighbouring countries and the world. Dams provide water for human consumption and agricultural and industrial purposes. Networks deliver water and electricity to consumers and convey industrial effluent, soilwater and wastewater to treatment works. Such infrastructure is foundational to a better life for all. However, investment in economic infrastructure will not necessarily lead to economic growth. Infrastructure which provides improvements or efficiencies in services, production or export capabilities, and which is delivered and maintained in a manner that minimises waste of materials, time and effort in order to generate the maximum possible amount of value, is most likely to contribute to economic growth.

Infrastructure is required by the state and state-owned businesses to deliver services to citizens. Each organ of state has a legislated mandate. Some organs of state generate revenue but require capital to expand their revenue generating services, while other are totally reliant on funding from the fiscus to satisfy their infrastructure needs. The fiscus has limited financial resources to fund infrastructure projects. New infrastructure projects need to be budgeted for, taking into account future operation and maintenance costs and current commitments. Accordingly, organs of state requiring funds for infrastructure projects compete for budget allocations. Projects need to be prioritised both within an organ of state and between organs of state. Such prioritisation is sometimes based on political prerogatives while at other times it is based on objective decision-making criteria, which take into account factors such as overarching government wide, long and medium-term policies and plans, including integrated sector plans and mandates.

The time taken between the submission of a project proposal and a final decision by an organ of state to implement a project can, depending upon the nature, complexity and size of a project and requirements for statutory approvals, take several years. Funding may also be required to develop project proposals so that informed decisions can be made regarding their implementation. In the first instance, initiation reports need to be developed to outline the business case. Should funding be made available to progress the proposal, a prefeasibility report is required on major capital projects to determine whether or not it is worthwhile to proceed to the feasibility stage where sufficient information is presented to enable a final decision to be made regarding the implementation of a project. On smaller projects of a routine nature, a strategic brief is required to brief the professional team so that they can develop a viable and integrated concept for the project. A final decision to proceed to implementation is based on a concept report.

The initiation reports and feasibility reports on major capital projects, above a threshold, other than those initiated by municipalities, require cabinet or executive council approval. This enables the inputs of other organs of state in the national and provincial spheres of government who may have competing projects, or projects which may be negatively impacted by the diversion of funds to such large projects, to make their inputs in the project approval process. Projects which are categorised as strategic integrated projects are given priority in planning, the obtaining of statutory approvals and implementation by the Presidential Coordinating Commission.

Procurement and supply chain management reform

The South African Planning Commission's National Development Plan 2030: *Our future – make it work* proposes that the following five areas be focused on in designing a procurement system that is better able to deliver value for money, while minimising the scope for corruption:

- differentiate between the different types of procurement which pose different challenges and require different skills sets;
- adopt a strategic approach to procurement above the project level to balance competing objectives and priorities rather than viewing each project in isolation;
- build relationships of trust and understanding with the private sector;
- develop professional supply chain management capacity through training and accreditation; and
- incorporate oversight functions to assess value for money.

National Treasury's 2015 Public Sector Supply Chain Management Review expresses the view that supply chain management (SCM) is one of the key mechanisms enabling government to implement policy which traditionally has been misunderstood and undervalued. This Review, which identified the need for SCM reform, suggests that if such reforms are implemented as envisaged in terms of section 217 of the Constitution, the benefits will be enormous, namely that:

- good-quality service delivery will be increasingly possible, with significant improvements in the welfare of South Africa's citizens, and especially the poor who rely heavily on government for support;
- the economy will grow as economic infrastructure is expanded and efficiently maintained;
- goods, services and infrastructure will be bought at lower costs;
- innovation will result in different approaches to the commodities used in some sectors; and
- for suppliers, the cost of doing business with the state should decrease substantially.

Public procurement that is unrelated to infrastructure delivery typically relates to goods and services that are standard, well-defined and readily scoped and specified. Once purchased, goods invariably need to be taken into storage prior to being issued for use. Services are most often of a routine and repetitive nature with well understood interim and final deliverables which do not require strategic inputs or require decisions to be made regarding the fitness for purpose of the service outputs.

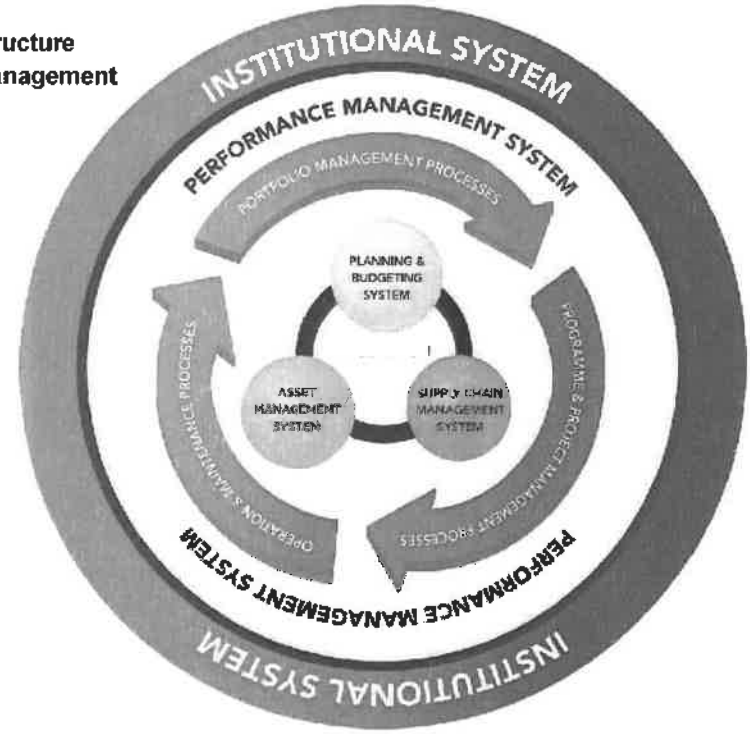
In contrast, procurement relating to the provision of new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure covers a wide and diverse range of goods and services, which are required to provide or alter the condition of immoveable assets on a site. Accordingly, the procurement process for the delivery of infrastructure involves the initial and subsequent recurring updating of planning processes at a portfolio level flowing out of an assessment of public sector service delivery requirements or business needs. Thereafter it involves planning at a project level, and the procurement and management of a network of suppliers, including subcontractors, to produce a product on a site. There is no need to store and issue materials or equipment unless these are issued to employees responsible for the maintenance or operation of infrastructure, or are issued free of charge to contractors for incorporation into the works.

Infrastructure delivery is the combination of all planning, technical, administrative and managerial actions associated with the construction, supply, refurbishment, rehabilitation, alteration, maintenance, operation or disposal of infrastructure. There is an urgent need to separate supply chain management requirements for general goods and services from those for infrastructure delivery in order to improve project outcomes.

Government's Infrastructure Delivery Management System

Government's Infrastructure Delivery Management System (IDMS) comprises three core systems, namely, a planning and budgeting, a supply chain management and an asset management system, all of which have forward and backward linkages. These core systems are located within portfolio, programme and project management, and operation and maintenance processes. Collectively these processes and systems, together with a performance management system, establish the institutional system for infrastructure delivery as indicated in the following sketch.

The Infrastructure Delivery Management System



The IDMS is supported by legislation and performance monitoring. It has a strong focus on the effective and efficient functioning of the supply chain management system.

Standard for Infrastructure Procurement and Delivery Management

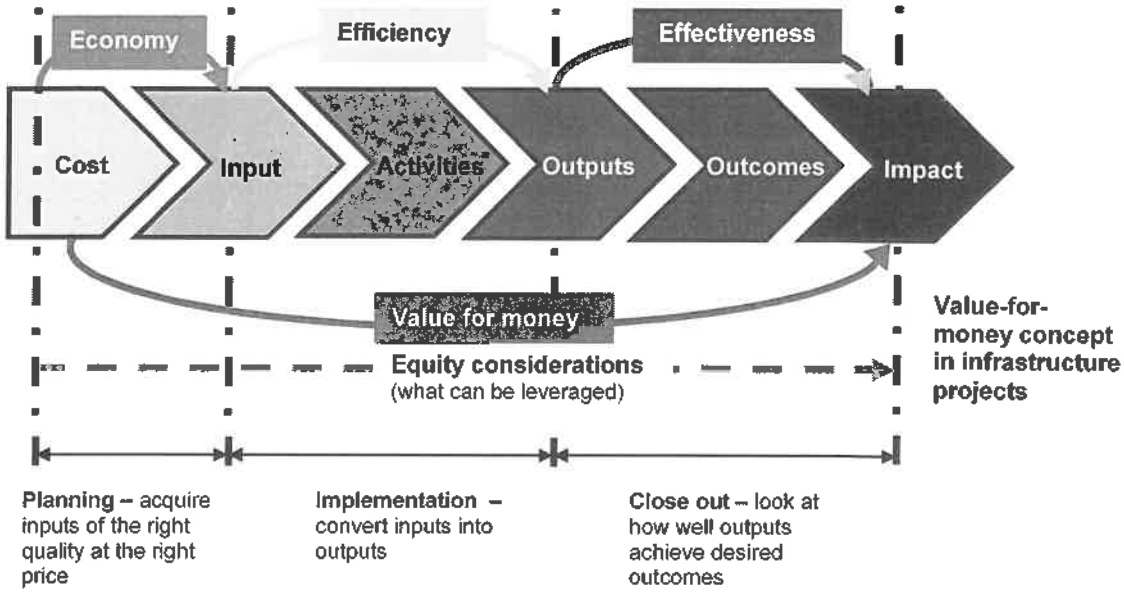
This Standard for Infrastructure Procurement and Delivery Management (SIPDM) covers the supply chain management system for infrastructure delivery. It has been framed around the five focus areas proposed by the National Planning Commission for the design of a procurement system and draws upon the work of the 2015 Public Sector Supply Chain Management Review. It is issued as an instruction in terms of Section 76(4)(c) of the Public Finance Management Act of 1999 (Act No.1 of 1999) and is applicable to the following organs of state:

a) a national or provincial department as defined in the Public Finance Management Act;
b) a constitutional institution entity as listed in schedule 1 of the Public Finance Management Act;
c) a public entity as listed in schedules 2 and 3 of the Public Finance Management Act of 1999; and
d) any organ of state which implements infrastructure delivery projects on behalf of another organ of state.

This standard also forms an integral part of the Model SCM Policy for Infrastructure Delivery Management which has been issued as a Treasury guideline determining a standard for municipal supply chain management policies in terms of Section 168 of the Municipal Finance Management Act of 2003 (Act No. 56 of 2003) in support of Regulation 3(2) of the Supply Chain Management Regulations. Accordingly, the standard applies to a municipality or municipal entity whose council or board of directors, respectively, adopts the aforementioned guideline standard.

Underlying this standard is the notion that the effective and efficient functioning of the supply chain management system for the procurement and delivery of infrastructure will realise value for money and good-quality service delivery. Value for money may be regarded as the optimal use of resources to

achieve the intended outcomes. Underlying value for money is an explicit commitment to ensure that the best results possible are obtained from the money spent, or maximum benefit is derived from the resources available. It is about striking the balance between the three "E's", namely, economy, efficiency and effectiveness, whilst being mindful of a fourth "E" – equity – as indicated in the diagram below.



The critical starting point in delivering value for money through infrastructure projects is, in the first instance, to align such projects with strategic objectives, priorities, budgets and plans, and thereafter, during the planning phase, to clearly define objectives and expected outcomes, as well as parameters such as the timelines, cost and levels of uncertainty. This frames the value-for-money proposition that needs to be implemented at the point in time that a decision is taken to proceed with a project, i.e. it establishes "economy" and identifies "equity". The end point is to compare the projected outcomes against the actual outcomes, i.e. to confirm the "effectiveness" of the project in delivering value for money.

Implementation sits between "economy" and "effectiveness" in the results chain framework. It needs to be executed "efficiently" in order to minimise time delays, scope creep and unproductive costs, and to mitigate the effects of uncertainty on objectives so as to maintain the value-for-money proposition formulated at the outset of the project. This necessitates that the implementer of an infrastructure project exercises due care and reasonableness during implementation. Failure to do so may result in substandard or unacceptable performance, which results in a gap between intended and achieved outcomes. This gap puts value for money for a project at risk and may result in unintended consequences, such as community instability and unrest.

Organs of state which are required to implement this standard need to establish a suitable supply chain management policy for infrastructure procurement and delivery management in order to do so.

Standard for Infrastructure Procurement and Delivery Management

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1 SCOPE

1.1 This standard establishes a supply chain management system for infrastructure procurement and delivery management by organs of state which are subject to the Public Finance Management Act, the Local Government: Municipal Finance Management Act, or which implement infrastructure projects on behalf of another organ of state in terms of section 238 of the Constitution of the Republic of South Africa, 1996. This standard:

a) provides a control framework for the planning, design and execution of infrastructure projects, the tracking of such projects and the monitoring of performance which:

1) enables risks to be proactively managed;
2) is capable of being audited;
3) is aimed at ensuring that any infrastructure acquired or to be acquired:

- is in accordance with the legal mandates and strategic priorities;
- is delivered in the right quantity and quality, and at the right place and time;
- is financially, economically and technically viable and offers value for money over its life cycle;
- is affordable in terms of existing budget and future budgetary projections after taking into account life cycle costs;
- is acquired in accordance with any required statutory permissions;
- makes optimal utilisation of existing infrastructure as demand patterns change over time;
- can be readily and economically maintained; and
- is aligned between those who design and construct infrastructure, and those who subsequently occupy, use and manage the infrastructure;

b) provides a control framework for infrastructure procurement;
c) establishes requirements for the following matters as applied to infrastructure procurement and delivery management:
- institutional arrangements;
- demand management;
- acquisition management;
- contract management;
- logistics management;
- disposal management;
- reporting of supply chain management information;
- regular assessment of supply chain management performance;
- risk management and internal control; and

d) establishes minimum requirements for infrastructure procurement.

1.2 This standard facilitates the allocation of clear responsibilities for performing activities and making decisions at gates.

1.3 The standard does not apply to:

a) the storage of goods and equipment, following their delivery to an organ of state, which are stored and issued to contractors or to employees of that organ of state;
b) the disposal or letting of land;
c) the conclusion of any form of land availability agreement;
d) the leasing or rental of moveable assets;

e) public private partnerships; and
f) the provision of municipal services by means of external mechanisms referred to in Chapter 8 of the Municipal Systems Act.

1.4 The standard includes the procurement of goods and services necessary for a new facility, as delivered to be occupied and used as a functional entity.

2 TERMS AND DEFINITIONS

2.1 For the purposes of this document, the definitions and terms given in SANS 10845-1, SANS 10845-2 and the following apply.

adjudication: a form of dispute resolution where, unlike other means of resolving disputes involving a third party intermediary, the outcome is a decision by a third party which is binding on the parties in dispute and is final unless and until reviewed by either arbitration or litigation

advance payment: sum of money paid to the contractor after the contract is signed but before work starts or goods or services or any combination thereof are supplied

alteration: changing, extending or modifying the character or condition of infrastructure

building: infrastructure that has the provision of shelter for its occupants or contents as one of its main purposes, usually partially or totally enclosed and designed to stand permanently in one place

building tuning: the review and fine-tuning of all the system settings made during the pre-occupation commissioning, so that the re-commissioning which takes place at the end of the 12-month tuning period results in settings which reflect how the occupants actually behave and the building responds to climatic conditions

construction: everything that is constructed or results from construction operations

control budget: the amount of money which is allocated or made available to deliver or maintain infrastructure associated with a project or package, including site costs, professional fees, all service and planning charges, applicable taxes, risk allowances and provision for price adjustment for inflation

contract management: applying the terms and conditions, including the agreed procedures for the administration thereof

contractor: person or organisation that contracts with the employer to provide goods or services or any combination thereof covered by the contract

defect: non-conformity of a part or component of the works to a requirement specified in terms of a contract

employer: organ of state intending to or entering into a contract with a contractor

framework agreement: an agreement between an organ of state and one or more contractors, the purpose of which is to establish the terms governing orders to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged

gate: a control point at the end of a process where a decision is required before proceeding to the next process or activity

gateway review: an independent review of the available information at a gate upon which a decision to proceed or not to the next process is based

infrastructure:

a) immovable assets which are acquired, constructed or which result from construction operations; or
b) movable assets which cannot function independently from purpose-built immoveable assets

infrastructure delivery: the combination of all planning, technical, administrative and managerial actions associated with the construction, supply, refurbishment, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

infrastructure procurement: the procurement of goods or services including any combination thereof associated with the acquisition, refurbishment, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

maintenance: the combination of all technical and associated administrative actions during an item's service life to retain it in a state in which it can satisfactorily perform its required function

major capital project: an infrastructure project or a series of interrelated infrastructure projects on a single site having an estimated cost, including those required for new facilities or systems to become fully operational, above a prescribed threshold

major public entity: a public entity included in the list in Schedule 2 to the Public Finance Management Act

metropolitan municipality: a Category A municipality as provided for in section 155 of the Constitution of the Republic of South Africa, 1996

national government business enterprise: a public entity included in the list in Schedule 3B to the Public Finance Management Act

operation: combination of all technical, administrative and managerial actions, other than maintenance actions, that results in the item being in use

operations and maintenance support plan: a plan which establishes the organisational structure required for the operation and maintenance of the works over its service life, and the office, stores, furniture, equipment, Information and Communications Technology (ICT), engineering infrastructure and staff training requirements

order: an instruction to provide goods, services or any combination thereof under a framework agreement

organ of state: an organ of state as defined in section 239 of the Constitution of the Republic of South Africa

package: work which is grouped together for delivery under a single contract or an order

portfolio: collection of projects or programmes and other work that are grouped together to facilitate effective management of that work to meet a strategic objective

procurement document: documentation used to initiate or conclude (or both) a contract or the issuing of an order

procurement strategy: selected packaging, contracting, pricing and targeting strategy and procurement procedure for a particular procurement

programme: the grouping of a set of related projects in order to deliver outcomes and benefits related to strategic objectives which would not have been achieved had the projects been managed independently

provincial government business enterprise: a public entity included in the list in Schedule 3D to the Public Finance Management Act

public private partnership: a commercial transaction between an organ of state and a private party in terms of which the private party:

a) performs an institutional function on behalf of the organ of state or acquires the use of state property for its own commercial purposes; and
b) assumes substantial financial, technical and operational risks in connection with the performance of the institutional function or use of state property; and
c) receives a benefit for performing the institutional function or from utilising the state property, either by way of:

1) consideration to be paid by the organ of state which derives from a revenue fund or, where an organ of state is a national government business enterprise or a provincial government business enterprise, from the revenues of such institution; or
2) charges or fees to be collected by the private party from users or customers of a service provided to them; or
3) a combination of such consideration and such charges or fees

quality: totality of features and characteristics of a product or service that bears on the ability of the product or service to satisfy stated or implied needs

refurbishment: modification and improvements to existing infrastructure in order to bring it up to an acceptable condition

rehabilitation: extensive work to bring infrastructure back to acceptable functional conditions, often involving improvements

repair: physical action taken to restore the required function of a faulty item

retention sum: sum retained for a certain period to offset costs which may arise from the contractor's failure to comply fully with the contract

service delivery agreement: an agreement between two or more organs of state setting out the terms and conditions and roles and responsibilities regarding infrastructure delivery which promotes and facilitates inter-institutional relations and the principles of participation, cooperation and coordination

service life: the period of time after acquisition or construction during which the infrastructure or its parts meet or exceed the performance demanded or expected to be fulfilled

stage: a collection of logically related activities in the infrastructure delivery cycle that culminates in the completion of a major deliverable

statutory permission: any relevant approval, consent or permission in terms of any legislation required to plan and deliver the infrastructure

target contract: a cost reimbursement contract in which a preliminary target cost is estimated and on completion of the work the difference between the target cost and the actual cost is apportioned between the parties to the contract on an agreed basis.

value for money: the optimal use of resources to achieve intended outcomes

3 NORMATIVE REFERENCES

3.1 Acts of Parliament

The following referenced Acts of Parliament are indispensable for the application of this document:

- Architectural Profession Act, 2000 (Act No. 44 of 2000)
- Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)
- Constitution of the Republic of South Africa, 1996
- Construction Industry Development Board Act, 2000 (Act No. 38 of 2000)
- Engineering Profession Act, 2000 (Act No. 46 of 2000)
- Landscape Architectural Profession Act, 2000 (Act No. 45 of 2000)
- Local Government: Municipal Finance Management Act, 2003 (Act No.56 of 2003)
- Municipal Systems Act, 2000 (Act No. 32 of 2000)
- National Archives and Record Services of South Africa Act, 1996 (Act No. 43 of 1996)
- Occupational Health and Safety Act, 1993 (Act No. 85 of 1993)
- Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
- Project and Construction Management Professions Act, 2000 (Act No. 48 of 2000)
- Public Finance Management Act, 1999 (Act No. 1 of 1999)
- Quantity Surveying Profession Act of 2000 (Act No. 49 of 2000)
- South African Schools Act, 1996 (Act No. 84 of 1996)

3.2 Standards

The following referenced standards and the forms of contract identified in this standard are indispensable for the application of this document. For dated references, only the edition cited applies. For undated references, the latest edition of the referenced document (including any amendments) applies.

- South African Bureau of Standards, SANS 10845-1, *Construction procurement – Part 1: Processes, methods and procedures*
- South African Bureau of Standards, SANS 10845-2, *Construction procurement – Part 2: Formatting and compilation of procurement documentation*
- South African Bureau of Standards, SANS 10845-3, *Construction procurement – Part 3: Standard conditions of tender*
- South African Bureau of Standards, SANS 10845-4, *Construction procurement – Part 4: Standard conditions for the calling for expressions of interest*
- Standard for Uniformity in Construction Procurement, Construction Industry Development Board

4 CONTROL FRAMEWORKS

4.1 Control framework for infrastructure delivery management

4.1.1 General

4.1.1.1 The control framework for the management of infrastructure delivery shall comprise the applicable stages and gates as set out in Figure 1 and the key deliverables described in Table 1. Stages 3 to 9 may be omitted where the required work does not involve the provision of new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure. Stages 5 and 6 may be omitted if sufficient information to proceed to stage 7 is contained in the stage 4 deliverable. Decisions to proceed to the next stage shall at each gate, subject to the provisions of 4.1.1.2, be based on the acceptability or approval of the end-of-stage deliverable.

4.1.1.2 A stage shall only be complete when the deliverable has been approved or accepted by the person or persons designated in the institutional arrangements to do so. Activities associated with stages 5 to 9 may be undertaken in parallel or series, provided that each stage is completed in sequence.

4.1.1.3 The level of detail contained in a deliverable associated with the end of each stage shall be sufficient to enable informed decisions to be made to proceed to the next stage. In the case of stages 3 to 6, such detail shall, in addition, be sufficient to form the basis of the scope of work for taking the package forward in terms of the selected contracting strategy.

4.1.1.4 Prefeasibility and feasibility reports shall be required as end-of-stage deliverables for stages 3 and 4, respectively, where one or more of the following applies:

a) the major capital project is required for:

1) a major public enterprise where the total project capital expenditure exceeds R1,5 billion; or
2) an organ of state subject to the Public Finance Management Act other than a major public enterprise where the total project capital expenditure exceeds R1,0 billion including VAT, or where the expenditure per year for a minimum of three years exceeds R250 million per annum including VAT;

b) the project is not:

1) a building project with or without related site works; or
2) a process-based, somewhat repetitive or relatively standardised project where the risk of failing to achieve time, cost and quality objectives is relatively low; or

c) the organ of state's infrastructure procurement and delivery supply chain management policy requires that prefeasibility and feasibility reports be produced during stages 3 and 4 respectively.

4.1.1.5 Stages 3 and 4 shall be repeated for each package if the acceptance at stage 4 is for the acceptance of a project comprising a number of packages which are to be delivered over time.

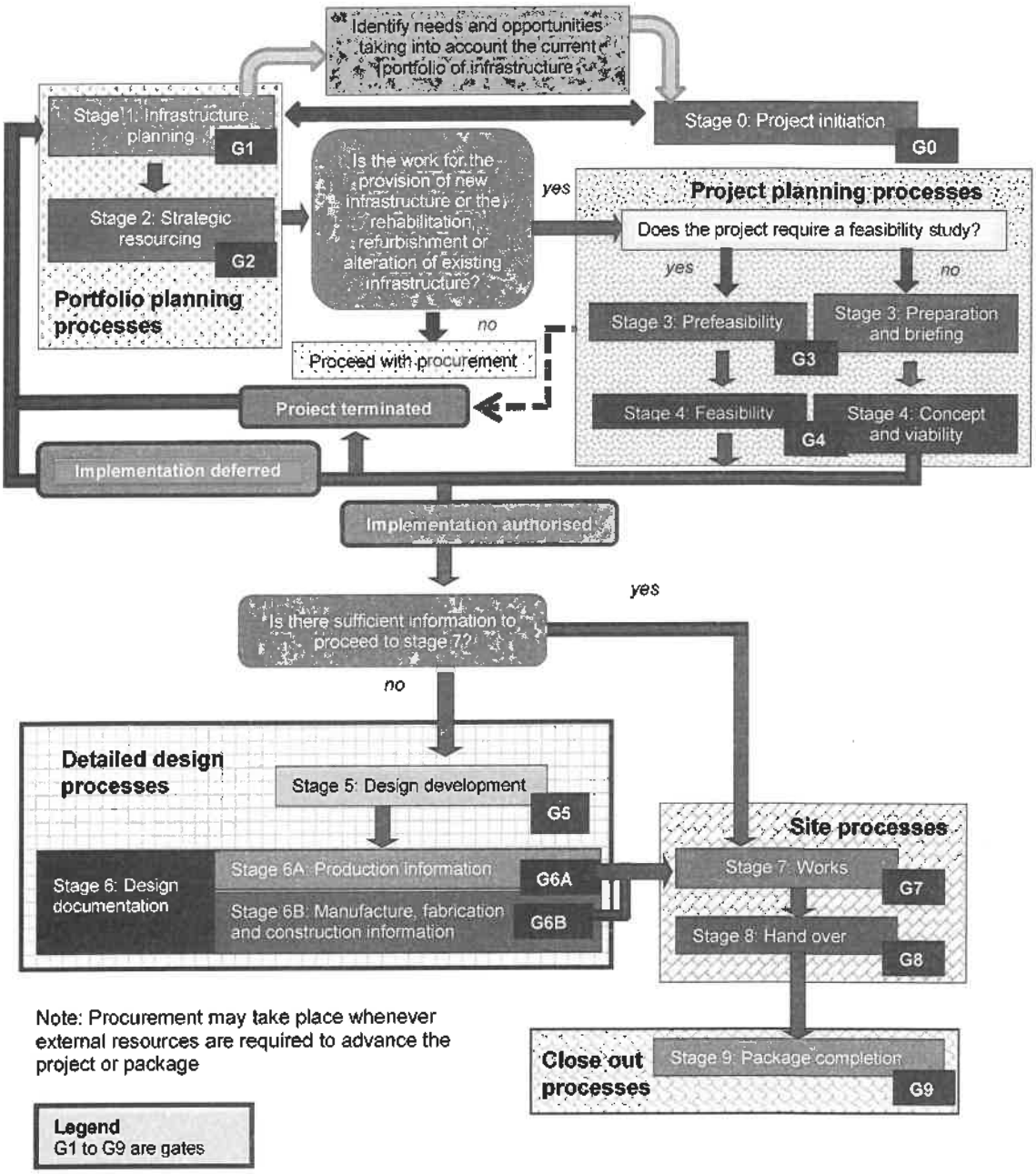

Figure 1: Stages and gates associated with the control framework for infrastructure delivery management

Table 1: End-of-stage deliverables

Stage			End-of-stage deliverable
No	Name		
0	Project initiation		An initiation report which outlines the high-level business case together with the estimated project cost and proposed schedule for a single project or a group of projects having a similar high-level scope
1	Infrastructure planning		An infrastructure plan which identifies and prioritises projects and packages against a forecasted budget over a period of at least five years
2	Strategic resourcing		A delivery and/or procurement strategy which, for a portfolio of projects, identifies the delivery strategy in respect of each project or package and, where needs are met through own procurement system, a procurement strategy
3	Prefeasibility		A prefeasibility report which determines whether or not it is worthwhile to proceed to the feasibility stage
	Preparation and briefing		A strategic brief which defines project objectives, needs, acceptance criteria and client priorities and aspirations, and which sets out the basis for the development of the concept report for one or more packages
4	Feasibility		A feasibility report which presents sufficient information to determine whether or not the project should be implemented
	Concept and viability		A concept report which establishes the detailed brief, scope, scale, form and control budget, and sets out the integrated concept for one or more packages
5	Design development		A design development report which develops in detail the approved concept to finalise the design and definition criteria, sets out the integrated developed design, and contains the cost plan and schedule for one or more packages
6	Design documentation	6A Production information	Production information which provides the detailing, performance definition, specification, sizing and positioning of all systems and components enabling either construction (where the constructor is able to build directly from the information prepared) or the production of manufacturing and installation information for construction
		6B Manufacture, fabrication and construction information	Manufacture, fabrication and construction information produced by or on behalf of the constructor, based on the production information provided for a package which enables manufacture, fabrication or construction to take place
7	Works		Completed works which are capable of being occupied or used
8	Handover		Works which have been taken over by the user or owner complete with record information
9	Package completion		Works with notified defects corrected, final account settled and the close out report issued

4.1.1.6 The infrastructure plan (stage 1), which is informed by demand management requirements as set out in 6.2, initiation reports (stage 0), decisions made during stages 3 and 4 and work in progress in stages 5 to 9, and the procurement strategy (stage 2) shall be reviewed and updated at least once a year.

4.1.1.7 An organ of state may, if it deems it necessary, add additional gates to the control framework presented in Figure 1.

4.1.1.8 The approval of the infrastructure plan and the securing of the necessary budget shall be obtained prior to advancing to stage 3. All subsequent stages shall only be proceeded with if the necessary budget is in place.

4.1.1.9 The approvals or acceptances at each gate shall be retained for record purposes for a period of not less than five years of such acceptance or approval in a secured environment, unless otherwise determined in terms of the National Archives and Record Services of South Africa Act.

4.1.2 Stage 0: Project initiation

4.1.2.1 Projects, or groups of projects having a similar high-level scope, which are appraised, shall address particular strategic needs or business opportunities which fall within the organ of state's legislated or sanctioned mandate.

4.1.2.2 Objective decision-making criteria based on factors such as those relating to strategic objectives, national, provincial or regional priorities, the level of stakeholder support, legislative compliance, risk considerations and financial justification shall be used to motivate the acceptance of a project into the infrastructure plan.

4.1.2.3 The initiation report for a project shall as a minimum:

a) provide a project description and high-level scope of work;
b) outline key issues and solution options that were interrogated;
c) outline options that were evaluated;
d) indicate the high-level business case; and
e) provide the estimated project cost and indicative high-level schedule.

4.1.2.4 The decision-making criteria, findings, assumptions and recommendations shall be documented in the initiation report.

4.1.2.5 Stage 0 is complete when the initiation report is accepted.

4.1.3 Stage 1: Infrastructure planning

4.1.3.1 The infrastructure plan for a portfolio of projects or packages which require implementation shall cover a period of not less than five years. Such a plan shall be:

a) described by the high-level scope of work for each project, the proposed time schedule, the estimated total project cost and annual budget requirement, the geographical location, any known encumbrances and estimated timeframes for removing these encumbrances; and
b) aligned with all prescribed planning, budgeting, monitoring and reporting requirements.

4.1.3.2 Stage 1 is complete when the infrastructure plan is approved.

4.1.4 Stage 2: Strategic resourcing

4.1.4.1 A delivery management strategy shall be developed following the conducting of a spend, organisational and market analysis. Such a strategy shall indicate how needs are to be met for each category of spend through one or more of the following:

a) a public private partnership;
b) another organ of state on an agency basis;
c) another organ of state's framework agreement;
d) own resources; or
e) own procurement system.

4.1.4.2 A procurement strategy shall, based on the spend, organisational and market analysis, document the selected packaging, contracting, pricing and targeting strategy and procurement procedure for all required goods or services or any combination thereof including professional services.

4.1.4.3 The procurement strategy shall include the rationale for adopting a particular option.

4.1.4.4 Organs of state who engage another organ of state to provide agency services shall develop a delivery management and procurement strategy covering the projects which are subject to an agency agreement (see 5.2), in consultation with that organ of state.

4.1.4.5 Stage 2 is complete when the delivery and procurement strategy is approved.

4.1.5 Stage 3: Preparation and briefing or prefeasibility

4.1.5.1 The strategic brief shall as necessary:

a) confirm the scope of the package and identify any constraints, including those relating to occupational health and safety;
b) establish the project criteria, including the performance and reliability requirements, design life, service life of components, function, maintenance and replacement requirements, mix of uses, scale, location, quality, value, time, safety, health, environment and sustainability;
c) identify procedures, organisational structure, key constraints, statutory permissions (e.g. environmental, heritage, social, planning, building control), and utility approvals, policies (e.g. environmental, developmental, social, maintenance or facilities management) and strategies to take the package forward;
d) identify risks that need to be mitigated;
e) identify interfaces between packages as necessary; and
f) establish the control budget for the package, ownership costs and schedule for the package or series of packages.

4.1.5.2 The prefeasibility study shall as necessary:

a) document the owner or user requirements specification;
b) shortlist the options that were considered;
c) provide a preliminary design for study options;
d) provide preliminary capital estimate and the proposed schedule; and
e) present the study outcomes.

4.1.5.3 Stage 3 is complete when the prefeasibility report or the strategic brief, as required, is accepted.

4.1.6 Stage 4: Concept and viability or feasibility

4.1.6.1 The concept report shall as necessary:

a) document the initial design criteria and design options or the methods and procedures required to maintain the condition of infrastructure for the package;
b) establish the detailed brief, scope, scale, form and cost plan for the package;
c) provide an indicative schedule for documentation and construction or maintenance services associated with the package;
d) contain a site development plan or other suitable schematic layouts of the works;
e) describe the statutory permissions, funding approvals or utility approvals required to proceed with the works associated with the package;

f) include a baseline risk assessment for the package, and a health and safety plan which is required in terms of the requirements of the Construction Regulations issued in terms of the Occupational Health and Safety Act;
g) contain a risk report linked to the need for further surveys, tests, other investigations and consents and approvals, if any, during subsequent stages and identified health, safety and environmental risk;
h) contain an operations and maintenance support plan which establishes the organisational structure required for the operation and maintenance of the works resulting from the package or series of packages over its service life, and the office, stores, furniture, equipment, Information and Communications Technology (ICT), engineering infrastructure and staff training requirements;
i) confirm the financial sustainability of the project; and
j) establish the feasibility of satisfying the strategic brief for the package or series of packages within the control budget established during stage 3 and, if not, motivate a revised control budget.

4.1.6.2 A feasibility report shall as a minimum provide the following:

a) details regarding the preparatory work covering:
   1) a needs and demand analysis with output specifications; and
   2) an options analysis;
b) a viability evaluation covering:
   1) a financial analysis; and
   2) an economic analysis, if necessary;
c) a risk assessment and sensitivity analysis;
d) a professional analysis covering:
   1) a technology options assessment;
   2) an environmental impact assessment; and
   3) a regulatory due diligence; and
e) implementation readiness assessment covering:
   1) institutional capacity; and
   2) a procurement plan

4.1.6.3 Stage 4 is complete when the feasibility report or the concept report, as required, is accepted.

4.1.7 Stage 5: Design development

4.1.7.1 The design development report shall as necessary:

a) develop in detail the accepted concept to finalise the design and definition criteria;
b) establish the detailed form, character, function and costings;
c) define all components in terms of overall size, typical detail, performance and outline specification;
d) describe how infrastructure, or elements or components thereof, are to function, how they are to be safely constructed, how they are to be maintained and how they are to be commissioned; and
e) confirm that the package or series of packages can be completed within the control budget or propose a revision to the control budget.

4.1.7.2 Outline specifications shall be in sufficient detail to enable a view to be taken on the operation and maintenance implications of the design and the compatibility with existing plant and equipment.

4.1.7.3 Stage 5 is complete when the design development report is accepted.

4.1.8 Stage 6: Design documentation

4.1.8.1 Stage 6A (Production information) is complete when all the production information that is required to be accepted prior to being issued for construction, manufacturing or fabrication purposes has been accepted.

4.1.8.2 Stage 6B (Manufacture, fabrication and construction information) is complete when the manufacture, fabrication and construction information is accepted as being in accordance with the production information.

4.1.9 Stage 7: Works

Stage 7 is complete when:

a) completion of the works is certified in accordance with the provisions of the contract; or
b) the goods and associated services are certified as being delivered in accordance with the provisions of the contract.

4.1.10 Stage 8: Handover

4.1.10.1 The handover stage shall include as necessary the training of the end user's or the owner's staff in the operation of the delivered infrastructure.

4.1.10.2 The record information shall as relevant:

a) accurately document the condition of the completed works associated with a package;
b) accurately document the works as constructed or completed;
c) contain information on the care and servicing requirements for the works or a portion thereof;
d) contain information or instructions on the use of plant and equipment;
e) confirm the performance requirements of the design development report and production information;
f) contain certificates confirming compliance with legislation, statutory permissions and the like; and
g) contain guarantees that extend beyond the defects liability period provided for in the package.

4.1.10.3 Record information shall, as relevant, provide those tasked with the operation and maintenance of infrastructure with the information necessary to:

a) understand how the designers intended the works, systems, subsystems, assemblies and components to function;
b) effectively operate, care for and maintain the works, systems, subsystems, assemblies and components to function;
c) check, test or replace systems, subsystems, assemblies or components to ensure the satisfactory performance of works, systems, subsystems, assemblies and components over time;

d) develop maintenance plans;
e) determine stock levels for components and assemblies that need to be regularly replaced; and
f) budget for the operation and maintenance of the works, systems, subsystems and components over time.

4.1.10.4 Arrangements shall be put in place to secure and safeguard the works from the time that the contractor's liabilities for damage to the works end until such time that the works are handed over to the end user or owner who shall accept such liabilities.

4.1.10.5 Stage 8 is complete when the end user or owner accepts liability for the works.

4.1.11 Stage 9: Close out

4.1.11.1 The close out report for the package shall outline what was achieved in terms of at least the following:

a) the performance parameters outlined in 12;
b) unit costs of completed work or major components thereof; and
c) key performance indicators relating to developmental objectives.

4.1.11.2 The close out report shall make suggestions for improvements on future packages of a similar nature. Such a report should also comment on the performance of the contractor and, if relevant, include building tuning or similar reports.

4.1.11.3 Stage 9 is complete when, as relevant, defects certificates or certificates of final completion are issued in terms of the contract, the final amount due to the contractor in terms of the contract is certified and the close out report is accepted.

4.1.12 Approval of high-value national and provincial major capital projects

4.1.12.1 The approval process for major capital projects described in 4.1.12.2 to 4.1.12.6 shall apply to all national and provincial projects where the value of such projects including VAT exceeds:

a) national and provincial departments and constitutional institutions: R7,5 billion
b) major public enterprise, national government business enterprise, provincial government business enterprise and other public entities, the lessor of:
    1) R10 billion; or
    2) 4% of the organ of state's total assets or, if applicable, 2% of the organ of state's total revenue as reflected in its latest audited financial statements.

4.1.12.2 The end-of-stage deliverables for stage 0 (initiation report) and stage 4 (feasibility report) in the control framework for the management of infrastructure delivery (see Figure 1) shall, after taking into account the comments and recommendations of the relevant treasury, be approved by:

a) cabinet, in the case of national departments, constitutional institutions and public entities listed in schedules 2, 3A and 3B of the Public Finance Management Act; or
b) the executive council, in the case of provincial departments and public entities listed in schedules 3C and 3D of the Public Finance Management Act.

4.1.12.3 The end-of-stage deliverables for stage 3 (prefeasibility) shall, after taking into account the comments and recommendations of the relevant treasury, be approved by:

a) the relevant member of the cabinet, in the case of national departments, constitutional institutions and public entities listed in schedules 2, 3A and 3B of the Public Finance Management Act; or
b) the relevant member of the executive council, in the case of provincial departments and public entities listed in schedules 3C and 3D of the Public Finance Management Act.

4.1.12.4 The initiator of the inception, prefeasibility and feasibility reports shall submit such reports to the relevant treasury for comment prior to making a submission to cabinet, the relevant minister, executive council or relevant member of the executive council, as applicable. The relevant treasury shall within three weeks of receiving a report submit comments and recommendations to the initiator who may revise such reports in the light of the comments and recommendations made, and:

a) request the relevant treasury to make comments and recommendations on the revised reports; or

b) submit the report together with the latest version of the relevant treasury comments and recommendations for approval.

4.1.13 Gateway reviews

4.1.13.1 Gateway reviews for major capital projects above a threshold

4.1.13.1.1 All major capital projects having an estimated capital expenditure equal to or above the threshold established in Table 2 shall have a gateway review of the end-of-stage 4 deliverable, prior to the acceptance of such deliverable. The review shall be initiated by the organ of state which intends implementing the project. The focus of such a review shall in the first instance be on the quality of the documentation, and thereafter on:

a) deliverability (the extent to which a project is deemed likely to deliver the expected benefits within the declared cost, time and performance envelope);
b) affordability (the extent to which the level of expenditure and financial risk involved in a project can be taken up on, given the organisation's overall financial position, both singly and in the light of its other current and projected commitments); and
c) value for money.

Table 2: Thresholds for gateway reviews of major capital projects

Organ of state	Estimated cost inclusive of VAT
National department	R100 million
Provincial department or metropolitan municipality	R100 million
Municipality other than a metropolitan municipality	R50 million
Major public entity	R500 million
National government business enterprise Provincial government business enterprise	R250 million
Other	R100 million

4.1.13.1.2 A gateway review team shall comprise not less than three persons who are not involved in the project associated with the works covered by the end of the stage 4 deliverable, and who are familiar with various aspects of the subject matter of the deliverable at the end of the stage under review. Such a team shall be led by a person who has at least six years post-graduate experience in the planning of infrastructure projects and is registered either as a

professional engineer in terms of the Engineering Profession Act, a professional quantity surveyor in terms of the Quantity Surveying Profession Act or a professional architect in terms of the Architectural Profession Act. The members of the team shall, as relevant, have expertise in key technical areas, cost estimating, scheduling and implementation of similar projects.

4.1.13.1.3 The relevant treasury shall be notified of a proposed gateway review for a major capital project, three weeks prior to the conducting of such a review. Such notification shall be accompanied by a brief outline of the proposed project or package, the names and qualifications of the reviewers and the timeframes for the review. The relevant treasury may nominate additional persons to serve on the review team.

4.1.13.1.4 The gateway review team shall base its findings primarily on:

a) the information contained in the end-of-stage deliverables;
b) supplementary documentation, if any, provided by key staff obtained during an interview process; and
c) interviews with key staff members and stakeholders.

4.1.13.1.5 The gateway review team shall issue a report at the conclusion of a gateway review which indicates the team's assessment of the information at the end of a stage and provides findings or recommendations on areas where further work may be undertaken to improve such information.

4.1.13.1.6 Aspects in the report shall be flagged as being:

a) code red: team considers the aspect to pose a significant risk to the project or package;
b) code amber: team considers the aspects which indicate a minor risk to the project or package; or
c) code green: team considers the aspect to have been given adequate consideration to the extent that it is unlikely to jeopardise the success of progressing to the next stage, or minor adjustments may be required before proceeding.

4.1.13.1.7 The contents of the gateway review report shall be taken into account when accepting the stage 4 deliverable. A stage 4 deliverable shall not be accepted until such time that all code red risks have been addressed in the stage 4 end-of-stage deliverable.

4.1.13.2 Gateway reviews initiated by the relevant treasury

4.1.13.2.1 A relevant treasury may at any time institute a gateway review of any of the end-of-stage deliverables associated with the control framework, irrespective of the estimated cost of a project. The focus of such a review shall be determined by the relevant treasury. The implementer of a project shall be notified of the review and its focus at least three weeks prior to the conducting of the review.

4.1.13.2.2 The implementer shall provide a person to lead the review and one other person to serve on the team, both of whom satisfy the requirements of 4.1.13.1.2.

4.1.13.2.3 The gateway review shall be conducted substantially in accordance with the provisions of 4.1.13.1.4 to 4.1.13.1.6.

4.2 Control framework for infrastructure procurement

4.2.1 General

4.2.1.1 Infrastructure procurement shall be implemented in accordance with the provisions of the control framework indicated in Figure 2 which contains:

a) procurement gates;
b) framework agreement gates;
c) reporting points, where applicable, for interfacing with the Construction Industry Development Board's (CIDB) register of projects; and
d) a gate relating to the interface with a financial management system.

4.2.1.2 The activities associated with the control framework indicated in Figure 2 are set out in Tables 3 and 4 whenever a negotiated, competitive selection or competitive negotiations procedure is applied, with the exception of the shopping procedure. Procurement Gates 6 and 7 may be combined in the case of the quotation procedure and the negotiation procedure where the value of the contract is less than the threshold set for the quotation procedure.

4.2.1.3 The level of detail contained in the documentation upon which a decision is made at a gate shall be sufficient to enable informed decisions to be made to proceed to the next activity or to undertake a particular procedure.

4.2.1.4 The approvals or acceptances at each gate shall be retained for record and audit purposes for a period of not less than five years of such acceptance or approval in a secured environment, unless otherwise determined in terms of the National Archives and Record Services of South Africa Act.

4.2.2 Specific requirements relating to the review of procurement documents

4.2.2.1 The approval of procurement documents at Procurement Gate 3 or Framework Agreement Gate 2 shall be based on the contents of a procurement documentation review report. Where the procurement relates to the provision of new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure, such a report shall be prepared by one or more persons who participated in the review and who are registered as:

a) a professional architect or professional senior architectural technologist in terms of the Architectural Profession Act or a professional landscape architect or a professional landscape technologist in terms of the Landscape Architectural Profession;
b) a professional engineer or professional engineering technologist in terms of the Engineering Profession Act; or
c) a professional quantity surveyor in terms of the Quantity Surveying Professions Act.

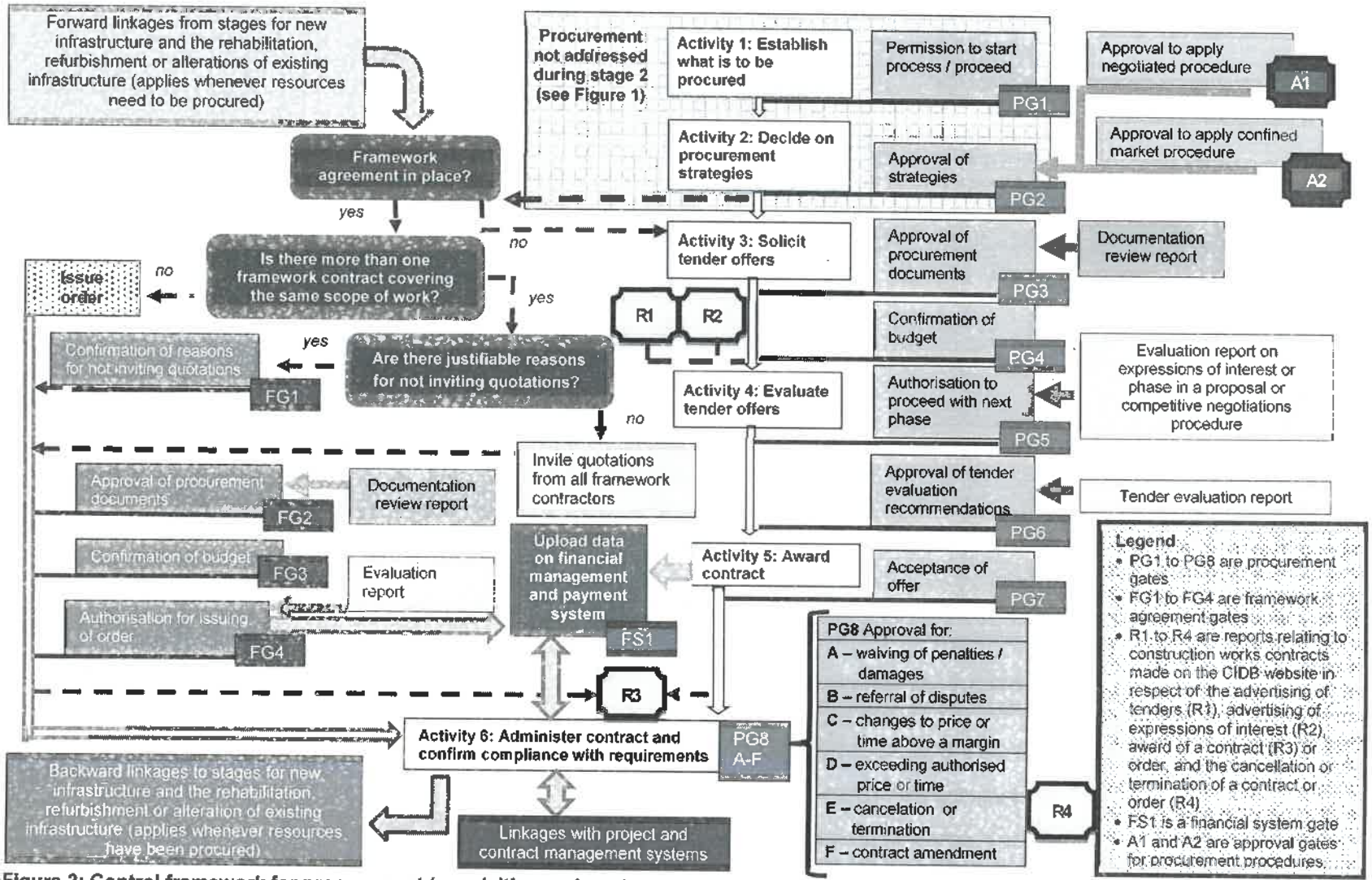

Figure 2: Control framework for procurement (acquisition and contract management) processes

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Table 3: Procurement activities and gates associated with the formation and conclusion of contracts above the threshold for the quotation procedure

Activity		Sub-Activity*		
1	Establish what is to be procured (Applies only to goods and services not addressed in a procurement strategy developed in terms of 4.1)	1.1	Prepare broad scope of work for procurement	
		1.2	Estimate financial value of proposed procurement	
		1.3 **PG1**	Obtain permission to start with the procurement process	
2	Decide on procurement strategy (Applies only to goods or services not included in a procurement strategy developed in terms of 4.1)	2.1	Establish opportunities for using procurement to promote developmental procurement policies, if any	
		2.2	Establish contracting and pricing strategy	
		2.3	Establish targeting strategy	
		2.4	Establish procurement procedure	
		2.5 **PG2**	Obtain approval for procurement strategies that are to be adopted, including specific approvals to approach a confined market or the use of the negotiation procedure	
3	Solicit tender offers	3.1	Prepare procurement documents	
		3.2 **PG3**	Obtain approval for procurement documents	
		3.3 **PG4**	Confirm that budgets are in place	
		3.4	Invite: • tender offers; or • expressions of interest (qualified procedure or restricted competitive negotiations procedure)	
		3.5	Receive submissions	
		3.6	Open and record submissions received	
4	Evaluate tender offers	4.1	Qualified procedure, proposal procedure or competitive negotiations procedure only	Evaluate and prepare evaluation report on submissions received
		4.2 **PG5**		Obtain authorisation to proceed with next phase of tender process
		4.3		Invite tender offers from qualified respondents or selected tenderers
		4.4		Open and record submissions received and, if necessary, repeat 4.1 to 4.4
		4.5	Evaluate tender offers and prepare a tender evaluation report	
		4.6 **PG6**	Confirm recommendations contained in the tender evaluation report	
5	Award contract	5.1	Notify unsuccessful tenderers of outcome	
		5.2	Compile contract document	
		5.3 **PG7**	Award contract	
		5.4	Capture contract award data on management systems	
		5.5 **GF1**	Upload data in financial management and payment system	

Table 3 (concluded)

Activity		Sub-Activity*	
6	Administer contracts and confirm compliance with requirements	6.1	Administer contract in accordance with the terms and provisions of the contract
		6.2	Confirm compliance with requirements
		6.3	Capture contract completion / termination data
		6.4 PG8A	Obtain approval to waive penalties or low performance damages
		6.5 PG8B	Obtain approval to notify and refer a dispute to an adjudicator, or for final settlement to an arbitrator or court of law
		6.6 PG8C	Obtain approval to increase the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at the award of a contract or the issuing of an order up to a specified percentage
		6.7 PG8D	Obtain approval to exceed the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at award of a contract or the issuing of an order by more than 20% and 30%, respectively
		6.8 PG8E	Obtain approval to cancel or terminate a contract
		6.9 PG8F	Obtain approval to amend a contract
		6.10	Close out the contract

* Shaded cells indicate the presence of a procurement gate

Table 4: Procurement activities and gates associated with the issuing of an order in terms of a framework agreement

Activity*	
1 FG1	Confirm justifiable reasons for selecting a framework contractor where there is more than one framework agreement covering the same scope of work
2	Prepare procurement documents
3 FG2	Obtain approval for procurement documents
4 FG3	Confirm that budgets are in place
5	Quotations amongst framework contractors not invited: Issue draft order documentation and consult with contractor and prepare evaluation report Quotations amongst framework contractors invited: Invite quotations from all framework contractors participating in the agreement, receive and evaluate submissions and prepare evaluation report
6 FG4	Authorise the issuing of the order
7	Log order onto management system
8	Issue order to contractor
9	Notify issuing of order to oversight person
10	Administer orders in accordance with contract and confirm compliance with requirements

*Shaded cells indicate the presence of a framework gate

4.2.2.2 The review of procurement documents associated with the negotiation, competitive selection or competitive negotiation procedure shall confirm that:

a) the procurement documents have been formatted and compiled in accordance with the requirements of SANS 10845-2, this standard and, where applicable, the CIDB Standard for Uniformity in Construction Procurement, and are aligned with the approved procurement strategy;

b) appropriate prompts for judgement are included in procurement documents in accordance with the requirements of SANS 10845-1 whenever quality is evaluated and scored in the evaluation of calls for expressions of interest or tender offers;

c) the selected form of contract in the case of a tender that is solicited is in accordance with the requirements of 14.5.3 and any standard templates required by the organ of state have been correctly applied;

d) the necessary approval has been obtained for additional clauses or variations to the standard clauses in the conditions of contract, conditions of tender or conditions for the calling for expressions of interest, as relevant, not provided for in the organ of state's approved templates;

e) the selected submission data in the case of a call for an expression of interest, or tender data and contract data options in the case of a tender, are likely to yield best value outcomes;

f) the scope of work adequately establishes what is required and the constraints to the manner in which the contract work is to be provided, and satisfies the drafting requirements of SANS 10845-1;

g) the submission or returnable documents are necessary and will enable submissions to be evaluated fairly and efficiently; and

h) the risk allocations in the contract and pricing data are appropriate.

4.2.2.3 The review of procurement documentation associated with the issuing of an order shall confirm that:

a) any standard templates required by the organ of state have been correctly applied;

b) the necessary approval has been obtained for additional clauses or variations to the standard clauses in the conditions of contract not provided in the organ of state's approved templates or the contract;

c) the scope of work adequately establishes what is required and the constraints to the manner in which the contract work is to be provided;

d) the provisions for competition amongst framework contractors, if relevant, and the selected options are likely to yield best value outcomes; and

e) the risk allocations are appropriate.

4.2.2.4 The review conducted to confirm the provisions of 4.2.2.2 and 4.2.2.3 shall identify sections, if any, which require amendments or improvements.

4.2.2.5 The documentation review report shall:

a) list the names and qualifications of the team members;

b) confirm that the documents are in accordance with the requirements of this standard;

c) capture any comments or opinions which the team may wish to express; and

d) recommend that the procurement documents be accepted with or without modifications.

4.2.3 Specific requirements relating to the evaluation of submissions

4.2.3.1 The authorisation to proceed with the next phase (Procurement Gate 5), the approval of tender evaluation recommendations (Procurement Gate 6) and the authorisation for the issuing of an order (Framework Agreement Gate 4) shall be based on the contents of an evaluation report.

4.2.3.2 The evaluation report shall be prepared by one or more persons who are conversant with the nature and subject matter of the procurement documents or the framework contract, and who are registered as:

a) a professional architect or professional senior architectural technologist in terms of the Architectural Profession Act;

b) a professional engineer or professional engineering technologist in terms of the Engineering Profession Act;

c) a professional landscape architect or a professional landscape technologist in terms of the Landscape Architectural Profession;

d) a professional project manager or a professional construction manager in terms of the Project and Construction Management Professions Act; or

e) a professional quantity surveyor in terms of the Quantity Surveying Profession Act.

4.2.3.3 All communications with respondents and tenderers during the procurement process to obtain information and clarifications shall be made in writing through the employer's agent named in the submission or tender data. Records of all communications in this regard shall be made and retained for auditing purposes.

4.2.3.4 Submissions shall be evaluated strictly in accordance with the provisions of the procurement documents (see Annex C of SANS 10845-3 and Annex C of SANS 10845-4, as relevant). Where quality is evaluated, at least three persons who satisfy the requirements of 4.2.3.2 shall undertake such evaluation. Quality shall be scored in terms of the prompts for judgement, with fixed scores assigned to each prompt, either individually and averaged or collectively, as appropriate.

4.2.3.5 Those involved in the evaluation of submissions shall record their scores for quality against each of the criteria during the process of evaluation, preferably with notes to substantiate the scores. Individuals should record their own markings on a separate sheet. These documents shall be placed on file as an audit trail and may form the basis of any debriefing that takes place.

4.2.3.6 Evaluation reports shall be prepared in accordance with the content headings and relevant guidelines contained in Tables 5 or 6, with modifications as necessary where a two-envelope, two-stage process or competitive negotiation procedure is followed. Such reports shall contain extracts from the procurement documents which are linked to the evaluation of submissions, such as eligibility criteria, criteria associated with evaluation methods, preferencing, quality criteria (including prompts for judgement), the method by which tenders are reduced to a common base and lists of returnable documents. Such references shall enable those who are tasked with making decisions based on these documents to do so without having to refer back to submissions in order to understand the content of the report.

4.2.3.7 An evaluation report which recommends the award of a contract shall contain in annexures the reports, if any, of prior processes, e.g. a call for an expression of interest, a round in a competitive negotiation procedure or a stage in a competitive selection procedure.

4.2.3.8 An evaluation report covering the application of the negotiated procedure for the award of a contract or the issuing of an order, shall confirm that the negotiated amounts are market-related and represent value for money. Where the total of the prices associated with a target cost contract is negotiated, the total of prices shall be certified as being fair and reasonable by a professional quantity surveyor registered in terms of the Quantity Surveying Profession Act or a professional engineer registered in terms of the Engineering Profession Act.

Table 5: Content of an evaluation report relating to an expression of interest

Section heading		Subsection heading		Guidelines for the preparation of content
1	**Summary**	-	-	Provide an overview of the parameters associated with the expression of interest, preferably in tabular form, including the following as relevant: • Contract / project no and contract / project description • Purpose of the expression of interest • Media in which advertisement was placed • Advertisement date(s) • Estimated value of contract or orders which are likely to be awarded during the term of the contract, if applicable • Date from which documents were available • Number and title of addenda issued • Closing date • Details of clarification meeting, including date and place, if any • Number of submissions made • Number of responsive submissions received • Recommended outcomes of the process
2	**An overview of the evaluation process**	-	-	Provide an overview of the procurement process, indicating the eligibility criteria that were applied. State points relating to evaluation criteria, prompts for judgement and weightings relating thereto. Reproduce the list of returnable documents. Provide, if applicable, an overview as to how the quality aspects of the submissions were scored. Record that those involved in the evaluation of tenders have no conflicts of interest or have declared any conflict of interest that they may have, and the nature of such conflict.
3	**Evaluation process**	**3.1**	**Submissions received**	List the submissions that were received. Describe any noteworthy events regarding the opening of submissions, e.g. the returning of late submissions.
		3.2	**Completeness of submissions received**	Compare submissions received against the list of returnable documents. State if any submissions were incomplete and outline how clarifications were obtained. Confirm if respondents took into account addenda, if any, in their submission.
		3.3	**Responsiveness of respondents**	Identify which of the submissions received were non-responsive and provide clear reasons for declaring respondents to be non-responsive.
		3.4	**Evaluation of submissions**	Record the manner in which submissions were evaluated. Record, where relevant, and preferably in a tabular form, the scores for each of the evaluation criteria and the total score (excluding those who failed to score above a threshold, if any).
		3.5	**Reasons for disqualification on the grounds of corrupt or fraudulent practice**	State reasons if applicable.
		3.6	**Compliance with legal requirements**	Confirm as relevant that respondents are not barred from participation, tax matters are in order, are registered, etc.
4	**Tender recommendation**	-	-	Make a recommendation for the outcome of the process, e.g. admit to a database or prequalify / shortlist respondent to be invited to submit tender offers. Record the names and qualifications of those who performed the evaluation.
5	**Confirmation of recommendations**	-	-	Make provision for the confirmation or amendment of the recommended action.

Table 6: Content of an evaluation report relating to the solicitation of tender offers

Section heading		Subsection heading		Guidelines for the preparation of content
1	**Summary**	-	-	Provide an overview of the parameters associated with the solicitation of the tender, preferably in tabular form, including the following as relevant: • Contract / Project / Tender number • Contract description • Contract duration • Purpose of tender • Contracting strategy, pricing strategy, form of contract and targeting strategy • Procurement procedure and method of tender evaluation • Tender validity expiry date • Alternative tenders (not permitted or state conditions under which permitted) • Media in which advertisement was placed, if not a nominated or qualified competitive selection procedure or a restricted competitive negotiations procedure • Date of advertisement(s) • Date from which documents were available • Details of clarification meeting, including date and place, if any • Tender closing date • Number and title of addenda issued • Number of tenders received • Number of responsive tenders • Recommended tender(s) • Cost estimate (budget), unless a framework contract • Lowest responsive and realistic tender used for comparative purposes (tender price, specific goals, etc.)
2	**An overview of the tender evaluation process**	-	-	Provide an overview of the procurement process, indicating the eligibility criteria that were applied and the evaluation criteria. State specific goals and points relating to preferences, as well as any quality evaluation criteria, prompts for judgement and weightings relating thereto. Reproduce the list of returnable documents. Provide an overview as to how the quality aspects of the tender were scored. Record that those involved in the evaluation of tenders have no conflicts of interest or have declared any conflict of interest that they may have, and the nature of such conflict.
3	**Tender evaluation process**	**3.1**	**Tender offers received**	List the tender offers that were received. Describe any noteworthy events regarding the opening of submissions, e.g. the returning of late tenders and the declaring of submissions non-responsive on the grounds that they were not received in the prescribed manner.
		3.2	**Completeness of tenders received**	Compare tender submissions received against list of returnable documents. State if any tender submissions received were incomplete and indicate what was not complete. Indicate what steps were taken to make incomplete tenders complete, only where this does not affect the competitive position of the tenderer in question. List all communications with tenderers. Confirm if tenderers took into account addenda, if any, in their tender submission.
		3.3	**Responsiveness of tenderers**	Identify which of the tenders received were non-responsive and provide clear reasons for declaring such tenders to be non-responsive.

Table 6 (concluded)

Section heading		Subsection heading		Guidelines for the preparation of content
3	Tender evaluation process (continued)	3.4	Evaluation of tender offers	Record the manner in which tenderers were reduced to a common basis: Record preferably in a tabular form: • the scores for each of the evaluation criteria; • the total score (excluding those who failed to score above a threshold); • the pricing parameters that were tendered to enable compensation events to be evaluated of contractors to be paid in cost reimbursable or target cost contract. Provide reasons for not granting a preference or considering a financial offer to be unrealistically low.
		3.5	Reasons for disqualification on the grounds of corrupt or fraudulent practice	State reasons if applicable.
		3.6	Compliance with legal requirements	Confirm as relevant that tenderers are not barred from participation, tax matters are in order, are registered, etc.
		3.7	Acceptability of preferred tenderer	State any reasons why the tenderer with the highest points should not be considered for the award of the tender, e.g. commercial risk, restrictions, lack of capability and capacity, legal impediments, etc. Also state any arithmetical corrections that have been made.
4	Outcome of the evaluation	-	-	Make a recommendation for the award of the tender and state any qualifications / conditions associated with such an award. Record the names and qualifications of those who performed the evaluation.
5	Confirmation of recommendations	-	-	Make provision for the recommendations for the award of the tender to be confirmed or amended.

4.2.4 Authorisation to proceed with the next phase of the procurement process

The person authorised to enable a procurement process to progress to the next phase of the process shall review the evaluation report and either refer the report back to those responsible for such a report or authorise the procurement process to proceed to the next phase after:

a) confirming that the report is complete and addresses all considerations necessary to make a decision;
b) confirming the validity and reasonableness of reasons provided for the elimination of tenderers or respondents; and
c) considering commercial risks and identifying any risks that have been overlooked which warrant investigation prior to taking a final decision.

4.2.5 Authorisation for issuing of an order

The person responsible for authorising an order shall, prior to authorising the issuing of an order:

a) confirm that the required goods or services, or any combination thereof, are within the scope of work associated with the relevant framework contract; and
b) consider the recommendations of the evaluation report where competition amongst framework contracts takes place (see 14.3.6) or a significant proportion of the total of the prices is negotiated, based on the financial parameter contained in the framework contract, and either

confirm the reasonableness of such recommendations and sign the acceptance of the order, or refer the evaluation report and recommendation back to those who prepared it.

5 INSTITUTIONAL ARRANGEMENTS

5.1 Organs of state who are responsible for infrastructure delivery shall establish a suitable infrastructure procurement and delivery supply chain management policy to implement this standard. Such a policy shall as a minimum:

a) assign responsibilities for approving or accepting deliverables associated with a gate in the control framework or authorising a procurement process or procedure;
b) establish committees which are required by law, or equivalent quality management and governance arrangements;
c) establish delegations for the awarding of a contract or the issuing of an order; and
d) establish ethical standards for those involved in the procurement and delivery of infrastructure.

5.2 An agency agreement shall be entered into between organs of state where responsibilities for implementation are delegated or assigned, or with a school governing body, established in terms of section 16 of the South African Schools Act, that makes a substantial financial contribution to a project. Such an agreement shall:

a) establish principles and requirements relating to the recovery of cost associated with the rendering of the service, claims for payments made on an agency basis including the release of retention sums, the settling of claims for payment and the documentation required to accompany such claims; and
b) include a service delivery agreement which as relevant sets out at least the following:
    1) overall aims, objectives and priorities;
    2) governance structures;
    3) reporting requirements;
    4) the scope of the services to be performed by the implementer during each financial year;
    5) the projects and packages which are included in the infrastructure plan and which are to be delivered, and the timeframes for doing so;
    6) the roles and responsibilities of the parties to the agreement, including requirements for the engagement and management of stakeholders;
    7) delegations to the implementer to accept end-of-stage deliverables on an agency basis;
    8) contributing resources, including human resources; and
    9) dispute resolution procedures.

5.3 The agency agreement shall be reviewed annually and amended or revised as necessary.

5.4 The implementer's supply chain management system shall be used to procure goods or services, or any combination thereof, for infrastructure covered by the agency agreement referred to in 5.2.

6 DEMAND MANAGEMENT

6.1 The demand management system shall be aimed at ensuring that goods and services, and any combination thereof required to support strategic and operational commitments, are delivered at the right price, time and place, and that the quality and quantity of such goods or services satisfy needs.

6.2 The demand for infrastructure delivery shall be managed through:

a) the service life plans which;

1) are based on:

- an assessment of current performance against desired levels of service or functionality; and
- a needs analysis informed by factors such as policies, norms and standards, condition assessments, functional performance, demographic trends, current and forecasted levels of optimisation; and

2) reflect a cost estimate for the life cycle activities comprising acquisition, operations, maintenance, refurbishment, rehabilitation or alteration as relevant, over a minimum period of five years; and

b) infrastructure plans which, as a minimum, summarise the service life plans and provide a credible forecast of current and net demand for services or requirements for functionality over a period of not less than ten years.

6.3 Consideration shall, where appropriate, be given to:

a) alternative service delivery methods or means of satisfying needs which do not require infrastructure to implement or reduce the demand for infrastructure; and
b) the disposal of infrastructure that is surplus to requirements.

6.4 Projects shall, wherever possible, be delivered in accordance with established norms and standards which are designed to yield value for money.

6.5 Identified projects shall be prioritised and budgeted for in an infrastructure plan (see 4.1.2.2).

6.6 Costs shall be proactively managed through the setting and proactive monitoring of control budgets for projects through the project planning, detailed design and site processes indicated in Figure 1.

7 ACQUISITION MANAGEMENT

7.1 Procurement of new infrastructure and the rehabilitation, refurbishment or alteration of existing infrastructure

7.1.1 Budgets submission for budget approval to advance a project or package relating to the delivery or planned maintenance of infrastructure in a financial year shall be broken down into the stages (see Figure 1) which have been completed.

7.1.2 Implementation plans relating to new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure which are aligned with the accepted delivery and procurement strategy, shall be developed for each project or package which is to be delivered in a financial year. Such a plan shall as necessary:

a) identify the objectives of each project or programme of projects;
b) identify the scope, budget and schedule for each project or package;
c) outline the procurement strategy in respect of each project or package;
d) provide a time management plan for each project, i.e. the baseline against which progress towards the attainment of milestone (key deliverables) target dates can be measured;
e) provide the projected budget and cash flows which will enable planned and actual expenditure to be compared and revisions to the budget to be approved, and multiple project budgets to be managed;
f) document the key success factors and the key performance indicators which need to be measured, monitored and evaluated;
g) contain a procurement plan which indicates the timeline for advertising and closing of tenders, and the obtaining of gate approvals leading up to the award of the contract or the issuing of an order;
h) identify the major risks and how such risks are to be mitigated or managed;
i) indicate how quality requirements and expectations are to be met and managed;
j) outline the controls and measures which will address health, safety, socio-economic or environmental risks;
k) provide a communication plan which determines the lines of communication and the key activities associated therewith; and
l) indicate the assigned internal and external resources with implementation responsibilities.

7.1.3 Financial data shall be gathered to enable a financial report to be generated at regular intervals which:

a) lists the packages which have completed stage 7 (works) together with actual expenditure;
b) indicates the following for packages which have advanced beyond stage 4 (concept and viability or feasibility) but have not yet completed stage 7 (works):

    1) budget for the financial year;
    2) actual expenditure to date;
    3) remaining budget for the year;
    4) forecast expenditure for the remainder of the year; and
    5) forecast over/under expenditure for the year;

c) indicates professional fees associated with a project or package; and
d) enables "actual" versus "planned" expenditure to be compared.

7.2 Procurement other than new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure

7.2.1 Annual procurement plans shall be prepared to cover the procurement of goods or services, or any combination other than that relating to new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure which exceed the threshold for quotations.

7.2.2 Annual procurement plans required in accordance with 7.2.1 shall contain the following information for all proposed tenders for a financial year where the proposed procurement is estimated to equal or exceed the threshold for quotations.

a) a description of the goods, services or works;
b) the estimated value of such goods, services or works, including all applicable taxes;
c) the envisaged date of advertisement;
d) the envisaged closing date for tenders; and
e) the envisaged date of award.

7.3 Use of an organ of state's framework agreement by another organ of state

7.3.1 An organ of state may request in writing to make use of one or more framework contracts entered into by another organ of state. Such a request, signed by the accounting officer or accounting authority of that organ of state, shall:

a) outline the scope and anticipated quantum of work associated with the work that is required;
b) provide a motivation for the use of the framework agreement; and
c) detail the benefit for the state to be derived from making use of the framework agreement.

7.3.2 The accounting officer or accounting authority may approve a request made in terms of 7.3.1 to make use of the organ of state's framework contract, conditionally or unconditionally, if:

a) the framework agreement was put in place following a competitive tender process;
b) confirmation is obtained that the framework contract is suitable for the intended use, and the required goods, services and works fall within the scope of such contract;
c) the framework contractor agrees in writing to accept an order from that organ of state;
d) the organ of state undertakes to pay the contractor in accordance with the terms and conditions of the agreement; and
e) the term of the framework agreement does not expire before the issuing of the required orders.

8 CONTRACT MANAGEMENT

8.1 The person responsible for the administration of the contract or an order on behalf of the employer shall:

a) act as stated in the contract that is entered into, subject to any constraints that may be imposed by the employer or the employer's supply chain management policy for infrastructure procurement and delivery management, using any standard templates that are provided for communications required in terms of the contract;

b) provide at least the following data within two weeks of the award of a contract or an order for capture on a contract management system:

1) name and contract particulars;
2) the programme or project number, as relevant;
3) the contractual dates associated with the contract or order;
4) except in the case of very low value goods or services contracts, a cash flow forecast;
5) the agreed total of prices or forecasted total of prices; and
6) where applicable, whether or not provision is made for price adjustment for inflation, delay damages, performance bond and retention, and if so, what the quantum or estimated quantum of such provisions is;

c) retain on a contract file, copies of certificates of insurances, bonds and the like;

d) make an assessment of the amount due to the contractor where required in terms of the contract, or review the contractor's assessment of the amount due and timeously certify payment;

e) revise the estimates for price adjustment for inflation where provided for, prepare an updated cash flow for the remainder of the contract based on the contractor's schedule, and capture these amounts together with the amounts due to the contractor and the retention amounts, if relevant, on a monthly basis;

f) provide the revised total of the prices or completion date or delivery date for the contract, or an order, within one week of a contractor revising a forecast of the total of prices, or an event being implemented, which in terms of the contract increases the total of prices or delays delivery or completion, for capture on a contract management system;

g) manage, if relevant, the interface between the contractor and those responsible for providing client inputs where a management, design and construct or develop and construct contracting strategy is utilised;

h) develop and maintain a contract risk register;

i) provide a monthly report on events which, in terms of the contract, cause the total of prices to increase or the contract completion date to be changed;

j) report all insurance claims made within one week of the claim being lodged; and

k) make inputs, if applicable, to the close out report in stage 9, including those relating to cost norms, contractor performance and the attainment, or not, of projective objectives.

8.2 The person responsible for administering the contract shall as necessary report on a monthly basis on the following:

a) the attainment of key performance indicators, if any, provided for in the contract or required by the sponsor of the project or in terms of legislation;

b) the number of improvement, contravention and prohibition notices issued by the health and safety agent; and

c) incidents reportable in terms of the Construction Regulations issued in terms of the Occupational Health and Safety Act, briefly indicating the nature of the incident.

8.3 The person responsible for the administration of a contract or order relating to the provision of new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure, shall be registered in a professional category of registration in terms of the Architectural Profession Act, the Engineering Profession Act, Landscape Architectural Profession Act, the Project and Construction Management Professions Act or Quantity Surveying Profession Act.

9 LOGISTICS MANAGEMENT

9.1 Materials, equipment and plant may be procured and issued free of charge to a contractor for incorporation into the works. Care shall be taken to ensure that suitable arrangements or measures are in place to minimise:

a) loss or damage to such items until the contractor has received and accepted them; and
b) delays in supply which can result in increases in the contractor's prices for providing the works.

9.2 Procurement processes associated with long lead items of plant, equipment and materials may be initiated before the conclusion of stage 4 (concept and viability or feasibility). No contract may be entered into following such processes until stage 4 has been concluded and the budgets are in place to proceed.

10 DISPOSAL MANAGEMENT

10.1 A disposal committee shall decide how best to undertake disposals relating to the demolition or dismantling of infrastructure or parts thereof, and the disposal of unwanted, redundant or surplus materials, plant and equipment.

10.2 Disposals shall be proceeded with only after the feasibility and desirability of using one or more of the following alternative disposal strategies have been considered:

a) transfer to another organ of state, business unit or a charitable organisation at market-related value or free of charge;
b) recycling or re-use of component materials; or
c) disposal by means of dumping at an authorised dump site, burning or demolition.

10.3 The reasons for adopting a disposal strategy shall be recorded prior to proceeding with such disposal.

11 REPORTING OF SUPPLY CHAIN MANAGEMENT INFORMATION

11.1 The implementer shall report to the relevant treasury within one month of the award of a contract or the issuing of an order, all engineering and construction, supply, service and professional service contracts that are awarded, or orders that are issued, should the total of prices, including VAT, exceed the thresholds contained in Table 7. Such a report shall indicate the following:

a) the title and number of the contract or order;
b) a brief outline of the scope;
c) the total of the prices at the time that a contract is concluded or an order issued;
d) the time for completion or delivery; and
e) the procurement procedure that was used to put the contract in place, or in the case of a framework agreement, whether or not competition amongst framework contractors was reopened.

Table 7: Thresholds, including VAT, for reporting the award of a contract or an order to the relevant treasury

Organ of state	Value of contract or order including VAT			
	Services contract	Professional services	Supply	Engineering and construction works
National department	R75 million	R75 million	R100 million	R100 million
Provincial department or metropolitan municipality	R50 million	R50 million	R100 million	R100 million
Municipality other than a metropolitan municipality	R25 million	R25 million	R50 million	R50 million
Major public entity	R250 million	R250 million	R500 million	R500 million
National government business enterprise Provincial government business enterprise	R125 million	R125 million	R250 million	R250 million
Other	R50 million	R50 million	R100 million	R100 million

11.2 Organs of state other than major public entities, national government business enterprises and provincial business enterprises shall report to the relevant treasury where a contract was awarded to a tenderer other than the tenderer recommended by a committee, giving reasons for such award.

11.3 The implementer shall prepare an annual report which contains the following in respect of a financial year and submit such report to the relevant treasury within two months after the financial year end:

a) the information contained in the performance report prepared in accordance with section 12 of this standard;
b) a brief progress report which reflects progress in terms of time and cost in relation to the time for completion or delivery and the total of prices at the award of the contract or the issuing of an order, and, if relevant, stages completed, on all contracts and orders above the threshold stated in Table 7;
c) an outline of the scope, value and duration of all contracts which were awarded as a result of unsolicited proposals, together with a brief motivation for such award;
d) particulars relating to:

    1) the cancellation or termination of contracts, together with the reasons therefore;

2) the use of a negotiated or confined market procurement procedure to enter into a supply, services, professional services or engineering and construction contract in excess of R10,0 million, including VAT, together with a brief motivation for doing so;
3) the evoking of the emergency procurement procedures where the value of the ensuing transaction exceeded R10,0 million, including VAT, together with a brief overview of the emergency and the outcomes of the procurement;
4) disputes arising from contracts which have been referred to arbitration or a court of law for settlement; and
5) contracts where the approval has been granted to increase the total of the prices or the time for completion at Procurement Gate 8D (see Figure 2 and Table 3).

12 ASSESSMENT OF SUPPLY CHAIN MANAGEMENT PERFORMANCE

An annual performance report shall be prepared for each portfolio of projects involving infrastructure delivery within two months of the financial year end which reflects performance in relation to at least the following:

a) expenditure incurred in infrastructure delivery for the financial year, against the budget made available to cover such expenditure at the start of the year;
b) the average variance between planned and achieved completion of stages of all packages and projects;
c) an overview of all packages where stage 7 was completed within the financial year and the total of the prices and the time for completion at the start of the contract or when the order was issued exceed 20%, together with a brief explanation as to why such increases occurred;
d) the average time taken to award a contract, measured from the closing date for tender submission or the final submission made in terms of a proposal or competitive negotiations procedure to a decision being taken to award the contract;
e) the average time taken, in respect of all packages covered in the report, to complete stage 8 measured from the time that stage 7 is completed;
f) the average difference between the total of the prices in the payment certificate that was issued following the completion of stage 7, and the total of the prices at the end of stage 9;
g) the average time taken to award a contract above the threshold for quotations, measured from the closing date for tender submission or the final submission made in terms of a proposal or competitive negotiations procedure, to the acceptance of the tender evaluation report; and
h) the average number of days that payment is later than that required under the terms of a contract.

13 RISK MANAGEMENT AND INTERNAL CONTROL

13.1 Risk management

13.1.1 Risk registers shall be established and maintained to enable risk mitigation relating to infrastructure procurement and delivery management to be proactively managed at a portfolio, programme, project and contract level. Such registers shall as a minimum contain:

a) the entry date of the risk;
b) a description of the risk, i.e. risk event, cause and possible outcome;
c) the measures and action to mitigate risk, i.e. a description of the action, responsibility for action and timetable for implementation;
d) action status, i.e. actioned, take no action, monitor and review or to be actioned.

13.1.2 Those responsible for establishing and maintaining risk registers shall issue risk reports when called upon to do so.

13.2 Internal control measures

13.2.1 The gates in the control frameworks provided in section 4 shall be used, as appropriate, to:

a) authorise the proceeding with an activity within a process, or commencing with the next process;
b) confirm conformity with requirements; or
c) provide information which creates an opportunity for corrective action to be taken.

13.2.2 Suitable templates shall be used to record the approval or acceptance of documents at the gates provided in the control framework established in section 4.

14 INFRASTRUCTURE PROCUREMENT REQUIREMENTS

14.1 General

14.1.1 Procurement shall be undertaken in accordance with all applicable legislation and;

a) the relevant requirements of SANS 10845-1,SANS 10845-2, SANS 10845-3 and SANS 10845-4;
b) the administrative procedures embedded in the approved standard forms of contract identified in this standard; and
c) the provisions of this standard.

14.1.2 All contracts that are entered into with contractors following a procurement process shall be in writing.

14.1.3 Quality may be evaluated in tender submissions as other objective criteria as provided for in the Preferential Procurement Policy Framework Act in accordance with the provisions of SANS 10845-1.

14.1.4 The preference points system contained in the Preferential Procurement Policy Framework Act shall not be applied to disposals. An assumption shall be made in the case of tenders for framework agreements that the 90:10 preference points system applies.

14.1.5 All awards above the quotation threshold in competitive selection and competitive negotiation procurement processes shall be published at least on:

a) the organ of state's or relevant treasury's website; or
b) if required in terms of the Construction Industry Development Board Act, on the Construction Industry Development Board's website.

14.1.6 The publication of the award of a contract shall contain at least the following information:

a) contract numbers and title;
b) a brief description of goods, services or works; and
c) the names of successful tenderers and their B-BBEE status level of contribution, and where practical, the total of the prices at award, the duration of the contract and the tender points scored during the tender evaluation process.

14.2 Usage of standard procedures

14.2.1 Goods or services or a combination thereof should generally be procured from the open market. Tenders may, however, be solicited from a confined market where:

a) it is established with reasonable certainty that:

1) only a sole contractor is able to provide the goods or services or any combination thereof;
2) only a very limited number of contractors are able to provide goods, services or works which are not freely available in the market, or which are provided solely for the organ of state in accordance with unique requirements;

b) there is justification for standardising goods or making use of manufacturer-accredited service providers;

c) a change in product or manufacturer requires modifications to related equipment and fixtures, e.g. a replacement pump requires costly changes to mountings, pipework or electrical connections or the replacement of circuit breakers requires costly changes to mounting frames, face panels, busbars, wiring and the like; or

d) a replacement model requires the holding of additional spares or maintenance personnel.

14.2.2 The standard procurement procedures identified in Table 8 shall be implemented under the stated conditions in accordance with the provisions of SANS 10845-1. Projects shall not be subdivided to reduce the estimated tender value to fall within a threshold applicable to a specific procurement procedure.

Table 8: Conditions under which procedures provided for in SANS 10845-1 may be utilised

Procedure	Conditions which need to be satisfied in order to utilise the procedure	
Competitive selection procedure		
Nominated procedure	Any procurement, the estimated value of which does not exceed a threshold stated in Table 9.	
Open procedure	Any procurement, except where the cost of advertising or the evaluation of a large number of tender submissions is disproportionate to the value of the work.	
Qualified procedure	Any procurement where: 1) a contract requires for its execution a high degree of specialised input, or requires skills and expertise that are not readily available; 2) a contract requires for its execution exceptional management skills or quality; 3) a tender submission requires significant tenderer inputs in order to respond appropriately to requirements so that a financial offer may be determined; 4) it is desirable, in a large programme or project, to link packages of work to tenderers who have the appropriate capacity and capability to compete against one another; 5) the time and cost required to examine and evaluate a large number of tender offers would be disproportionate to the procurement; 6) for practical reasons, it is necessary to limit the number of tender submissions that are received; or 7) the goods or services are not freely available in the market, or are manufactured solely for the organ of state in accordance with that organ of state's own specifications.	
Quotation procedure	Any procurement where the estimated value does not exceed a threshold stated in Table 9.	
Proposal procedure using the two-envelope system	Services where tenderers are required to develop and price proposals to satisfy a broad scope of work.	
Proposal procedure using the two-stage system	Option 1	Any procurement in which tenderers are required to submit technical proposals and, if required, cost parameters around which a contract may be negotiated.
	Option 2	Any procurement in which tenderers are invited to submit technical proposals in the first stage and to submit tender offers based on procurement documents issued during the second stage.
Shopping procedure	Procurement which involves readily available goods and does not exceed the threshold value stated in Table 9.	

Table 8 (concluded)

Procedure	Conditions which need to be satisfied in order to utilise the procedure
Restricted competitive negotiations	As for open competitive negotiations, but where: 1) a contract requires for its execution a high degree of specialised input, or requires skills and expertise that are not readily available; 2) a contract requires for its execution exceptional management skills or quality; 3) a tender submission requires significant tenderer inputs in order to respond appropriately to requirements so that a financial offer may be determined; 4) the time and cost required to examine and evaluate a large number of tender offers would be disproportionate to the procurement; 5) for practical reasons, it is necessary to limit the number of tender submissions that are received; or 6) a target price is tendered and finalised prior to the award of the contract.
Open competitive negotiations	Any procurement where: 1) it is not feasible to formulate detailed specifications for the work or to identify the characteristics of goods or works to obtain the most satisfactory solution to procurement needs; 2) there are various possible means of satisfying procurement needs; 3) the technical character of the goods or works, or the nature of the services, warrants the use of competitive negotiations to realise the most satisfactory solution to procurement needs; 4) the purpose of the contract is research, experimentation, study or development; or 5) all the tenders received in a competitive selection procedure are non-responsive and the calling for fresh tenders is likely to result in a similar outcome.
Negotiated procedure	
	Any procurement where: 1) a rapid response is required due to the presence of, or the imminent risk of, an extreme or emergency situation arising from: a) human injury or death; b) human suffering or deprivation of human rights; c) serious damage to property or financial loss; d) livestock or animal injury, suffering or death; e) serious environmental damage or degradation; or f) interruption of essential services; 2) the required goods, services or works cannot technically or economically be separated from another contract previously performed by a specific contractor; 3) only one contractor has been identified as possessing the necessary experience and qualifications or product to deliver value for money in relation to a particular need; 4) the services, goods or works do not exceed a threshold value stated in Table 9; 5) the service or works being procured are largely identical to work previously executed by that contractor and it is not in the interest of the public or the organ of state to solicit other tender offers; 6) a professional service contract does not exceed a threshold value stated in Table 9 and but can be based on time and proven cost; 7) the nature of the works, goods or services, or the risks attached thereto, do not permit prior overall pricing; or 8) only one responsive tender is received.

14.2.3 Prior approval shall be obtained for the following procurement procedures, unless such a procedure is already provided for in the approved procurement strategy:

a) the negotiated procedure above the thresholds identified in Tables 8 and 9; and
b) the approaching of a confined market, except where a rapid response is required in the presence of, or the imminent risk of, an extreme or emergency situation arising from the conditions set out in Table 8, and which can be dealt with, or the risks relating thereto arrested, within 48 hours.

14.2.4 Only a person authorised in terms of a policy developed in accordance with the provisions of section 5 may pursue a negotiated procedure in an emergency without the prior approval permitted in terms of 14.2.3.

14.2.5 Approval for the use of a confined market shall only be valid for a period not exceeding 18 months.

Table 9: Procurement thresholds

Procedure (see Table 8 and SANS 10845-1)	Conditions which need to be satisfied in order to utilise the procedure	Threshold (Rand including VAT)		
		Schedule 2 public enterprise	Department or a schedule 3 public enterprise	Municipality or a municipal entity
Negotiated	The services, goods or works have a value not exceeding a threshold	R125 000	R75 000	R75 000
	A professional service contract has a value not exceeding a threshold	R500 000	R350 000	R200 000
Nominated procedure	Any procurement not exceeding a threshold	R2 500 000	R1 500 000	R1 500 000
Quotation procedure	Any procurement where the estimated value does not exceed a threshold	R2 000 000	R1 000 000	R200 000
Shopping procedure	Supplies contract which involves readily available goods not exceeding a threshold	R50 000	R50 000	R10 000

14.3 Framework agreements

14.3.1 Framework agreements may be entered into with contractors by:

a) inviting tender offers to enter into a suitable contract for the required work, using stringent eligibility and evaluation criteria to ensure that contracts are entered into with only those contractors who have the capability and capacity to provide the required goods, services or works; and
b) entering into a limited number of contracts based on the projected demand and geographic location for such goods, services or works.

14.3.2 The term of a framework agreement shall not exceed:

a) three years in the case of all organs of state other than a major public entity, a national government business enterprise or a provincial government business enterprise; or
b) four years in the case of a major public entity, a national government business enterprise or provincial government business enterprise.

14.3.3 Framework agreements that are entered into shall not commit an organ of state to any quantum of work beyond the first order, or bind the employer to make use of such agreements to meet its needs.

The employer may approach the market for goods or services, or a combination thereof, whenever it considers that better value in terms of time, cost and the quality which may be obtained.

14.3.4 Orders:

a) shall cover only goods or services, or any combination thereof, falling within the scope of work associated with the agreement which may not be amended for the duration of the contract;
b) may not be issued after the expiry of the term of the framework agreement; and
c) may be completed even if the completion of the order is after the expiry of the term.

14.3.5 The issuing of orders with a number of framework contractors covering the same scope of work may be made with and without requiring competition amongst framework contractors. Where competition is required amongst framework contractors, it shall be conducted in a non-discriminatory manner such that competition is not distorted.

14.3.6 Competition amongst framework contractors for orders shall take place where:

a) there is no justifiable reason for issuing an order to a particular framework contractor, such as:

1) the framework contractor provided the most economical transaction when the financial parameters included in the contract are applied, and has the capacity to deliver;
2) the required goods, services or works cannot technically or economically be separated from another contract or order previously performed by a specific contractor;
3) the service or works being instructed are largely identical to work previously executed by that contractor;
4) the value of the order is less than the threshold for the quotation procedure;
5) the schedule for delivery necessitates that each of the framework contractors be issued with orders on a continuous basis; or
6) capacity to execute the order;

b) the terms in the framework agreement are insufficiently precise or complete to cover the particular requirement, e.g. delivery time scales or time estimates to complete the order (productivity); or
c) a better quality of service can be obtained through a competitive process.

14.4 Design competitions

14.4.1 A single- or two-stage design competition may be used as a means to identify one or more suitable contractors to provide design services. The conditions for a design competition shall clearly state the purpose of the competition and the intentions of the promoter, the nature of the problem that is to be solved and all the practical requirements to be met by the competitors.

14.4.2 A design competition shall be initiated following a call for an expression of interest. All respondents who satisfy the admission requirements for a design competition and complete an application form shall be admitted to the competition as participants.

14.4.3 A jury who is independent of participants in the competition shall be appointed to collectively decide on the outcome of the competition. Such a jury shall be autonomous in its decisions or opinions and endeavour, adopt decisions on each individual submission by consensus and record its decisions in writing. Not less than 50% of the members serving on the jury shall have relevant professional qualifications in the subject matter of the competition.

14.4.4 The design competition shall be conducted in such a manner that the identity of any particular participant during the process is not known to the jury until after competition winners are announced. The awarding of prizes and honoraria may be linked to such competitions.

14.4.5 A contract may be negotiated with the winner of the design competition. Where more than one contract is awarded to participants in a design competition, all competitors in the final stage of the competition shall be invited to submit tender offers. Tender offers shall be evaluated in terms of method 4 of SANS 10845-3, with the score for quality being based solely on the ranking of the competition jury.

14.5 Procurement documentation

14.5.1 General

14.5.1.1 Procurement documents shall be developed in accordance with the provisions of SANS 10845-1 and SANS 10845-2 and, where aspects of the national register of contractors or register of projects established in terms of the Construction Industry Development Board Act are implemented through procurement documents, the CIDB Standard for Uniformity in Construction Procurement.

14.5.1.2 The Form of Offer and Acceptance contained in Annex B of SANS 10845-2 shall be used, with minimal contract-specific amendments, to form the basis of agreement arising from the solicitation of tender offers.

14.5.1.3 The formation of a contract in the single volume approach (see SANS 10845-2) shall occur once:

a) the schedule of deviations has been completed to reflect each and every amendment to the tender documents:

   1) made in terms of addenda issued prior to the close of tenders; and
   2) permitted in terms of the conditions of tender, and agreed to in the process of offer and acceptance; and

b) the acceptance portion of the Form of Offer and Acceptance has been signed by the person authorised to do so.

14.5.1.4 The formation of the contract in the three-volume approach (see SANS 10845-2) shall take place after:

a) each and every amendment to the tender documents made in terms of addenda issued prior to the close of tenders, and those permitted in terms of the conditions of tender and agreed to in the process of offer and acceptance have been incorporated into the final contract;
b) a brief summary of the changes made in the final contract document is included in the schedule of deviations so as to allow the reader to understand the nature and extent of the changes; and
c) the acceptance portion of the Form of Offer and Acceptance has been signed by the person authorised to do so.

14.5.1.5 A tenderer's covering letter shall not be included in the final contract document or referenced in the schedule of deviations. The agreed provisions of such a letter shall be stated in the schedule of deviations.

14.5.1.6 Standard returnable documents for infrastructure procurement contained in annexures A to E shall, where appropriate, form part of the Returnable Documents in procurement documents.

14.5.1.7 Standard documentation issued by a relevant treasury for non-infrastructure procurement shall not be included in infrastructure procurement documents unless they are found to be compatible, and

not in conflict with the provisions of a procurement document which complies with the provisions of this standard.

14.5.2 Tender, submission and auction data

14.5.2.1 The tender data shall reference the Standard Conditions of Tender contained in SANS 10845-3.

14.5.2.2 The tender offer validity period provided for in the tender data shall generally not exceed eight weeks, and in exceptional circumstances shall not exceed 12 weeks.

14.5.2.3 The tender data associated with Method 3 (financial offer and preference) shall be as follows:

5.11.4	The procedure for the evaluation of responsive tenders is Method 3. The financial offer will be scored using the following formula: $A = (1 - \frac{(P - Pm)}{Pm})$ The value of W_1 is: 1) 90 where the financial value, inclusive of VAT, of all responsive tenders received has a value in excess of R1 000 000; or 2) 80 where the financial value, inclusive of VAT, of one or more responsive tender offers has a value that equals or is less than R1 000 000. Up to 100 minus W_1 tender evaluation points will be awarded to tenderers who complete the preferencing schedule and who are found to be eligible for the preference claimed.

14.5.2.4 The tender data associated with Method 4 (financial offer, quality and preferences) shall be as follows:

5.11.5	The procedure for the evaluation of responsive tenders is Method 4. The total number of tender evaluation points (T_{EV}) shall be determined in accordance with the following formula: $T_{EV} = f_1 (N_{FO} + N_P) + f_2 N_Q$ where f_1 and f_2 are fractions, f_1 equals 1 minus f_2 and f_2 equals ..... N_{FO} is the number of tender evaluation points awarded for the financial offer made in accordance with 5.11.7 where the score for financial offer is calculated using the following formula $A = (1 - \frac{(P - Pm)}{Pm})$ and W_1 equals: 1) 90 where the financial value, inclusive of VAT, of all responsive tenders received has a value in excess of R1 000 000; or 2) 80 where the financial value, inclusive of VAT, of one or more responsive tender offers has a value that equals or is less than R1 000 000. N_P is the number of tender evaluation points awarded for preferences claimed in accordance with the Preferencing Schedule. N_Q is the number of tender evaluation points awarded for quality offered in accordance with 5.11.9 where $W_2 = 100$. Up to 100 minus W_1 tender evaluation points will be awarded to tenderers who complete the preferencing schedule and who are found to be eligible for the preference claimed.

14.5.2.5 The submission data shall reference the Standard Conditions for the Calling for Expressions of Interest contained in SANS 10845-4.

14.5.2.6 Auction data shall be based on the auction data contained in SANS 10845-1.

14.5.3 Standard forms of contract

14.5.3.1 The standard forms of contract shall be selected from, and be suitable for use under the conditions described in Table 10.

14.5.3.2 The standard forms of contract shall be used with minimal contract amendments which do not change their intended usage and shall only be amended when absolutely necessary to accommodate special needs.

14.5.3.3 Adjudication shall be used to resolve disputes arising during the performance of a contract prior to proceeding to either arbitration or litigation.

Table 10: Approved forms of contract related to the delivery and maintenance of infrastructure

Form of contract	Code	Intended usage
Construction Industry Development Board (CIDB)		
CIDB Standard Professional Service Contract	SPSC	Professional services
CIDB General Conditions of Purchase	-	An order form type of contract for low-value goods without any incidental work or services on or before a specified date being required.
CIDB Contract for the Supply and Delivery of Goods	-	Simple, regional purchase of readily available materials or commodities which require almost no management of the buying and delivery process, minimal testing, installation and commissioning on delivery.
CIDB General Conditions of Service	-	An order form type of contract where low-value services on or before a specified date are required.
International Federation of Consulting Engineers (FIDIC)		
FIDIC Short Form of Contract	Green Book	Building or engineering works of relatively small capital value, or for relatively simple or repetitive work, or for work of short duration. Use for design by employer- or contractor-designed works.
FIDIC Conditions of Contract for Construction for Building and Engineering Works designed by the Employer	Red Book	Building or engineering works designed by the employer. (The works may include some elements of contractor-designed works.)
FIDIC Conditions of Contract for plant and design-build for electrical and mechanical plant, and for building and engineering works, designed by the contractor	Yellow Book	The provision of electrical or mechanical plant and the design and construction of building or engineering works.
FIDIC Conditions of Contract for EPC Turnkey Projects	Silver Book	The provision on a design and construct (turnkey) basis of a process or power plant, of a factory or similar facility, or an infrastructure project or other type of development.
FIDIC Conditions of Contract for Design, Build and Operate Projects	Gold Book	"Green field" building or engineering works which are delivered in terms of a traditional design, build and operate sequence with a 20-year operation period. (The contractor has no responsibility for the financing of the project/package or its ultimate commercial success.)
South African Institution of Civil Engineering (SAICE)		
SAICE General Conditions of Contract for Construction Works	GCC	Engineering and construction, including any level of design responsibility.

Table 10 (concluded)

Joint Building Contracts Committee (JBCC)		
JBCC Principal Building Agreement	PBA	Buildings and related site works designed by the employer.
JBCC Minor Works Agreement	MWA	Buildings and related site works of simple content designed by the employer.
Institution of Civil Engineers (ICE)		
NEC3 Engineering and Construction Contract	ECC	Engineering and construction including any level of design responsibility.
NEC3 Engineering and Construction Short Contract	ECSC	Engineering and construction which do not require sophisticated management techniques, comprise straightforward work and impose only low risks on both the employer and contractor.
NEC3 Professional Services Contract	PSC	Professional services, such as engineering, design or consultancy advice.
NEC3 Professional Services Short Contract	PSCC	Professional services which do not require sophisticated management techniques, comprise straightforward work and impose only low risks on both the client and consultant.
NEC3 Term Service Contract	TSC	Manage and provide a service over a period of time.
NEC3 Term Service Short Contract	TSSC	Manage and provide a service over a period of time, or provide a service which does not require sophisticated management techniques, comprises straightforward work and imposes only low risks on both the employer and contractor.
NEC3 Supply Contract	SC	Local and international procurement of high-value goods and related services, including design.
NEC3 Supply Short Contract	SSC	Local and international procurement of goods under a single order or on a batch order basis and is suitable for use with contracts which do not require sophisticated management techniques, and impose only low risks on both the purchaser and the supplier.

14.5.4 Tender assessment schedules

Tender assessment schedules shall be used to take account of all tendered financial parameters that have an impact upon the final value of the contract.

14.5.5 Guarantees

14.5.5.1 Bonds which guarantee performance with a stated financial benefit in the event of non-performance:

a) should as a general rule not be required in service, professional service and supply contracts; and
b) shall be between 5% and 12,5% of the contract or package order value, excluding VAT, and may be either a fixed or variable guarantee.

14.5.5.2 Advance payment, where required in engineering and construction and supply contracts and approved by the organ of state's chief financial officer, may only be made to contractors against the lodging of a suitable advance payment bond.

14.5.6 Retention monies

Retention monies that are held shall not exceed 10% of any amount due to a contractor. The total amount of retention monies held shall not exceed 5% of the contract or package order price.

14.5.7 Communications

All procurement documents and communications shall be in English.

14.5.8 Intellectual property rights

Organs of state shall as a general rule own the rights over the materials specifically prepared by a contractor in relation to a contract.

14.5.9 Budgetary items

14.5.9.1 Provision for budgetary items in procurement documents shall as far as possible be avoided. Assumptions should rather be stated in the pricing data so that they can be priced and adjusted in terms of the contract, should these assumptions be incorrect. Where unavoidable, estimates of the likely costs may be included in the contract to cover identified work or services to be performed by a subcontractor appointed in terms of the contract.

14.5.9.2 No provision for contingencies or price adjustment for inflation shall be made in the pricing data or included in the contract price at the time that the contract is awarded or an order is issued.

14.5.10 Professional indemnity insurance

Professional service appointments shall as a general rule be subject to proof of current professional indemnity insurance being submitted by the contractor in an amount of not less than R3 million in respect of each claim, without limit to the number of claims.

14.6 Developmental procurement policy

14.6.1 General

14.6.1.1 Organs of state shall utilise procurement to promote Broad-Based Black Economic Empowerment in accordance with the provisions of the Broad-Based Black Economic Empowerment Act and, where appropriate, to promote:

a) work opportunities for target groups; and
b) national development goals, such as those identified by the Presidential Infrastructure Coordinating Commission.

14.6.1.2 Not less than 50% of the points allocated to preference in a points scoring system in the evaluation of tenders shall be allocated to Broad-Based Black Economic Empowerment goals.

14.6.1.3 Minimum local content shall be included in contracts in accordance with the Preferential Procurement Regulations issued in terms of the Preferential Procurement Policy Framework Act. Requirements shall be evaluated in tenders through declarations made by tenderers and shall be included in the scope of work associated with the contract.

14.6.2 Permitted targeted procurement procedures

The targeted procurement procedures that may be used to promote social and economic objectives shall include one or more of the following:

a) the granting of preferences;
b) accelerated rotations on electronic databases, where appropriate;
c) the granting of up to 10% of the total number of evaluation points used to short-list tenderers following a call for expressions of interest;
d) financial incentives for the attainment of key performance indicators in the performance of the contract; and
e) the creation of contractual obligations to engage target groups in the performance of the contract by establishing requirements for the tendering of subcontracts in terms of a specified procedure, or establishing obligations to attain contract participation goals in accordance with the relevant provisions of SANS 10845.

Annexure A: Record of Addenda to tender documents

We confirm that the following communications received from the Employer before the submission of this tender offer, amending the tender documents, have been taken into account in this tender offer:

	Date	Title or Details
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Attach additional pages if more space is required.

Signed _____ Date _____

Name _____ Position _____

Tenderer _____

Annexure B: Proposed amendments and qualifications

The Tenderer should record any deviations or qualifications he may wish to make to the tender documents in this Returnable Schedule. Alternatively, a tenderer may state such deviations and qualifications in a covering letter to his tender and reference such letter in this schedule.

The Tenderer's attention is drawn to clause 5.8 of SANS 10845-3 regarding the employer's handling of material deviations and qualifications.

Page	Clause or item	Proposal

Signed _____ Date _____

Name _____ Position _____

Tenderer _____

Annexure C: Preferencing schedule: Broad-Based Black Economic Empowerment status

Preamble

Section 10(b) of the Broad-Based Black Economic Empowerment Act of 2003 (Act No. 53 of 2003) states that "*Every organ of state and public entity must take into account and, as far as is reasonably possible, apply any* ***relevant code of good practice*** *issued in terms of this Act in developing and implementing a preferential procurement policy.*"

A number of codes of good practice have been issued in terms of Section 9(1) of the B-BBEE Act of 2003, including a generic code of good practice and various sector codes. The sector codes vary the metrics, weightings and targets used in the generic code of good practice to establish the overall performance of an entity and its B-BBBEE status. The B-BBEE status needs to be assessed in accordance with the applicable code.

1 Conditions associated with the granting of preferences

Tenderers who claim a preference shall provide sufficient evidence of their B-BBEE status in accordance with the requirements of section 2 in respect of the applicable code as at the closing time for submissions, failing which their claims for preferences will be rejected.

2 Sufficient evidence of qualification

2.1 Exempted micro-enterprises

Sufficient evidence of qualification as an Exempted Micro-Enterprise is:

a) a registered auditor's certificate or similar certificate issued by an accounting officer as contemplated in the Close Corporations Act of 1984 in respect of the entity's last financial year, or a 12-month period which overlaps with its current financial year; or
b) a certificate issued by a verification agency and which is valid as at the closing date for submissions.

2.2 Enterprises other than micro-exempted enterprises

Sufficient evidence of B-BBEE status is an original or certified copy of the certificate issued by a verification agency accredited by the South African National Accreditation System (SANAS) or registered auditors approved by the Independent Regulatory Board for Auditors (IRBA) and which is valid as at the closing date for submissions.

3 Tender preferences claimed

The scoring shall be as follows:

B-BBEE status determined in accordance with the preferencing schedule for Broad-Based Black Economic Empowerment	% Maximum points for preference
Form not completed or no-complaint contributor	0
Level 8 contributor	10
Level 7 contributor	20
Level 6 contributor	30
Level 5 contributor	40
Level 4 contributor	50
Level 3 contributor	80
Level 2 contributor	90
Level 1 contributor	100

4 Declaration

The tenderer declares that

a) the tendering entity is a level contributor as stated in the submitted evidence of qualification as at the closing date for submissions

b) the tendering entity has been measured in terms of the following code (tick applicable box):

☐ Generic code of good practice

☐ Other – specify

.....

.....

c) the contents of the declarations made in terms of a) and b) above are within my personal knowledge and are to the best of my belief both true and correct

The undersigned, who warrants that he/she is duly authorised to do so on behalf of the tenderer, confirms that he/she understands the conditions under which such preferences are granted and confirms that the tenderer satisfies the conditions pertaining to the granting of tender preferences.

Signature: .....

Name: .....

Duly authorised to sign on behalf of: .....

Telephone: .....

Fax: ..... **Date:** .....

Name of witness: ..... Signature of witness: .....

Note: 1) Failure to complete the declaration will lead to the rejection of a claim for a preference.

2) Supporting documentation of the above-mentioned claim for a preference must be submitted with the tender submission to be eligible for a preference.

Annexure D: Compulsory Declaration

The following particulars must be furnished. In the case of a joint venture, separate declarations in respect of each partner must be completed and submitted.

Section 1: Enterprise details

Name of enterprise	
Contact person	
Email	
Telephone	
Cell	
Fax	
Physical address	
Postal address	

Section 2: Particulars of companies and close corporations

Company / Close Corporation registration number	

Section 3: SARS information

Tax reference number	
VAT registration number	(state *Not Registered* if not registered for VAT)

Section 4: CIDB registration number

CIDB Registration number (if applicable)	

Section 5: Particulars of principals

principal: means a natural person who is a partner in a partnership, a sole proprietor, a director of a company established in terms of the Companies Act of 2008 (Act No. 71 of 2008) or a member of a close corporation registered in terms of the Close Corporations Act, 1984, (Act No. 69 of 1984).

Full name of principal	Identity number	Personal tax reference number

Attach separate page if necessary

Section 6: Record in the service of the state

Indicate, by marking the relevant boxes with a cross, if any principal is currently or has been within the last 12 months in the service of any of the following:

- ☐ a member of any municipal council
- ☐ a member of any provincial legislature
- ☐ a member of the National Assembly or the National Council of Provinces
- ☐ a member of the board of directors of any municipal entity
- ☐ an official of any municipality or municipal entity
- ☐ an employee of any department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act of 1999 (Act No. 1 of 1999)
- ☐ a member of an accounting authority of any national or provincial public entity
- ☐ an employee of Parliament or a provincial legislature

If any of the above boxes are marked, disclose the following:

Name of principal	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

Insert separate page if necessary

Section 7: Record of family member in the service of the state

family member: a person's spouse, whether in a marriage or in a customary union according to indigenous law, domestic partner in a civil union, or child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption

Indicate, by marking the relevant boxes with a cross, if any family member of a principal as defined in section 5 is currently or has within the last 12 months been in the service of any of the following:

- ☐ a member of any municipal council
- ☐ a member of any provincial legislature
- ☐ a member of the National Assembly or the National Council of Provinces
- ☐ a member of the board of directors of any municipal entity
- ☐ an official of any municipality or municipal entity
- ☐ an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act of 1999 (Act No. 1 of 1999)
- ☐ a member of an accounting authority of any national or provincial public entity
- ☐ an employee of Parliament or a provincial legislature

Name of family member	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

Insert separate page if necessary

Section 8: Record of termination of previous contracts with an organ of state

Was any contract between the tendering entity, including any of its joint venture partners, terminated during the past five years for reasons other than the employer no longer requiring such works or the employer failing to make payment in terms of the contract?

☐ Yes ☐ No (tick appropriate box)

If yes, provide particulars (insert separate page if necessary)

Section 9: Declaration

The undersigned, who warrants that he/she is duly authorised to do so on behalf of the tendering entity, confirms that the contents of this Declaration are within my personal knowledge, save where stated otherwise in an attachment hereto, and to the best of my belief is both true and correct, and that:

i) neither the name of the tendering entity, nor any of its principals, appears on:
   a) the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004 (Act No. 12 of 2004); or
   b) National Treasury's Database of Restricted Suppliers (see www.treasury.gov.za);

ii) the tendering entity or any of its principals has not been convicted of fraud or corruption by a court of law (including a court outside of the Republic of South Africa) within the last five years;

iii) any principal who is presently employed by the state has the necessary permission to undertake remunerative work outside such employment (attach permission to this declaration);

iv) the tendering entity is not associated, linked or involved with any other tendering entities submitting tender offers;

v) the tendering entity has not engaged in any prohibited restrictive horizontal practices, including consultation, communication, agreement, or arrangement with any competing or potential tendering entity regarding prices, geographical areas in which goods and services will be rendered, approaches to determining prices or pricing parameters, intentions to submit a tender or not, the content of the submission (specification, timing, conditions of contract, etc.) or intention to not win a tender;

vi) the tendering entity has no other relationship with any of the tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest;

vii) neither the tenderer nor any of its principals owes municipal rates and taxes or municipal service charges to any municipality or a municipal entity, and are not in arrears for more than three months;

viii) SARS may, on an on-going basis during the term of the contract, disclose the tenderer's tax compliance status to the Employer and, when called upon to do so, obtain the written consent of any subcontractors who are subcontracted to execute a portion of the contract that is entered into in excess of the threshold prescribed by National Treasury, for SARS to do likewise.

Signed _____ Date _____

Name _____ Position _____

Enterprise name _____

NOTE 1: The Standard Conditions of Tender contained in SANS 10845-3 prohibits anticompetitive practices (clause 3.1) and requires that tenderers avoid conflicts of interest, only submit a tender offer if the tenderer or any of his principals is not under any restriction to do business with the Employer (4.1.1) and submit only one tender either as a single tendering entity or as a member in a joint venture (clause 4.13.1). Clause 5.7 also empowers the Employer to disqualify any tenderer who engages in fraudulent and corrupt practice. Clause 3.1 also requires tenderers to comply with all legal obligations.

NOTE 2: Section 30(1) of the Public Service Act, 1994, prohibits an employee (person who is employed in posts on the establishment of departments) from performing or engaging remunerative work outside his or her employment in the relevant department, except with the written permission of the executive authority of the department. When in operation, Section 8(2) of the Public Administration Management Act, 2014, will prohibit an employee of the public administration (i.e. municipalities and all national departments, national government components listed in Part A of Schedule 3 to the Public Service Act, provincial departments including the office of the premier listed in Schedule 1 of the Public Service Act and provincial departments listed in schedule 2 of the Public Service Act, and provincial government components listed in Part B of schedule 3 of the Public Service Act) or persons contracted to executive authorities in accordance with the provisions of section 12A of the Public Service Act of 1994 or persons performing similar functions in municipalities, from conducting business with the State or to be a director of a

public or private company conducting business with the State. The offence for doing so is a fine or imprisonment for a period not exceeding five years, or both. It is also a serious misconduct which may result in the termination of employment by the employer.

NOTE 3: Regulation 44 of Supply Chain Management regulations issued in terms of the Municipal Finance Management Act of 2003 requires that municipalities and municipal entities should not award a contract to a person who is in the service of the State, a director, manager or principal shareholder in the service of the State or who has been in the service of the State in the previous twelve months.

NOTE 4: Regulation 45 of Supply Chain Management regulations requires a municipality or municipal entity to disclose in the notes to the annual statements particulars of any award made to a close family member in the service of the State.

NOTE 5: Corrupt activities which give rise to an offence in terms of the Prevention and Combating of Corrupt Activities Act of 2004, include improperly influencing in any way the procurement of any contract, the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any contract, and the manipulating by any means of the award of a tender.

NOTE 6: Section 4 of the Competition Act of 1998 prohibits restrictive horizontal practice, including agreements between parties in a horizontal relationship, which have the effect of substantially preventing or lessening competition, directly or indirectly fixing prices or dividing markets or constituting collusive tendering. Section 5 also prohibits restrictive vertical practices. Any restrictive practices that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties.

Annexure E: Municipal declaration and returnable documents

The following particulars must be furnished in relation to tenders for municipalities and municipal entities:

a) where consultancy services are required; and

b) goods, services or a combination thereof, where the estimated total of the prices exceeds R10 million, including VAT.

In the case of a joint venture, separate municipal declarations and returnable documents shall be submitted in respect of each partner.

Section 1: Enterprise details

Name of enterprise	
Contact person	
Email	
Telephone	
Cell	
Fax	
Physical address	
Postal address	

Section 2: Declaration for consultancy services

The enterprise has been awarded the following consultancy services by an organ of state during the last five years:

Name of organ of state	Estimated number of contracts	Nature of service, e.g. quantity surveying	Service similar to required service (yes/no)?

Attach separate page as necessary

Section 3: Goods, services, or a combination thereof, where the estimated total of the prices exceeds R10 million, including VAT

I/we certify that

1) (tick one of the boxes):

☐ the enterprise **is not** required by law to prepare annual financial statements for auditing

☐ the enterprise **is** required by law to have audited annual financial statements (attached herewith for the past three financial years or the years for which the enterprise has been in operation)

2) the enterprise and its directors have no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days (i.e. all municipal accounts are paid up to date);

3) source of goods and/or services :

(tick one of the boxes and insert percentages if applicable)

☐ goods and/or services are sourced only from within the Republic of South Africa

☐ [ ] % of the total cost of goods and/or services will be sourced from outside the Republic of South Africa, and the percentage of payment from the municipality or municipal entity which is expected to be transferred out of the Republic is [ ] %

I furthermore confirm that the following contracts were awarded to the enterprise by an organ of state during the last five years and attached particulars of any material non-compliance or dispute concerning the execution of such contracts:

Name of organ of state	Estimated number of contracts	Nature of contracts

Attach separate page as necessary

I, the undersigned who warrants that I am duly authorised on behalf of the tendering entity, hereby declare that the contents of this Declaration are within my personal knowledge, and save where stated otherwise, are to the best of my belief both true and correct.

Signed _____ Date _____

Name _____ Position

Tenderer _____

SS7-OMN-184

"OMN 12"

"OMN12"

prasa
PASSENGER RAIL AGENCY OF SOUTH AFRICA

Internal Communiqué
22 May 2019

PRASA PLACES VARIOUS EXECUTIVES ON SUSPENSION AND SPECIAL LEAVE

The PRASA Board of Control and Group CEO, Dr. Nkosinathi Sishi have places various executives on suspension and special leave as follows:

1. Dr. Sipho Sithole, PRASA Chief Strategy Officer on suspension.
2. Ms. Martha Ngoye PRASA Head of Legal, Risk and Compliance and
3. Mr. Tiro Holele Executive in the office of the Group CEO on special leave.

This decision follows the outcomes and ongoing investigations that have dogged PRASA of improper, irregular, corrupt, fruitless and wasteful expenditure by various employees of PRASA at all levels of the organisation. The suspension and placement on special leave of these executives, is to ensure a fair process based on a principle of innocent until proven guilty.

The Board and staff continue to work with vigour and commitment in our quest to create a PRASA that delivers quality service to our commuters.

Issued by
Group Communications



SS7-OMN-186

"OMN 13"

SSZ-OMN-187
Received 02/07/19.

"OMN 13"

Office of K Kweyama
Chairperson

www.prasa.com

prasa
PASSENGER RAIL AGENCY OF SOUTH AFRICA

PRASA HOUSE
1040 Burnett Street
Hatfield
Pretoria

Private Bag X101
Bloemfontein, 2017
T: +27 12 748 7010

Martha Ngoye
GE: Legal and Compliance
PRASA

24 June 2019

Special leave

Dear Martha

1 We refer to your letters addressed to the Board of Control of the Passenger Rail Agency of South Africa ("the Board") dated 27 May 2019 and 19 June 2019 in response to the letter from Dr Nkosinathi Sishi, the Group Chief Executive Officer of PRASA ("the GCEO"), placing you on special leave and the internal communique, amongst other things, communicating the GCEO's decision to place you on special leave.

2 We do not intend to deal with each and every allegation contained in your letters. Our failure to do so should not be construed as an admission thereof. The Board reserves the right to do so should the need arise.

3 In this letter, the Board would like to deal with two allegations contained in your letters namely:

3.1 The GCEO and the Board placed you on special leave; and

3.2 The Board has done nothing about the allegations and grievance made by Ms Maggie Marema against you.

Members of the Board of Control
K Kweyama (Chairperson), S Ntsaluba,
L Wessie, J Schreiner, B Mthembu, D Tshepe,
X George, R Khan, E Nchabeleng

Group Chief Executive Officer
Dr. N Sishi

Acting Group Company Secretary
F. Dingiswayo

The Board and the GCEO placed you on special leave

4 As you are aware, the letter placing you on special leave was addressed to you by the GCEO and states that:

"As per our discussion earlier today I have decided to place you on special leave..."

5 The letter does not make any reference to the Board or any decision by the Board. As a result, the allegations in your letter that the Board and the GCEO have placed you on special leave are incorrect. In the circumstances, any issues that you may wish to raise regarding the decision to place you on special leave must be addressed to the GCEO who will deal with those issues and not to the Board.

6 To the extent that the internal communique that was issued also suggests that the decision to place you on special leave was that of the Board and the GCEO, it is for the same reasons incorrect.

Allegations that nothing has been done about the allegations and grievance made by Ms Maggie Marema against you

7 As you are aware, the allegations and grievance by Ms Maggie Marema against you were escalated to the Board by the former GCEO, Mr Sibusiso Sithole. The Board then appointed an ad hoc committee consisting of the Chairperson of the Board, the Chairperson of the FCIP Committee and the Chairperson of the Audit and Risk Committee, to deal with these allegations and allegations contained in the components' report.

8 The ad hoc committee, in turn, appointed an independent investigator, Advocate Simmy Lebala SC, through the law firm Hogan Lovells, to investigate both the grievance lodged by Ms Marema against you and the allegations contained in the components' report.

9 We have been informed that you have participated in this investigation and have appeared before Advocate Lebala SC. The Board awaits a report from Advocate Lebala SC.

10 Therefore, your allegation, in your letter, that nothing has been done about the allegations and grievance made by Maggie Marema against you is incorrect.

11 In the circumstances, any correspondence regarding the investigation by Advocate Lebala SC, before his report is provided to the Board, must be directed to him, being the independent investigator.

12 Furthermore, the Board has included the allegations of components fraud in the list of matters that the Special Investigative Unit will investigate once a Proclamation on PRASA investigations is signed by the President. The GCEO will continue to communicate with you on this process.

13 We hope that the above clarifies the matters.

Yours sincerely

Khanyisile Kweyama
Chairperson of the Board of Control of PRASA

SS7-OMN-190

"OMN 14"

"OMN 14"

File Ref:	HRER004	
Approved Date		
Title	DISCIPLINARY CODE AND GRIEVANCE PROCEDURE	

GRIEVANCE FORM 1

Section1:

Name: MARTHA NGOYE
Grade: GROUP EXECUTIVE
Contact Tel No: 0823364812

Employee No: 20101356
Department: LEGAL, RISK & Compl
Date: 12 July 2019

Nature of grievance:
GRIEVANCE AGAINS THE GCEO FOR ABUSE OF AUTHORITY AND TARNISHING MY NAME (Attach additional pages if necessary)

Solution Required:
GCEO TO ISSUE THE CORPORATE COMMUNIQUE APOLOGISING FOR TARNISHING MY NAME (see attached)

Signature of employee (must be signed personally)

Section2:

With reference to your grievance, which was submitted on _____ date, my decision is as follows:

_____

_____

_____

Motivation for this decision:

_____

_____

_____

If you are not satisfied with this decision, you can address further grievance to _____ _____, within five (5) days of receipt hereof, by completing Section 1of Annexure H and submitting it to him/ her.

Signature of Supervisory Officer/ Line Manager: _____

Designation: _____

Date: _____ Employee was notified on: _____

The Chairperson of the Human Capital Management Committee of the Board of Control of PRASA
Ms. Doris Tshepe

GRIEVANCE AGAINST THE GCEO FOR ABUSE OF AUTHORITY AND TARNISHING OF MY NAME

A. ***Tarnishing my Name***

1. My name is Martha Ngoye, I am currently the Group Executive: Legal, Risk and Compliance at PRASA and have held this position since 2014. I joined PRASA's subsidiary, Intersite, in January 2011. Throughout my employment at PRASA and Intersite (and before that), I have ensured that I maintain a good name and have managed to do so. I refuse to have any person tarnish my good name and address this to you to request the assistance of the Board of Control ("the Board") of the Passenger Rail Agency of South Africa ("PRASA") to assist as the person that tarnished my good name reports to the Board. The person is Dr. Nkosinathi Sishi, the Group Chief Executive Officer ("the GCEO") of PRASA.

2. I attach hereto the correspondence that was exchanged between myself, the GCEO and the Board of PRASA ("A", "B" and "C"). I also attach a letter that was published to the PRASA community communicating the decision to place me, amongst others, on special leave ("D"). The last letter is from the Chairperson of the Board of PRASA and bears the signature that looks like that of the GCEO ("E"). This is the letter that informs me that the person who tarnished my name is the GCEO.

3. It is clear from my letters that I believed this to be a matter that is capable of easy resolution. I believed that what I attempted to address in my correspondence may have been a mere oversight or an honest, innocent mistake that would be easy to correct. However it appears that I may have been wrong in this regard. I am doing this to avoid resorting to the more drastic action of litigating against my own employer in order to restore my good name. This matter affects me personally and is very important to me. I do not believe that the GCEO believes this matter to be important.

4. I hereunder take the Board through the correspondence for ease of reference.

5. The Correspondence

5.1. The Corporate Communiqué of 22 May 2019

5.1.1. The first communication is the one that was issued by PRASA's Group Communications and that announced the decision by *"the PRASA Board of Control and the Group CEO"* to place me on special leave. This communication stated that *"This decision follows outcomes and ongoing investigation that have dogged PRASA of improper, irregular, corrupt, fruitless and wasteful expenditure"*.

5.1.2. This communication was reported to the media and the emphasis in the media was, understandably, the corruption aspect of the reason for the decision.

5.2. My Letter of 27 May 2019

5.2.1. In response to the media reports and the queries that I received from my family, friends and acquaintances, I amongst others asked the Board and the GCEO (as the GCEO had indicated that the decision communiqué was issued by him and

the Board) to retract the above communiqué, particularly to the extent that it connected my good name to the scourge of corruption that our country and state-owned entities is battling with. The statement that there were *"outcomes ... of corrupt*[ion] *... at all levels of the organisation"* created an impression that investigations had found me guilty of, amongst others, corruption.

5.2.2. After the above communique, a Google search of my name shows, as the first results, the articles that connect my name to corruption. The articles are followed by articles that show my fight against corruption. The search results, read together, give the impression of a corrupt official that fights corruption to mask her own corruption. I am aware of people who wish to give an impression of them being corruption-busters to mask their own corruption; I am not one of these people.

5.2.3. Absent a finding of corruption against me by a competent authority, the GCEO's statement is defamatory, injurious and baseless.

5.3. After my letter of the 27 May 2019, the GCEO requested to meet me to discuss my matter. Two things came out of this meeting: firstly, the GCEO asked to communicate with him directly in this matter (that is, not to include the Board in my communication on this matter); secondly, the GCEO asked me to attend to some duties at work. Although the Corporate Communiqué was unequivocal on who took the decision, I reluctantly agreed to communicate with the GCEO on it. I wrote to the GCEO on 11 June 2019 and requested a response to my letter. The GCEO failed to acknowledge receipt of my letter and to respond to it. I, again, wrote to the Board after not receiving a response to the letter that I addressed to the GCEO as well as the letter that I addressed to the Board.

5.4. The Response from the Chairperson of the Board

5.4.1. The first response that I received from PRASA in this matter was a letter that was on the letterhead of Chairperson of the Board. This letter is dated 24 June 2019 and was scanned 8 days later on the 2nd July 2019 and bears a signature that looks like that of the GCEO. The following also appear in this letter:

5.4.1.1. It states that the internal communiqué communicated the GCEO's decision to place me on special leave – This is at variance with the communiqué which unequivocally states that that decision was taken by *"The PRASA Board of Control and the Group CEO"*.

5.4.1.2. It states that the internal communiqué (which it earlier indicated communicated the GCEO's decision), is incorrect to the extent that it *"suggests"* that the decision to place me on special leave was that of the Board and the GCEO.

5.4.2. I reiterate that I have not been found guilty of corruption by any competent authority. The above Communiqué not only exposes PRASA to a defamation claim but also makes my continued employment at PRASA unbearable. I attach hereto two Corporate Communiqués that relate to the suspension of Ms. Pearl Munthali. The later Communiqué ("G") corrects the earlier Communiqué ("F"). The GCEO is therefore perfectly capable of correcting his Communiqués.

6. My only interest at this stage is to avoid the association of my name with corruption for a long period of time and I hope that the Board will assist in resolving this matter amicably and speedily.

B. ***Desperation to Find Fault / Abuse of Power***

7. On 9 July 2019, for the first time I was invited to a meeting with PRASA's attorneys and prior to that meeting, I received the attached letter from the attorney ("H"). According to this letter, one of the issues to be investigated against me is "***the signing of a power of attorney to Messrs Werksmans to act as attorneys of PRASA and to represent PRASA in liquidation proceedings relating to Swifambo Rail Leasing Proprietary Limited (in Liquidation) without appropriate authority for me to do so***"

8. The Delegation of Authority document that I have attached here ("I"), gives me authority to appoint lawyers to issue claims against creditors in my capacity as the Group Executive: Legal, Risk and Compliance. The claim against Swifambo was contained in the summons issued by PRASA against Swifambo in 2016. All that the power of attorney that I signed did was to abide by the formality of having this self same claim pursued against the insolvent estate of Swifambo. This is not a new claim. The Board has been kept abreast of the proceedings that inform this claim. The Board has never questioned my authority to instruct lawyers on this claim. The Board had at least two meetings (one physical and another by teleconference) with the lawyers discussing the progress of the liquidation. A report from these lawyers was submitted to the Board at its meeting of June in Cape Town. In any event, as stated above, my position derives the authority to institute claims from the Delegation of Authority that is currently in force. The Delegation of Authority does not only delegate authority to my position, it also delegates authority to other PRASA officials who approve purchase orders, sign invoices and sign various contracts and even provides for seemingly mundane things such as the approval of leave by the immediate supervisor.

9. It appears to me that now that the GCEO has defamed me, he is now desperate to find something, anything that will stick so that he avoids doing the right thing of apologizing to me for defaming me and to the Board for using the name of the Board in the defamatory statement. This, I respectfully submit, is an abuse power by the GCEO. The GCEO's desperation has painted him as someone that does not have knowledge or does not understand the Delegations of Authority issued by the Board enabling the entire organization to function.

10. There is no basis for that allegation because, if it stands, anyone who has signed any approval (even an approval of leave), any invoice or any contract must be charged for acting without authority.

C. ***Placing me on a Collision Course with the Board***

11. By issuing the Communiqué dated 22 May 2019 and stating in it that the decision contained in the Communique was taken by *"The PRASA Board of Control and the Group CEO"*, the GCEO placed me on a collision course with the Board. What the GCEO communicated to me at my meeting with him appears to me, in the circumstances, to have been an attempt to conceal this by asking me not to communicate with the Board on this matter. From the above letter dated 24 June 2019 and transmitted to me on the 2nd July 2019, it appears to me that instead of the GCEO indicating to me that it was incorrect to associate the Communiqué with the Board, he elected to dissuade me from engaging with the Board.

12. Having received my letter of the 27th May 2019 and subsequent letters, the failure of the GCEO to indicate to me that his inclusion of the Board in the Communiqué when the Board was not involved as per the letter from the Chairperson was dishonest and calculated to set me on a collision course with the Board.

13. In the circumstances, I request the Board to do the following:

13.1. Instruct the GCEO to issue a Corporate Communiqué apologising to me for defaming me and to the Board for including it in a Communiqué that the didn't involve the Board; and

13.2. Discipline the GCEO for lying about the Board, for defaming me and for placing me on a collision course with the Board.

MARTHA NGOYE
12 JULY 2019

SS7-OMN-196

Office of Dr. N Sishi
Group Chief Executive Officer

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"A"

Ms Martha Ngoye
Group Executive: Legal, Risk & Compliance
PRASA
Hatfield

21 May 2019

By hand

Dear Ms Ngoye,

NOTICE OF DECISION TO PLACE YOU ON SPECIAL LEAVE

1. As per my discussion with you earlier today I have decided to place you on special leave pending the outcome of an investigation into your role in the contracts that were concluded between PRASA and KGP Media.

2. This decision is made to ensure that the investigation proceeds and is finalised without any hinderance.

3. Please note that, during your special leave and for all intents and purposes, you are to be available to PRASA whenever a need arises for you to be called upon to assist in any matter. Please also note that the rules of suspension provided for in clause 4.2 of the Disciplinary Code and Grievance Procedure do not apply to this special leave. You are therefore to retain your laptop and cell phone; you are also expected to be contactable at all times and not to leave your place of ordinary residence for more than 1 day without informing me.

Yours faithfully,

Dr Nkosinathi Sishi
Group Chief Executive Officer
Passenger Rail Agency of South Africa

Members of the Board of Control
K Kweyama (Chairperson), S Ntsaluba,
L Wessie, J Schreiner, B Mthembu, D Tshepe,
X George, R Khan, P Setai, E Nchabeleng

Group Chief Executive Officer
Dr. N Sishi

Acting Group Company Secretary
F. Dingiswayo

The Board of Control of PRASA
PRASA House
Hatfield
by e-mail

MY SPECIAL LEAVE

To the Board of Control of PRASA and GCEO,

1 I write this letter as an employee of PRASA that is primarily charged with advising PRASA on compliance with laws that are applicable to it and, unfortunately, as a person that the Board of Control of PRASA ("the Board") and the Group CEO ("GCEO") have decided to place on special leave.

2 In a statement released by the Board and the GCEO after placing me on special leave, the Board and the GCEO drew an association between my special leave and the ongoing investigations into improper, irregular, corrupt, fruitless and wasteful expenditure. It was therefore left to the reader to elect whether I was suspected of impropriety and/or irregularity and/or corruption and/or fruitlessness. In light of the manner in which I was removed from the workplace and the unilateral imposition of 'special leave', it is not surprising that the media reports have elected the "corruption" option. This is very unfortunate and, in my respectful view, has no relationship with the truth. I hope to demonstrate this in this letter.

3 At the outset, let me start with the blindingly obvious: The Board is enjoined by law to act in the best interests of PRASA. Any decision that is taken by the Board should not be informed by the wishes of an employee who is undergoing discipline and who has now been found guilty of misconduct. It is, in my view, incumbent on the Board to have a fresh look at any allegations that are brought to its attention and to make decisions about those allegations based on the interests of PRASA and the Board's legal duty to be fair to PRASA employees. In this case, the Board appears to have placed a lot of

reliance on the views of someone who flip flops about the irregularity of a transaction that he participated in and, in relation to which, he has now been found guilty of misconduct.

The Special Leave Constitutes an Irregularity and is Fruitless and Wasteful Expenditure

4 On 21 May 2019, I had a meeting with the GCEO on his invitation. In this meeting, the GCEO advised me that I will be placed on special leave. The GCEO indicated that he will send me a letter to this effect and that I should continue with my normal work until I received this letter. A few minutes after this meeting (about 5 minutes), I received a call from someone who knew that I had been placed on special leave (as opposed to, I was going to be placed on special leave). From that call, I received further calls and messages to this effect. Having considered this, I realised that it was common knowledge that I had been placed on special leave (as opposed to, I will be placed on special leave). I therefore thought that the letter was a mere formality and there was no need for me to wait for it. I therefore deemed it meet to indicate to the GCEO that if I come to work, that may create the impression that I am defying the instructions of the GCEO, therefore, I would not be coming to work. The GCEO agreed with this approach, apologised for this breach of confidentiality and indicated that he would investigate the violation of this confidentiality. I trust that I will be advised of the results of this investigation. I take it that there will have been a limited number of people who were aware of these discussions and it will be easy to establish who, of those people, was responsible for the violation.

5 Over the past two months, the Board placed five executives on special leave and two executives on suspension. The placing of the five executives on special leave and the two employees on suspension in the manner that it was done is not supported by any law or any policy of PRASA and is, in my respectful view, therefore, irregular. In my respectful view, the placing of the five executives on special leave and the two

executives on suspension constitutes fruitless and wasteful expenditure in that there is no legal instrument that permits this and the employees that are on special leave and on suspension, are being paid their full salaries. This is done in a context where these executives are not rendering any services to PRASA during their period of suspension. It must be understood that I am saying that in PRASA's case, employees who have already been investigated and have been given charges were placed on suspension and special leave after the investigations had been concluded. In the normal course, a person would be suspended pending the finalization of the investigations that are conducted, especially when there is a reasonable belief that that person will cause danger or interfere with the investigations, were they to remain at work. In the normal course, employees at PRASA are given an opportunity to give reasons why they should not be suspended, before the decision to suspend is made.

6 Over the years that I have been an employee at PRASA, I do not recall any person being placed on special leave. If the Board is keen to have special leave as one of the instruments it makes use of in employee relations, the Board should develop an appropriate policy. In the absence of such a policy, my placement of special leave, is irregular, invalid and unfair.

My Special Leave is Unfair

7 According to the Communique of 22 May 2019, the Board and the GCEO decided to place me (and another colleague) on special leave *"to ensure a fair process based on a principle of innocent until proven guilty."* I assume that this statement applies to those that have been placed on special leave as Dr Sithole has already been found guilty. This principle (or presumption, in law) is in line with the legal obligations of the employer in relation to me, as an employee. With respect, I don't agree with the part of the statement that speaks to *"a fair process"* because I have not seen fairness in the manner in which this matter has been handled:

7.1 The decision of the Board and the GCEO was leaked at almost the same time as it was verbally communicated to me. A leak of information that will in any event be publicised as it has become normal in PRASA, is evidence of an improper purpose;

7.2 All the employees that were placed on special leave were aware of the details of the charges against them. In my case, all I know is what I was advised by the GCEO that according to Dr Sithole, I was implicated in the KGP Media Investments matter. Apart from the generality of this assertion, no specifics were provided to me. For example: how and on what basis was I implicated; was it in relation to my involvement in the Corporate Tender and Procurement Committee ("the CTPC") and if so, are the other four members of the CTPC also implicated; in respect of what aspect of my conduct on the CTPC have I been implicated? I do not know the answers to these questions; and

7.3 There are a number of employees who are undergoing discipline and who have not been placed on special leave.

8 All that I was told by the GCEO is that this decision is based on the guilty finding of Dr. Sithole in relation to the irregular contract between PRASA and KGP Media Investments. The two other people who were directly involved in the transaction were Mr. Montana and Mr. Phungula. I was not involved in this transaction and a guilty finding against Dr. Sithole has nothing to do with me and I do not understand why it would cause the Board and the GCEO to believe that my presence at work is undesirable.

9 In any event, Dr. Sithole was at work from the time he was charged and remained at the office throughout his hearing. Even when other Group Executives were placed on special leave, he was spared, even to the extent of him appearing on national television on the evening of this event to explain this event to the nation. It is only the guilty finding

against him that caused the Board and the GCEO to believe that his presence at work was undesirable.

10 It is therefore my respectful view that the decision of the Board and the GCEO to place me on special leave is grossly unfair.. This decision suggests that the Board and the GCEO have imputed Dr. Sithole's guilt to me, because the decision was taken before I was served with any charges.

The Publication of my Special Leave

11 For one or other reason, the Board and the GCEO deemed it meet to publish my being placed on special leave even though I do not know what the reasons for this decision are. The publication of this decision led to media reports that linked my being placed on special leave with corruption. As stated above, the statement by the Board and the GCEO left it to the reader to choose which reason they liked the most. A reader that chooses "corruption" does so at the prompting of the statement issued by the Board and the GCEO. Had the Board and the GCEO elected not to publish this, a connection would not have been made between my name and corruption.

12 I am certain that the Board and the GCEO are aware of how this story was interpreted by the media. The failure of the Board and the GCEO to correct this suggests that the Board and the GCEO agree with this understanding of their message.

13 I cannot imagine a reason that would have caused the Board and the GCEO to publish this and what useful purpose this publication served for the interests of PRASA and my constitutionally guaranteed presumption of innocence. What I know is that this publication tainted my reputation to my extreme detriment and has contravened my right to innocence in the greatest respect.

14 The Board and the GCEO are aware or at least should be aware of my fight against the corruption that has occurred at PRASA. Ironically, at the meeting of the 21st May 2019,

the GCEO asked me whether I was safe. I have been asked this question by different people from different backgrounds over the past four to five years because of my fight against corruption in PRASA. I am loathed by current and former colleagues who are implicated in corruption and maladministration because of my fight against corruption in PRASA at a time when fighting corruption meant putting my job and life on the line.

15 I was unlawfully dismissed by Mr. Lucky Montana for the fight against corruption. This unlawful dismissal did not stop me from fighting corruption. Court records and media reports bear testimony to all that I have done in the fight against corruption and maladministration in PRASA. By the stroke of a pen, the Board and the GCEO have characterised me as someone who fights corruption as a cover up of her own corruption. This, as you are aware is how corruption has begun to manifest of late. People mask their own corruption by fighting the corruption of others in a much publicized way. I am definitely not one of those people and I will not be made out to be one of those.

16 I have no qualms with my work being scrutinised, however, I cannot be associated with corruption. I have worked very hard to build a reputation as an astute, clean, hard-working professional and I am very offended that the people that I thought I was working with in the cleaning up of PRASA and improving its operations have now allowed my name to be branded as corrupt without even giving me an opportunity to state my case.

My Involvement in the KGP Media Investments Matter

17 Against the ordinary legally advisable posture of any person that is in my position, I have decided to be upfront with the Board on this matter.

18 I have no recollection of some of the details of this matter which clearly commenced in 2009 when I was not even an employee of PRASA. However, I will share with you what I recall about this transaction. This transaction happened in an environment where corruption was starting to be open and impunity rising. It was at a time when those who were fighting corruption were treated as criminals.

19 I was one of the members of the CTPC of PRASA around 2012 which was shortly after joining PRASA. What I recall about the KGP Media Investments matter is the following:

19.1 The matter was brought to the CTPC for the confirmation of an extension of the duration of the contract and a request for the extension of the scope of the contract.

19.2 The extension of the duration for three years was indicated to the CTPC to have been contractually contemplated when the contract was awarded and be contingent upon the performance of KGP Media Investments in the first three-year instalment of the contract. My recollection is that the CTPC was advised that KGP Media Investments had met its performance obligations in terms of the contract and therefore was entitled to an extension for a further three years. On the basis of this representation, the CTPC supported the extension of the contract and, as was the practice then, referred the matter to the then Group CEO for approval. The Group CEO approved this extension of time.

19.3 The extension of the scope of the contract was refused by the CTPC. The CTPC insisted on this new scope being subjected to a supply chain management process. I was one of the people who were very vocal about refusing this request in this meeting. As a result, I was advised by one of the employees of PRASA that Mr. Mabe, the owner of KGP Media Investments had enquired as to who I was and whether I knew the things that I was interfering with. This enquiry led to a demand for a meeting between me and Mr. Mabe where Mr. Mabe wanted to tell me to stop interfering with things that I did not know. I met Mr Mabe in Rosebank and gave him the reasons why the new proposed scope could not be approved. His attempts to persuade me, even with veiled threats, were not successful. I did not know that KGP Media Investments was owned by Mr. Mabe

and it would, in any event, not have made a difference to my consideration of the decision.

19.4 To the extent that there were irregularities in the appointment of KGP Media Investments in 2012 as per the findings of the Public Protector, such irregularity was occasioned by a representation that was made to the CTPC. This will not be the first time that a committee is lied to by PRASA officials. There are allegations that as late as a week ago, a Board Committee in whose meeting I was, was lied to by executives of PRASA. By way of an evidence-based example, one of the allegations in the Siyangena review application is that the then GCEO of PRASA and the then Chief Procurement Officer of PRASA gave the then Finance and Capital Investment Committee of the Board an impression that the CTPC had recommended the appointment of Siyangena Technologies (Pty) Limited ("Siyangena") for the Phase 1 of the ISAMS tender. This information was false. On the basis of this misrepresentation, the FCIP recommended the appointment of Siyangena to the Board for R1,9 billion. In the PRASA environment, it would therefore not be unheard of for officials to misrepresent facts to a committee, which misrepresentation leads the committee making a wrong decision.

19.5 Having gone through what I went through with Mr. Mabe, I now find myself in a position where my employer has placed me on special leave in relation to this and suggested that I was involved in the corruption associated with this transaction. All that the Board and the GCEO had to do was to ask and I would have shared all that I remember about this transaction. In my respectful view, there was no need to place me on special leave because someone was found guilty by an independent arbiter for his part in the transaction and/or to publish this special leave in the manner that it was published.

20 At this point, I must state that the Chairperson of the Board and the GCEO asked Mr. Dingiswayo and I to explain in writing how Werksmans Attorneys was engaged by PRASA to undertake the forensic investigation that they undertook. This request was based on the allegations of impropriety related to this appointment. This report was provided to the Chairperson and the GCEO and the Board and the GCEO will decide on how to deal with us based on a report that we provided and any other information that may come to their attention. I do not know and do not understand why this approach was not followed in this instance.

21 I must state three other events that clearly show my posture to maladministration and irregularities in the contract with KGP Media Investments:

21.1 Condonation Request

21.1.1 After the release of the Public Protector's Report, we as the Legal Department advised that the contract between KGP Media Investments and PRASA should be terminated. This was the first time that I learned that the contract between KGP Media Investments and PRASA was concluded on the basis of an unsolicited bid. This information was certainly not provided to the CTPC at the time of the first extension in 2012, when I was one of the members of the CTPC.

21.1.2 At this point there were about three invoices that had not been paid by PRASA to KGP Media Investments. As he did with the matter of Blue Flames, Dr. Sithole requested the payment of these invoices. Dr. Sithole was advised (I think by the Finance Department) that he will have to first request for the condonation of the incurring of this irregular expenditure before these invoices may be paid. Dr. Sithole then prepared a request for condonation and sought my support of this request. I refused to provide this support as the fact that the contract was awarded as a result

of an unsolicited bid came as a complete surprise to me. I was also surprised that the Public Protector had flagged this transaction before the renewal that Dr. Sithole was part of.

21.1.3 As far as I know, the committee that was set up by the then Board to consider condonation requests did not approve this request. This led to the urgent application discussed below.

21.1.4 Therefore, when Dr Sithole wanted support for invoices to be paid, I refused to give him my support.

21.2 In compliance with the findings of the Public Protector, Group Legal prepared a letter of termination of this contract and asked Dr. Sithole to sign it.

21.3 The above events led to KGP Media Investments launching an urgent application to interdict PRASA from implementing the remedial steps of the Public Protector. This application was successfully opposed (all the way to the Supreme Court of Appeal) and I deposed to all the affidavits in this matter in my capacity as Group Executive: Legal, Risk and Compliance as duly authorised.

22 I find myself in a very interesting situation. On the one hand, Mr. Mabe is very unhappy with me in that:

22.1 I did not support the extension of the scope of his company's contract with PRASA;

22.2 I did not support the request for the condonation of about three payments that Dr. Sithole had requested condonation for; and

22.3 I deposed to affidavits that opposed his application to enforce the contract between PRASA and KGP Media Investments, with KGP Media Investments failing up to the Supreme Court of Appeal.

23 On the other hand, my employer has branded me as corrupt in relation to the very same contract. My employer has gone further to impute Dr. Sithole's finding of guilt to me, without charges and without a hearing.

Conclusion

24 My name has been tainted under circumstances that are grossly unfair to me and that could have been avoided by a simple enquiry.

25 I have no objection to being investigated by the Board and the GCEO and will answer to what the intended charges will be if any against me. I just believe that I have been treated unjustly, compromised and victimized.

26 Not only has my name been tainted by the Board and the GCEO, my name was also tainted by Ms Maggie Marema who lied about me alleging that I assaulted her. I managed to get confirmation from the people that were present at the meeting where the alleged assault is supposed to have happened that Ms Marema lied. These are employees of PRASA and the Board and the GCEO have full access to these people. After having lied about me to the Board and the GCEO, I am not aware of any decisive action that the Board and the Group CEO have taken against her. Lying adversely affects an employment relationship as it destroys the trust relationship. My view is that lying to the Board requires special attention as the Board does not have the time to be sifting through employees' lies. The Board and the GCEO appear to have taken this lie lightly. This lie has led to criminal charges and an application for a protection order which I am dealing with. The statement issued by the Board and the GCEO on 22 May 2019 thus has a potential of compromising my case against Maggie Marema that is due to be heard in the Mamelodi Magistrates Court of 5 June 2019.

27 The suggestion by the Board and the Group CEO that I am being investigated for corruption will imperil cases that PRASA has instituted and, in which I am a witness. These are the fraud case against Mr Daniel Mthimkulu and the Siyangena criminal and

civil proceedings. I did indicate to the GCEO that I have been subpoenaed to give evidence in the criminal case of Mr Mthimkhulu, which is to be heard in the Johannesburg Magistrate's Court on 7 June 2019. It is my view that the Communique published by the Board and the GCEO has compromised my integrity even in that matter. It is possible for Mr Mthimkulu's lawyers to pick up the article in relation to the corruption allegations against me.

28 Furthermore, I received a letter from the Hawks requesting a meeting with me on the cases of Siyangena, Swifambo and Lufthansa. I had met with the respective Captains and Colonels before I was placed on special leave. In fact, just before receiving the letter placing me on special leave, we met to discuss what kind of evidence they will require from me. This too forms part of the work that PRASA has initiated against corruption. This request was made on an urgent basis. I did advise them of the letter placing me on special leave and their request for assistance and information from me remained. My absence from the office prejudices me in that the information I require to prepare for these matters is in the office.

29 I would like the Board and the GCEO to correct the above gross unfairness that relates to the KGP Media Investments matter as well as the matter of Ms. Marema without any delay. Furthermore, to advise how I am expected to attend to these Law Enforcement Agencies responsibilities in the circumstances of my Special Leave.

30 Finally, I would like to know on what legal basis I have been placed on special leave?

Yours faithfully,
Martha Ngoye
27 May 2019.

Be moved

PASSENGER RAIL AGENCY OF SOUTH AFRICA

"B"

Memorandum

To:	GCEO: Dr Nkosinathi Sishi
From:	GE: Legal Risk & Compliance: Martha Ngoye
Date:	11 June 2019
Subject:	**Special Leave**

Dear Group CEO,

I refer to our meetings of 21st May 2019 and of the 4th June 2019. As per your request in the meeting of the 4th, I am addressing this memorandum to you although I understand that, according to the Corporate Communique issued on these, the matters dealt with herein are within the purview of the Board and the Group CEO.

At the meeting of the 21st, you indicated that the investigation into the allegations against me will be conducted and concluded in a week. As a result, I expected that there will be some indication of the way forward by the 28th May 2019. This did not happen.

We met on the 4th and you informed me that you had sent my letter of 27 May 2019 (addressed to you and the members of the Board) to the lawyers who are investigating the allegations against me for their advice. Since the investigation would have started by the time I wrote my letter of the 27th, I was hoping that I would receive an indication of the way forward by last week Friday, alternatively an indication as to when I should expect a response to my letter and the outcomes of the investigation.

Please advise me as to when I should expect a response to my letter as well as the outcome of the investigation.

As indicated to you and the Board, I am very concerned about the association of my name with corruption and maladministration as per the Corporate Communique that was issued by the Board and yourself. It is this reason that causes me to be keen to have these allegations dealt with as soon as possible. As I indicated to you, these allegations have tainted my good name and it is very important for me to have them resolved.

Kindly therefore advise, at your earliest convenience, when I will receive a response to my letter of the 27th or an indication of the steps that PRASA intends to take in this regard.

Awaiting to hear from you

Ms. Martha Ngoye
Group Executive: Legal, Risk & Compliance

[Memo to GCEO Dr Sishi re Martha Ngoye "placed on Special Leave" communique and Special Leave Letter

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19 June 2019

PRASA Board of Control.
PRASA House
Hatfield
By e-mail

To the Board of Control of PRASA and GCEO

MY SPECIAL LEAVE

1. I refer to my letter of the 27th May 2019. I record that I have received neither an acknowledgment of receipt nor a response to this letter.

2. Subsequent to this letter, I met with the Group CEO on his invitation on the 4 June 2019, where I was requested to attend to various matters within the Legal Department. I have obliged. In this meeting the GCEO indicated that my matter was under investigation and that he had requested the lawyers to expedite the investigation. In my meeting with him, the Group CEO also indicated to me that he had expected me to write to him and not to the members of the Board. I explained to the Group CEO that, according to the Corporate Communique' that had been issued, it was clear that the decision to place me on special leave was taken by "the Board and the Group CEO".

3. When I did not receive a response as per my expectation from my meeting with the Group CEO and as a result of the views expressed by the Group CEO, I addressed my follow up letter to him. This letter is annexed hereto and is dated 11 June 2019. I have received neither an acknowledgment of receipt nor a response to this letter. I must say that I reluctantly addressed this letter to the Group CEO in the hope that this letter will not suffer the fate of another letter that I wrote to the Group CEO in March. To date I have received neither an acknowledgment of receipt nor a response to this letter. I therefore lost faith in the Group CEO responding to correspondence from me.

Members of the Board of Control
K Kweyama (Chairperson),S Ntsalubs,
L Wessie, J Schreiner, B Mthembu, D Tshepe,
X George, R Khan, P Setai, E Nchabeleng

Group Chief Executive Officer
Dr. N Sishi

Acting Group Company Secretary
F. Dingiswayo

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4. I obviously do not know what is keeping the Group CEO and the Board so busy as to not be in a position to acknowledge receipt of my letter or to respond to it. I am however concerned that the sense of urgency that was displayed in deciding that it was undesirable for me to be at work and associate my name with corruption, irregularities and maladministration at PRASA is not shown in respect of my letters questioning this association. This also considering that a week later I was called back to attend to some matters at work which I also did. I still do not understand why my presence at work was considered undesirable at the time. I appreciate also that the Corporate Communique' that placed me on special leave does not affect any of the Board members and the Group CEO personally. This however affects me personally and is very important to me. It is my name that has been unjustly and unfairly tarnished.

5. I am writing this follow up letter in order to give the Board and the Group CEO another chance to respond to avoid the need to take any steps outside of PRASA. If the Board does not have the time to respond, I will have to look outside to clear my name. I still believe that this matter is capable of resolution internally and amicably.

I look forward to hearing from you at your earliest convenience.

Yours Faithfully

Martha Ngoye
19 June 2019.

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

Internal Communiqué
22 May 2019

PRASA PLACES VARIOUS EXECUTIVES ON SUSPENSION AND SPECIAL LEAVE

The PRASA Board of Control and Group CEO, Dr. Nkosinathi Sishi have places various executives on suspension and special leave as follows:

1. Dr. Sipho Sithole, PRASA Chief Strategy Officer on suspension.
2. Ms. Martha Ngoye PRASA Head of Legal, Risk and Compliance and
3. Mr. Tiro Holele Executive in the office of the Group CEO on special leave.

This decision follows the outcomes and ongoing investigations that have dogged PRASA of improper, irregular, corrupt, fruitless and wasteful expenditure by various employees of PRASA at all levels of the organisation. The suspension and placement on special leave of these executives, is to ensure a fair process based on a principle of innocent until proven guilty.

The Board and staff continue to work with vigour and commitment in our quest to create a PRASA that delivers quality service to our commuters.

Issued by
Group Communications



Received SS7-OMN-213
02/07/19.

Office of K Kweyama
Chairperson

"E"

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Martha Ngoye
GE: Legal and Compliance
PRASA

24 June 2019

Special leave

Dear Martha

1 We refer to your letters addressed to the Board of Control of the Passenger Rail Agency of South Africa ("the Board") dated 27 May 2019 and 19 June 2019 in response to the letter from Dr Nkosinathi Sishi, the Group Chief Executive Officer of PRASA ("the GCEO"), placing you on special leave and the internal communique, amongst other things, communicating the GCEO's decision to place you on special leave.

2 We do not intend to deal with each and every allegation contained in your letters. Our failure to do so should not be construed as an admission thereof. The Board reserves the right to do so should the need arise.

3 In this letter, the Board would like to deal with two allegations contained in your letters namely:

3.1 The GCEO and the Board placed you on special leave; and

3.2 The Board has done nothing about the allegations and grievance made by Ms Maggie Marema against you.

Members of the Board of Control
K Kweyama (Chairperson), S Ntsaluba,
I Wessie, J Schreiner, B Mthembu, D Tshepe,
X George, R Khan, E Nchabeleng

Group Chief Executive Officer
Dr. N Sishi

Acting Group Company Secretary
F. Dingiswayo

The Board and the GCEO placed you on special leave

4 As you are aware, the letter placing you on special leave was addressed to you by the GCEO and states that:

"As per our discussion earlier today I have decided to place you on special leave..."

5 The letter does not make any reference to the Board or any decision by the Board. As a result, the allegations in your letter that the Board and the GCEO have placed you on special leave are incorrect. In the circumstances, any issues that you may wish to raise regarding the decision to place you on special leave must be addressed to the GCEO who will deal with those issues and not to the Board.

6 To the extent that the internal communique that was issued also suggests that the decision to place you on special leave was that of the Board and the GCEO, it is for the same reasons incorrect.

Allegations that nothing has been done about the allegations and grievance made by Ms Maggie Marema against you

7 As you are aware, the allegations and grievance by Ms Maggie Marema against you were escalated to the Board by the former GCEO, Mr Sibusiso Sithole. The Board then appointed an ad hoc committee consisting of the Chairperson of the Board, the Chairperson of the FCIP Committee and the Chairperson of the Audit and Risk Committee, to deal with these allegations and allegations contained in the components' report.

8 The ad hoc committee, in turn, appointed an independent investigator, Advocate Simmy Lebala SC, through the law firm Hogan Lovells, to investigate both the grievance lodged by Ms Marema against you and the allegations contained in the components' report.

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

9 We have been informed that you have participated in this investigation and have appeared before Advocate Lebala SC. The Board awaits a report from Advocate Lebala SC.

10 Therefore, your allegation, in your letter, that nothing has been done about the allegations and grievance made by Maggie Marema against you is incorrect.

11 In the circumstances, any correspondence regarding the investigation by Advocate Lebala SC, before his report is provided to the Board, must be directed to him, being the independent investigator.

12 Furthermore, the Board has included the allegations of components fraud in the list of matters that the Special Investigative Unit will investigate once a Proclamation on PRASA investigations is signed by the President. The GCEO will continue to communicate with you on this process.

13 We hope that the above clarifies the matters.

Yours sincerely

Khanyisile Kweyama
Chairperson of the Board of Control of PRASA

SS7-OMN-216

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

Internal Communiqué
12 June 2019

"F"

SUSPENSION OF MS PEARL MUNTHALI FROM HER DUTIES

Dear colleagues

The office of the Group CEO would like to announce the suspension of Ms Pearl Munthali, the Group Executive, PRASA Foundation at the corporate office, from her official duties. The suspension is with immediate effect. The suspension is in line with the commitment to good Corporate Governance and the eradication of irregularities within the organisation.

PRASA presumes innocence until due processes have been completed.

The Group CEO would like to encourage staff to continue the important work of delivering quality service to our customers and the fulfilment of our mandate.

Issued by
Group Communications



"I"

Be moved

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA)

POWERS, AUTHORITY OF THE BOARD AND DELEGATION OF AUTHORITY

Initial sign: PSM...

Be moved

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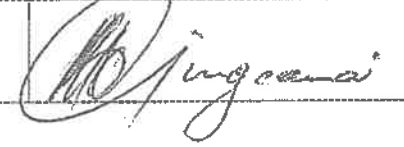
i. Document Control

Name of Policy:	Supply Chain Management
Prepared by:	Office of the Group Chief Procurement
Policy reference number:	**PRASA/Financial_Delegation of Authority_Ver_1_06062016**

This document replaces	• The approved preceding DOA in 2012
Reason for revision	• To effect regular review • To align Business Requirements • Include Subsidiary Board delegations • Integration and standardisation of subsidiaries/divisions and Regional functions •
Destination group	PRASA Officials
Effective date	Date of approval
Revision date	Annually

ii. Document Approval

We, the undersigned, accept this document as a formal PRASA Financial (DOA).

Recommended by:	
Name	MBULELO GINGCANA
Designation	ACT: GCPO
Date of Approval	30 MAY 2016
Signature of Approval Authority	

Recommended Supported by:	
Name	
Designation	
Date of Approval	
Signature of Approval Authority	

Recommended for Approval by:	
Name	
Designation	
Date of Approval	
Signature of Approval Authority	

Approved by:	
Name	
Designation	CHAIRMAN
Date of Approval	
Signature of Approval Authority	

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1. PREAMBLE

PRASA was established in terms of the Legal Succession to the Transport Services Act 38 of 2008.

The primary objects of PRASA is:

- to ensure that, at the request of the Department of Transport, rail commuter services are provided within, to and from the Republic in the public interest: and
- to provide, in consultation with the Department of Transport, for long haul passenger rail and bus service within, to and from the Republic in terms of the principle set out in section 4 of the National Land Transport Act.

The Secondary Objects of PRASA is:

- to generate income from the exploitation of assets transferred to PRASA by the Minister under the Act;
- to be responsible for provision and management of commuter rail services, long distance rail and bus business, as well as bus feeder business in South Africa; and
- to manage and upgrade PRASA's 473 stations and the building of new stations

2. INTRODUCTION

The National Department of Transport herein refers as the Shareholder has appointed a Board of Control ("The Board") vested with the power and authority to lead, control, manage and conduct the business of PRASA viable business, of global stature. The Board shall exercise these powers, subject to the existing PRASA Policies and the Shareholders compact concluded by and between the Minister and the Board as well as meeting and Provisions of:

- Legal Succession Act 38/08;
- The Shareholder Compact;
- The Public Finance Management Act No. 1 of 1999 (PFMA)
- Treasury Regulations; and
- Any other relevant applicable legislation

3. INTERPRETATION

Unless otherwise indicated by the context, the following words and phrases shall have the meanings assigned to them hereunder:

- **"Delegee"** means any person/or committee that delegates authority in terms of this Delegation of Authority document
- **"Delegate"** means a person who receives delegated authority from a person who is authorised to delegate.
- **"Sub-delegation"** means a permitted delegation to another by a delegate.
- **"Group Chief Executive Officer (GCEO)"** means the Group Chief Executive of PRASA
- **"Executives"** means Group Executives, Chief Executive Officer and Executive Managers reporting to the GCEO
- **"Agency"** means Passenger Rail Agency of South Africa

- **"Senior Management"** means General Managers and Senior Managers
- **"Division"** means Metrorail, CRES and Technical
- **"Subsidiary"** means Intersite Property Management and Autopax

4. SHAREHOLDER APPROVAL AND REPORTING

4.1. In terms of the Legal Succession Act, the PFMA and the Shareholder Compact, the Board must seek the Shareholders approval in respect of the below mentioned transaction:

a) Entering into any transaction other than in the ordinary, regular and normal course of business;

b) Purchasing or disposing any asset other than in the ordinary, regular and normal course of the business;

c) Being liable, whether contingently or otherwise and whether as surety, co-principal debtor, guarantor, for the liabilities of any third party other than in the ordinary, regular and normal course of business

d) Making a decision falling outside the scope of the mandate and authority granted both in terms of the Legal Succession Act and the Shareholder Compact;

e) The sale or alienation of the company or the whole or substantial part of the assets of the company;

f) Appointment of the Directors of PRASA;

g) A Policy and Framework for the remuneration of all Directors'

h) Remuneration of Non-Executive Directors; and

i) Certain aspects of the Corporate Plans, namely:

i. Strategic Plans and Intent;

ii. Key Performance Indicators (KPI); and

iii. Targets.

4.2. In terms of section 54(2) of the PFMA

a) Establishment of participation in the establishment of a company

b) Participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;

c) Acquisition or disposal of a significant shareholding in a company;

d) Acquisition or disposal of a significant asset;

e) Commencement or cessation of a significant business activity; and

f) A significant change in the nature of extent of interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

4.3 Shareholders consultation

The Board shall be entitled and empowered to:

a) Develop an appropriate performance incentive scheme

b) Appoint directors to the Board of Subsidiaries, in consultation with the Shareholder

4.4 Reporting and information dissemination to the Shareholder

The following information need to disseminate to the Shareholder on a regular basis:

a). The Board must, in terms of Section 52 of the PFMA, submit to the Executive Authority ("Minister of Transport") and to the relevant treasury, at least one month before start of the financial year or other period agreed with the National Treasury (NT):

i. A projection of revenue, expenditure and subsidy for that financial year in prescribed format;

ii. A corporate plan, in the prescribed format, covering the affairs of PRASA for the following three (3) financial years and , if it has subsidiaries, also the affairs of the subsidiaries; and

iii. Funding Plan

b) Quarterly reports on the performance of PRASA

4.5. In terms of Section 54 (1) of the PFMA, the Board must submit to the relevant Treasury such information, returns, document, explanation and motivations as prescribed or as may be required.

4.6. In terms Section 55 of the PFMA, the Board must:

4.6.1 Submit draft financial statements within two months after the end of the financial year to the auditors for auditing;

4.6.2 Submit within five (5) months of the end of the financial year to the shareholder, relevant treasury and the Auditor General of South Africa (AGSA)

a) An annual report on its activities;

b) Audited financial statements for that financial year; and

c) The report of the auditors

5. POWERS AND DUTIES OF THE BOARD OF CONTROL (BOC)

5.1 The Board is empowered to exercise all powers and authorities to lead, control and manage PRASA and to delegate any or all of such powers to an official(s), employee(s), and any other person and/ or to a committee(s) of PRASA Policies and the provisions set out herein.

5.2 The approval of the Board shall be obtained for all matters that are beyond the authority delegated herein.

5.3 The following matters, inter alia, are specifically reserved for approval by the Board:

5.3.1 Performance objectives and the Strategic Direction of the Agency (Including the PRASA Roadmap and Investment Plan);

5.3.2 Annual Reports and Financial Statement;

5.3.3 Appointment of auditors in the event that Auditor General does not perform the audit;

5.3.4 The Strategic Plan, Budgets and Corporate Plan;

5.3.5 Appointment and Succession planning for Group Executives and Heads of Business Divisions;

5.3.6 Mechanisms to monitor the performance management;

5.3.7 Recommendations regarding matters requiring Shareholder approval;

5.3.8 Decisions regarding additional or new generation Train Fleet, or upgrading of existing Train Fleet and Infrastructure in general;

5.3.9 Restructuring of the Agency (This refers to any restructuring that results or could result in a change in ownership of significant assets or a significant business, the establishment of new entity, the transfer of significant assets)

5.3.10 Integrated Transport/intermodal planning i.e. National Rail Plan ;

5.3.11 Any other matter that the Board may from time to time reserve for decision/approval by the Board;

5.3.12 The Board shall comply with its obligations in terms of the Legal Succession Act and the PFMA;

5.3.13 The fiduciary duties of the Board are set out in Section 50 of the PFMA and attached hereto as Appendix 1B

5.3.14 The general responsibilities of the Board are set out in Section 51 of the PFMA and attached as Appendix 1C

6. DOA: PRINCIPLES AND CONDITIONS

6.1 The Board hereby approves the powers and authorities herein delegated and as set out in Appendix 1A (Table) as follows:

a) The first column sets out the nature of the power/authority delegated and the remaining columns set out the delegation to whom such power/authority is delegated and the conditions and limits within which the power or authority will be exercised; and

b) Powers set out 4 and 5 below are delegated to the Chairperson of the Board and Board Committees respectively

6.2 The powers delegated are to be exercised subject to the terms and conditions set out herein:

a) Does not divest the Board of its accountability relating to the exercise of the delegated powers of the performance of the assigned duty;

b) May be given to a specific individual or to the holder of a specific post or to a committee;

c) Is subject to the statutory and legal limitations, recorded herein, and such other lawful limitations as may be applicable to PRASA from time to time;

d) Is subject to any limitations, conditions, policies and /or directives that may be developed and implementation by the Board, or by Executive Management at the request of the Board in the exercise of such delegated powers;

e) May at any time be revoked or varied by the Board;

f) The Board may confirm, vary or revoke any decision taken by a delegate as a result of a delegation in terms hereof, subject to any rights that may have become vested as a consequence of the decision. As required in terms of the PFMA, any such variation shall also be in writing;

g) Unless otherwise specified, the delegate referred to herein are hereby authorised in writing;

h) To delegate further any powers and authority delegated, any person or committee and to allow sub-delegation of such powers only once and, where necessary, in terms of the needs of the business, subject to the policies, directives and conditions that the Board

may from time to time prescribed, and the reporting of such authority to sub-delegate to GCEO;

i) To impose any limits or conditions in such further delegation to ensure good governance and controls with regard to the exercise of such powers and may, in writing confirm vary or revoke any decision taken subject to any rights that may have become vested as a consequence of such decision;

j) It is permissible for GCEO, or any other Delegated to delegate such powers to another person or committee set out in the attached table in terms hereof, even if such powers were not delegated to such delegate by the Board in terms of the attached table;

k) The delegated shall ensure that any further delegation of sub-delegation is to a functionary with the appropriate seniority, skills, expertise and knowledge to exercise such authority in an effective manner, and shall ensure that such authorities are reviewed on a regular basis;

l) The GCEO shall be responsible for the management of all delegation and authorisations granted in terms hereof; to all executives and employee (s) excluding Chairperson of the Board and other Board Committees, and shall ensure that the committees that act in terms of such a delegation, act:

   i. Lawfully;
   ii. Within the scope of their powers and authorization;
   iii. In terms of internal rules and procedures that the Board have approved;
   iv. In compliance with any policies and directives by the Board; and
   v. In accordance with the provisions of the PFMA, or any other applicable legislation.

m) The delegation of authority, unless otherwise specified, is confined to be exercised only within the limit and scope of the functional area of responsibility of delegate;

n) All financial authority shall be exercised within the approved budget or delegated. Any decisions with regard to matters beyond the approved budget shall be referred for approval to the next level of decision making, or to the functionary authorised to approve the over expenditure. Over expenditure regarding the budgets of the divisions shall be authorised by the GCEO within his thresholds, Over expenditure regarding the budget of the subsidiaries shall be authorised by the subsidiary board, and if there is any over-expenditure on the total PRASA budget, Board approval shall be required.

6.3 Any power not expressly delegated by the Board shall remain vested in the Board, unless such power can be regarded as necessary officer incidental to a power that is delegated. It is hereby recorded that the Group Chief Executive is, in general terms and subject to what is set out herein, delegated full authority to manage and run PRASA's business.

6.4 The provisions hereof shall not be construed as in any way limiting the authority of the GCEO, subject to the overall limitations set out herein, to manage the day-to-day operations of the business in accordance with his/her performance compact.

6.5 In particular, the Group Chief Executive Officer is authorized to prescribe the manner in which authority is exercised by delegees, and is entitled to act in any matter even where authority is delegated to another delegee, and to revoke or amend any delegation granted to any delegee, provided that any such amendment shall not grant to any delegee any higher authority that that granted by the Board for that level of delegee.

6.6 Where power is delegated to more than one delegee, it is in the basis of different functional responsibility and financial limits.

6.7 In keeping with the approval of the Minister of Finance in terms of Section 66(6) of the PFMA, the further delegation regarding PRASA Treasury activities, a set out in Appendix 2, is hereby approved.

6.8 Should the GCEO, GCFO, Group Executive or any other delegee be absent from office he/she may, in writing, appoint a manager to act in his/her stead with full or limited delegated authority. Where such delegee is the Group Chief Executive Officer, the person appointed to act shall be a member of EXCO and where the delegee is the Chief Financial Officer or, Group Executive, the person appointed to act shall not be lower than the level of a General Manager. Where there is no General Manager or Senior Manager within a particular division, the appointment of an appropriate Senior Manager will be acceptable. Where such absence or delegation is for a period longer than one month (even if to different persons), the approval of the next level of authority shall be obtained. In the case of the Chief Financial Officer, the approval of the Chairperson of the Board shall be obtained.

7. ALLOCATION AND RE-ALLOCATION OF RESPONSIBILITIES

7.1 The GCFO, Group Executive and General Manager or any other person with delegated powers may only exercise those powers in respect of the responsibilities and functions allocated to them from time to time, in terms of a performance agreement (compact) or specific instructions or mandates. The GCEO is authorized to define the scope and functional area of responsibility of the GCFO, Group Executive and General Managers

7.2 and in this regard may revoke, amend or vary any delegation granted by the Board to any delegee provided that such amendment does not result in any higher authority than that granted to that level of delegee by the Board.

7.3 In the event of any re-allocation of responsibilities to any other person, or the appointment of additional GCEO, all powers delegated in terms hereof shall vest in such appointees in respect of the functions to be carried out by such appointee. The Group Chief Executive Officer shall in such instance confirm in writing the particular functions to be carried out by such appointees and provide for any additional conditions that may be applicable to the exercise of such delegated authority, and shall be entitled to delegate any other powers to such appointees.

7.4 The GCEO shall be entitled to appoint, subject to Board approval, any Executives, in addition to EXCO members, to report directly to him, and to allocate to such Executive responsibilities.

8. SIGNING AUTHORITIES

8.1 All signing authorities are subject to the limitations and directives in respect of the specific delegation to which the signed agreement or document relates. A delegee may sign all documents relating to a delegated authority exercised by the delegee. A delegee may also authorize any PRASA official or appointed agent to sign any documents, the principal terms of which have been approved by the delegee.

8.2 The delegation of signing authorities is subject to the proviso that any contract that is approved or within the authorization limits of the EXCO Procurement Committee Cross Functional Sourcing Committee (CFSC), Corporate Tender Procurement Committee (CTPC), Board Tender Committee (FCIP) or the Board itself shall only be delegated to the level of such a Group Executive or General Manager, where such Group Executive or General Manager does not exist within a division, a delegation to the next appropriate Senior employee will be acceptable.

8.3 In the absence of any delegee within whose authority a matter falls, and if there is no specific resolution in this regard, The Group Chief Executive Officer is empowered to sign any document or agreement to give effect to any decision of the Board or any of its committees.

8.4 Where Board approval is required in terms of the said table, the Board may authorize committees of the Board, to exercise such authority on its behalf, provided that such authority is set out in the terms of reference of the said committee or a specific mandate is provided by the Board to such committee.

9. THE CHAIRPERSON OF THE BOARD

9.1 The Chairperson of the Board is authorized to sign any memorandum of understanding or contract, which:

a) is within the decision-making powers of the Board of Control, and approved by the Board of Directors;

9.2 Donations may also be made by the Chairperson of the Board in terms of what is approved by the Board as part of the budget for the year.

10 TRAVEL

10.1 The Chairperson is authorised to approve any travel (domestic and International), training, conferences and subsistence claims in respect of the Non-Executive Directors, subject to the PRASA travel policy.

10.2 Approval of the Chairperson's travel (domestic and overseas); training, conferences and subsistence claims shall be approved by the Company Secretary

10.3 The Chairperson is authorized to approve the International travel of the Group Chief Executive Officer subject to the PRASA travel policy

11 BOARD COMMITTEES

11.1 The Board may establish committees that are responsive to the nature of the business, and which can help advance the business of the Board efficiently and may delegate authority to such committees.

11.2 As a minimum, the Board is required to appoint an Audit and Risk Management Committee, HR and Remuneration Committee, SHE Committee, FCP Committee, Governance Performance Committee, Executive Management Committee.

11.3 The Board has determined the terms of reference, life span, role and function of these committees, and may amend these terms of reference from time to time. The committee that have delegated general financial authority to the following:

11.3.1 Board Finance, Capital Investment and Procurement Committee (FCP). The approval limit of this committee is an amount of R500 million and a maximum contractual period of 15 years for the acquisition, use and disposal of movable and immovable assets, and the provision or acquisition of services, in respect of Capital Investments, use and disposal and for any other financial transaction.

11.4 Subsidiary Boards. The approved authority is as per the attached table. 2

11.5 All committees appointed by the Board or EXCO shall develop terms of reference for the approval of the Board or EXCO, as applicable.

12 KEY TO LEVELS

TERM	DESCRIPTION	TERM	DESCRPTION
BoC	Board of Control	EXCO	Executive Committee
DoT	Department of Transport	Chairperson	Formal appointed to chair meetings
NT	National Treasury	GCEO	Group Chief Executive Officer
CIO	Chief Information Officer	CFO	Chief Financial Officer
FCIP		EM	Executive Manager
GCFO	Group Chief Financial Officer	(D/S) CEO	Division/Subsidiary CEO
GCPO	Group Chief Procurement Officer	CRO	Chief Risk Officer
GE: HCM	Group Executive: Human Capital Management	GE: SAD	Group Executive: Strategic Asset Development
HoL	Head of Legal	FM	Financial Manager
ARM	Audit and Risk Management Board Committee	HCM	Human Capital Management
RM	Regional Manager	HCS	Head Corporate Security

APPENDIX 1A

The table below depict standing Business Units directives per delegation:

1. Corporate Management

Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations /remarks
		Accountable	Responsible	Consult	Inform	
1.	a) Corporate Plan, Business Plan, Strategic Plan, Financial Plan and Investment Strategy Plan	Minister	BoC GCEO	EXCO	National Treasury	
2.	b) Budget Approval	Minister	BoC	GCEO/EXCO	National Treasury	
3.	c) Establishment of Organisational Structure	BoC	GCEO	Group Executive: HCM EXCO	All	
4.	d) Proposal on the restructuring of PRASA	Minister	BoC GCEO	EXCO	National Treasury	

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2. Planning

Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations /remarks
		Accountable	Responsible	Consult	Inform	
5.	e) To investigate an efficient and cost effective means to: ▪ Invest in Modern Rail Technology	GCEO	▪ Group Executive: SAD ▪ GCFO	EXCO		
6.	f) Integrated Transport/Intermodal Planning	GCEO	▪ Group Executive: SAD	EXCO		

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3. Governance and Control

Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
7.	Developing and maintaining Effective, Efficient and Transparent system of: ▪ -financial management & control ▪ Integrated risk management ▪ Internal control & internal audit ▪ Procurement that is fair, equitable, transparent competitive and cost effective ▪ Properly evaluating all major capital projects ▪ Ensuring effective revenue collection ▪ Preventing irregular expenditure ▪ Fruitless & wasteful expenditure not complying with the operational Policies ▪ Ensuring compliance with tax obligations ▪ Compliance with the Legal Succession Act and PFMA	BOC	GCEO	GCFO EXCO	ALL	
8.	Financial limitation per overall general transaction	BOC	GCEO	EXCO		

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
9.	Overall general contractual period limitation per transaction	BOC	GCEO	EXCO		
10.	**ACQUISITION, USE AND DISPOSAL OF MOVABLE ASSETS AND SERVICES** To purchase, acquire manage sell, lease, mortgage, dispose of, give in exchange, work, develop, improve, turn to account or in any way otherwise deal with any kind of description of movable assets or to acquire or sell services.	BOC	GCEO	GCFO OCPO	EXCO	
11.	**ACQUISITION, USE AND DISPOSAL OF IMMOVABLE ASSETS** To purchase, acquire manage sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to account or in any way otherwise deal with any kind or description of immovable assets	Minister	BoC GCEO	GCFO OCPO	EXCO	

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
12.	**SUPPLY CONTRACTS** To negotiate, conclude and approve entering into, amending, terminating or cancelling any operational agreement	GCEO GCFO (D/S)CEO	GCPO HoL	End-User Business Unit	EXCO	Within approved delegation
13.	**LEASE OR RENTAL AGREEMENTS** (This excludes financial lease transactions)	GCEO GCFO (D/S)CEO	GCPO HoL	End-User Business Unit	EXCO	Within approved delegation
14.	**PATENTS, TRADEMARKS AND COPYRIGHTS** To register patents, trademarks, designs, copyrights or any license, concession or similar right in respect thereof and the alienation thereof.	BoC	GCEO HoL	EXCO	Group Executive: Corporate Affairs	

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
	ESTABLISH INFRASTRUCTURE, ADDITIONAL CAPACITY AND MAINTANACE, AND REFURBISHMENT					
15.	15.1 Investment decision as per general transactional limits	GCEO	GCFO	EXCO	BoC	
16.	15.2 Procurement (once the investment decision has been made)	GCEO	GCFO	GCPO EXCO	BoC	
17.	15.3 Where Tender Committee approves a procurement strategy which may include: ▪ Recapitalization of Fleet ▪ Other criteria	Minister	BoC GCEO	GCFO GCPO EXCO	ALL	

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
18.	OPERATIONAL MAINTENANCE AND REFURBISHMENTS To approve all operational maintenance or refurbishment that falls within the total approve budget. (Maintenance shall be regarded as any reasonable or necessary maintenance that is required for PRASA Train Flee, power lines, Infrastructure machinery and equipment, vehicles or other assets in the ordinary course of business. Refurbishment shall be any refurbishment reasonably necessary or required to PRASA Train Fleet and Services, power lines, Infrastructure, Machinery and equipment, vehicles or other assets in the ordinary course of Business	▪ GCEO ▪ GCFO ▪ (D/S) CEO	Group Executive: AM GCPO	EXCO		Within approved delegation

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
	RISK FINANCE					
19.	Insurance Strategy -	BOC	ARM GCEO	CRO GCFO	EXCO	
20.	Risk Finance Plan and Budget	GCEO	CRO GCFO	EXCO GCPO	BoC	
21.	Insurance Placement	GCEO	CRO GCFO	EXCO GCPO	BoC	
	STRATEGIC CAIPTAL INVESTMENT					
22.	a. To approve strategic capital investments	BoC	GCEO	GCFO	EXCO	
23.	b. Capital Expenditure -- Approval of capital expenditure	BoC	GCEO	GCFO	EXCO	
24.	c. Cash surplus investment decision (if any)	GCEO	GCFO	EXCO	BoC	

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
	BANKING ACCOUNTS					
25.	**a.** To open, operate and close any Account for the utilization of foreign, or local bank, financial institution or supplier	GCEO	GCFO	EXCO	BoC	
26.	**b.** To open, operate and close current accounts including treasury's foreign exchange rand accounts with any suitable bank	BoC	GCEO	GCFO EXCO	National Treasury	
27.	**c.** To open, operate and close PRASA's Treasury foreign currency accounts to facilitate payment to third parties with any suitable bank	GCEO	GCFO	EXCO	BoC	
28.	**d.** To make, draw, issue, execute, accept, endorse and discount cheques, promissory notes, bills of exchange and any other kind of negotiable or transferable instruments	GCFO	Financial Manager (D/S) CFO	EXCO	GCEO	

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
29.	e. To sign and issue all cheques, promissory notes, bills of exchange and/ or any other kind of negotiable or transferable instruments drawn on PRASA's current banking accounts.	GCFO	Financial Manager (D/S) CFO	EXCO	GCEO (D/S) CEO Regional Manager	
30.	f. To authorize that cheques, promissory notes, bills of exchange stock certificates or any other financial negotiable or transferable instrument maybe machine signed	GCFO	Financial Manager (D/S) CFO	EXCO	GCEO (D/S) CEO Regional Manager	
31.	g. To accept, endorse and discount cheques, promissory notes, bills of exchange and or any other kind of financial, negotiable or transferable instruments.	GCFO	Financial Manager (D/S) CFO	EXCO	GCEO (D/S) CEO Regional Manager	

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
32.	COMPANIES, PARTNERSHIPS AND TRUSTS					
33.	To appoint Directors to the PRASA Board	Minister	BoC	GCEO Company Secretariat	EXCO	
34.	To appoint Directors to PRASA's subsidiaries	BoC	GCEO Group Executive: HCM	Company Secretariat	EXCO	
35.	To appoint Directors, Officers, Trustees to company, Trusts, Employee benefit schemes , or any other entities (other than the PRASA, Intersite and Autopax Board)	BoC S/Board	GCEO Group Executive: HCM Company Secretariat	EXCO	ALL	

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
36.	**STANDARD CONTRACTUAL TERMS OR DEVIATIONS OR AMENDMENTS THERETO**	GCEO	HoL GCPO Relevant Executive	GCFO EXCO	ALL	
37.	**RESEARCH, DEVELOPMENT AND DEMONSTRATION** To carry out research and development activities	GCEO	Group Executive: SAD	GCFO GCPO LM	EXCO	
	LEGAL CLAIMS					
38.	a) To institute or defend legal, arbitration quasi - judicial or administrative proceedings, or to oppose any appeal against any judgment, sentence or order of any court or other authority subject to (h) below	GCEO	HoL	EXCO	BoC	

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
39.	b) To take action for the sequestration or liquidation of any debtor or to prove a claim against any debtor which is sequestrated or liquidated? c)	GCEO	HoL GCFO	Relevant Executive	EXCO	
40.	d) To settle any claim by/or against PRASA or dispute with PRASA, whether or not proceedings have been instituted	GCEO	HoL	EXCO	BoC	
41.	e) To plead guilty or not guilty to any charge PRASA may be required to answer	HoL	Relevant Executive	EXCO	GCEO	
42.	f) To make applications to the relevant authorities for or the amendments of permits, licenses, concerns and orders and to oppose applications by others	HoL	Relevant Executive	EXCO	GCEO	
43.	g) To obtain external legal opinions or to give legal opinions on behalf of PRASA for external purposes	HoL	Relevant Executive	EXCO	GCEO	
44.	h) To give or receive indemnities in respect of settlement agreements	HoL	Relevant Executive	GCEO	EXCO	

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
45.	i) To appoint attorneys and counsel to act on behalf of PRASA	HoL	Relevant Executive	GCEO	EXCO	
46.	j) To expropriate immovable property	Minister	BoC GCEO	HoL	EXCO	
	DONATIONS / CORPORATE SOCIAL INVESTMENTS					
47.	To approve corporate social investment / donations	Boc	GCEO Group Executive: CSI	GCFO	EXCO	

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
	HUMAN CAPITAL MANAGEMENT **To approve corporate social investment / donations**					
48.	The GCEO of PRASA shall be appointed by the BoC in consultation with the Minister	Minister	BoC		Group Executive: HCM	
49.	The GCEO will recommend to the BoC the appointment of Group Executives, and the CEO's of Division(s)	BoC	GCEO		Group Executive: HCM	
50.	The GCEO approves the appointment of General Managers and Senior Managers at PRASA Corporate level, as well as Executive Managers	GCEO	Group Executive: HCM		EXCO	
51.	The Subsidiary Boards shall appoint the CEO;s and Executive Managers of the Subsidiaries in consultation with BoC	Subsidiary Board	BoC	Subsidiary: General Manager: HCM	GCEO	

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
52.	The Group Executive: HCM shall approve appointment of Employees up to Manager level at PRASA Corporate	Group Executive: HCM	GCEO	EXCO	BoC	
53.	To approve significant HCM policies and principles relating to reward and incentive schemes, conditions of service, benefits and general HCM issues.	BoC	GCEO	Group Executive: HCM	EXCO	
54.	To approve general conditions of service, reward and incentive schemes, employee benefit schemes and to pay gratuities to and to contribute to the pension schemes and other incentive schemes	GCEO	Group Executive: HCM	EXCO	ALL	
55.	To determine the specific remuneration and service conditions of officers and employees	GCEO	Group Executive: HCM	EXCO	ALL	
56.	To negotiate with Trade Unions in respect of employees' affairs	Group Executive: HCM	GCEO	EXCO	BoC	

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Item	Description of powers, activities and duties that are delegated	Responsibility Delegated to				Conditions/limitations/remarks
		Accountable	Responsible	Consult	Inform	
57.	To determine general personnel structure and various post structures	GCEO	Group Executive: HCM	EXCO	ALL	
58.	To negotiate, conclude and approve entering into, amending, or cancelling any memorandum of understand, confidentiality agreement, Heads od Terms, Terms Sheets	Group Executive: HCM	HoL Relevant Executive	EXCO	GCEO	
	INFORMATION, COMMUNICATION AND TECHNOLOGY					
59.	To develop ICT strategy, Governance and Business process	BoC	CIO	GCEO	EXCO	
60.	To approve the choice of technology and software	GCEO CIO	CIO	EXCO	BoC	
61.	To determine ICT Security control and safety information	GCEO CIO	HCS CIO	EXCO	BoC	

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13. KEY NOTES

13.1 Any lease or rental agreement that exceeds R1m in value must be referred to the Chief Financial Officer or the General Manager (Treasury) for consideration and approval.

13.2 This approval shall be given in accordance with the terms and conditions of the relevant long-term contracts approved and accepted by the Board.

13.3 GCEO or the Group Executive concerned, in consultation with the Group Executive Legal and Compliance, may in special circumstances approve variations of the terms and conditions of the standard contracts used by PRASA.

13.4 EXCO shall each year ensure that the total amount required for risk finance is included in the budget to be approved by the Board, subject to the Risk Finance Plan as recommended by EXCO from time to time. The total insurance premium for the year shall not exceed the budget approved by the Board.

13.5 GCEO approves projects of a capital nature and any other strategic investments to a maximum amount of R50 million per investment, within budget constraints.

13.5.1 The FCIP limit for these investments is R750m.

13.5.2 The Tender Committee authority for these transactions is the maximum of the investment decision, cumulatively or as a single contract.

13.5.3 Quarterly reports of all expenditure incurred in terms of this section shall be submitted by the decision making structure to the next level of authority.

13.5.4 Authority to the FCIP Committee is up to the maximum of the approval budget.

13.6 The GCEO or GCFO, in consultation with the Chief Executive, may open, operate and close banking accounts with any suitable South African. The GCFO will ensure that all operations will be conducted in accordance with the requirements of the South African Reserve Bank, PFMA and exchange control regulations.

13.7 GCEO shall determine, after a risk analysis by the GCEO, the documents in respect of the power delegated that shall be signed by two signatories that act independently of each other.

13.8 The GCFO may recommend to EXCO to authorize that cheques, promissory notes, bills of exchange, bond transfer deeds, bond certificates or any other financial or negotiable instruments may be machine signed provided that any facsimile signature shall be that of an official then authorized to co-sign by hand. Instruments that are machine signed may carry only one facsimile signature except when the instrument has been altered, in which circumstances it shall then be countersigned by hand by two officials that may normally sign such an instrument.

13.9 The GCEO shall also specify the accounts and instruments in respect of which facsimile signature may be used.

13.10 The GCEO or GCFO shall approve and sign any electronic funds transfer systems agreements, with the co-signature of the appointed signatory as determined by EXCO.

13.11 The negotiable instruments have to be signed by two officials or employees, who shall act independently of each other if machine signing is not used. GCEO shall determine who will co-sign with the GCFO. Each Group Financial Manager shall, in respect of the bank accounts of

the group, be a signatory of cheques and will appoint all signatories for the group in respect of the signing of cheques. Such signatories must act independently of each other.

13.12 Notes 9 and 10 above shall apply in respect of machine signing of all negotiable instruments.

13.13 This authority is subject to the general financial limitations.

13.14 The authority set out herein may not be further delegated by EXCO.

13.15 GCEO shall each year recommend the total amount that may be required for corporate social investments and donations to further PRASA's interests be included in the budget to be approved by the Board, within the limits of legislative prescripts.

13.16 Over and above the Corporate Social Investment (CSI) budgeted amount, EXCO may approve donations up to and including a total amount of R5 million per annum; and the GCFO or GCEO may approve donations up to an amount approved by EXCO in each group/division budget. The cumulative effect of the donations amount shall not exceed R5 million in any year.

13.17 Donations made by the PRASA shall be for the education, schools or appropriate community projects, but shall exclude political party activities, grants to individuals, and profit making organisations/businesses.

13.18 The Board may settle claims above R50m, on the recommendation of GCEO accompanied by the opinion of the Group Executive Legal.

13.19 GCEO may settle claims up to R50m. With regard to claims between R25 m and R50m GCEO may settle such claims on recommendation of EXCO or the Group Executive concerned, or his delegate, which may be accompanied by the opinion of suitably qualified and experienced external expert.

13.20 Chief Executive, the Chief Financial Officer, Group Executive concerned may, after obtaining the written recommendation from Group Executive Legal, settle any claim, which fall within their respective financial limits other than an insurance claim accepted by the insurer. If the Chief Executive Officer or Group Executive concerned disagrees with the recommendation of the Group Executive Legal & Risk, the GCE shall make a final decision a decision.

13.21 The Group Executive Legal may settle any claim, other than an insurance claim, between R1m and R10m, in consultation with the Chief Financial Officer or relevant Group Executive.

13.22 The Group Executive Legal may settle any claim, other than an insurance claim, up to an amount of R1m together with the business unit manager concerned

13.23 The GCEO shall recommend appointment of Group Executives and Divisional Heads after and approval must be obtained from the Board Officer of Control.

13.24 GCEO shall approve all appointments of General Managers and Senior Managers.

13.25 Dismissals of all employees, including Executives referred to in this section for reasons of misconduct or disciplinary problems shall be in accordance with the applicable HCM process. All other terminations shall be in accordance with the table.

13.25.1 GCEO in line with the approved grading system shall recommend the general conditions of service, salaries, bonuses, fringe benefits and other remuneration of employees, once the Board has approved the budget in respect of the normal and total

cost of employment, and any principles and policies that may be applicable. The Group Executive Manager (HCM) shall issue directives in respect of the general conditions of service, salaries, bonuses, fringe benefits, allowances and other remuneration of each category of employees in accordance with the grading system

13.25.2 Where a multi agreement is contemplated regarding salary increases, EXCO is mandated to agree on what it believes is a reasonable adjustment for each year that is part of the multiyear agreement, subject to the maximum provided in the three year financial plan. When the budget for the next financial year is approved EXCO shall ensure that the total cost of employment is within the budget approved by the Board for that year, alternatively, is within the parameters of the financial plan approved.

13.25.3 The write-off of bad debts is subject to a policy approved by the ARM Committee. The policy in consideration shall prescribe an overall maximum limit per annum for CFO, and may amend the limits set out herein.

14 APPOINTMENTS/SUCCESSION PLANNING

14.1 The Board on the recommendation of the HCM and Remuneration Committee appoints the CEOs of Divisions.

14.2 GCE approves at the recommendation of the CEO of Divisions, appointment of the General Mangers reporting to them and who form part of their Operational Committee (OpsCo)

14.3 The Board of PRASA on the recommendation of the Board of Intersite and Autopax, appoints the CEO of Intersite and Autopax respectively,

14.4 The CEO's of Intersite and Autopax shall subject to their Boards approval appoint members of the Executive Management teams.

15. HCM RELATED APPROVAL

15.1 The Group Executive: HCM, shall approve the appointment of employees at Manager Level and below at Corporate Head Office.

15.2 The CEO's of Divisions shall approve the appointment of employees at Senior Manager Level and below within their respective Division.

15.3 Appointment of position at General Manager reporting level or above reporting to the CEO of Divisions shall be approved by the GCE, at the recommendation of the Divisional CEO's.

15.4 Leave to be approved by immediate supervisor in terms of leave policy of PRASA.

15.5 Overtime to be approved by immediate supervisor after consultation, with relevant HCM Manager.

15.6 Disciplinary policy and procedure shall be recommended by the General Executive: HCM and approved by EXCO.

16. SAFETY

16.1 The GCE of PRASA shall ensure that application are timeously submitted for the operating license of both Metrorail and Shosholoza Meyl in terms of the Rail Safety Regulator (RSR ACT OF 2002)

16.2 The Board shall approve an Integrated Management System (IMS) Policy to govern and guide the Management of Safety within the business.

16.3 The CEO of Metrorail and Shosholoza Meyl shall ensure that necessary contingency plans are put in place and received on a quarterly basis.

16.4 The Regional Managers of Metrorail and Shosholoza Meyl shall be responsible for the implementation of contingency as well as Safety measures in operation within the respective regions. They shall put in place the relevant measures as well as appoint the relevant Risk Managers in their teams.

17. CONTRACTS

17.1 The GCEO shall approve and sign contracts subject to vetting by Group Executive Legal & Risk to the minimum value of R 25 million and maximum of R 50 million.

17.2 GCFO- shall approve and sign contracts subject to vetting by Group Executive Legal & Risk to the minimum value of R25 million and maximum of R50 million

17.3 The GCPO shall approve and sign contracts subject to vetting the Group Executive Legal & Risk, to the minimum value of minimum R 10 million and Maximum of R 25 million

17.4 The CEOs of the Division and Subsidiaries shall approve and sign operating contracts subject to vetting by the Group Executive Legal & Risk to the minimum value of 10 million and maximum R 25 million.

17.5 Lease and Rental contracts to the value of R 25 million shall be approved by the GCPO.

17.6 Lease and Rental contracts to the value of R 50 million shall be approved by the GCFO.

17.7 Lease and Rental contracts to the value of more than R 25 million but not exceeding R 50 million shall be approved by the GCEO.

17.8 Lease and Rental contracts to the value of more than R 50 million shall be approved by the BOC.

17.9 Lease and Rental contracts to the value of R 25 million but not exceeding R 100 million for Subsidiary shall be approved by the Subsidiary Board.

APPENDIX 1B

The fiduciary duties of the Accounting Authorities (the Board) are set out in Section 50 as follows:

(1) The Accounting Authority for a public entity must-

(a) Exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;

(b) Act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;

(c) On request, disclose to the executive authority responsible for that public entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature; and

(d) See within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state.

(2) A member of an Accounting Authority or, if the Accounting Authority is not a board or other body, the individual who is the accounting authority, may not-

(a) act in a way that is inconsistent with the responsibilities assigned to an Accounting Authority in terms of this Act; or

(b) Use the position or privileges of, or confidential information obtained as, Accounting Authority or a member of an accounting authority, for personal gain or to improperly benefit another person.

(3) A member of an Accounting Authority must-

(a) disclose to the Accounting Authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the accounting authority; and

(b) Withdraw from the proceedings of the Accounting Authority when that matter is considered, unless the Accounting Authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant.

APPENDIX 1C

The general responsibilities of accounting authorities (the Board) are set out in Section 51 as follows:

(1) An Accounting Authority for a public entity-

(a) Must ensure that the public entity has and maintains-

i. effective, efficient and transparent systems of financial and risk management and internal control;

ii. a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and

iii. an appropriate procurement and provisioning system that is fair, equitable, transparent, competitive and cost-effective;

iv. a system for properly evaluating all major projects prior to a final decision on the project;

(b) Must take effective and appropriate steps to-

(i) Collect all revenue due to the public entity concerned; and

(ii) Prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and

(iii) Manage available working capital efficiently and economically;

(c) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;

(d) Must comply with any tax, levy, duty, pension and audit commitments as required by legislation;

(e) Must take effective and appropriate disciplinary steps against any employee of the public entity who-

(i) Contravenes or fails to comply with a provision of this Act;

(ii) Commits an act which undermines the financial management and internal control systems of the public entity; or

(iii) Makes or permits an irregular expenditure or a fruitless and wasteful expenditure;

(f) is responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament, and to the relevant executive authority or treasury, as may be required by this Act;

(g) must promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment;

(h) Must comply and ensure compliance by the public entity, with the provisions of this Act and any other legislation applicable to the public entity.

(2) If an Accounting Authority is unable to comply with any of the responsibilities determined for an Accounting Authority in this Part, the Accounting Authority must promptly report the inability, together with reasons, to the relevant executive authority and treasury.

18. APPLICATION

1.2.1 These financial delegations apply to all employees of the Department, unless indicated otherwise.

19. DATE OF COMMENCEMENT

1.3.1 These financial delegations take effect from the date approved by the Accounting Authority.

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Bid Adjudication Committees	Delegation of Authority (Value)	Minister	Board of Control		
			Prasa Board	Subsidiary Board	Grc
			> R 100 m		< 5
	< R500 K				
	> R500 K <R 1 m				
	> R1 m <R 5 m				
	> R5 m <R 10 m				I
	> R10 m <R 25 m			I	I
	> R25 m <R 50 m		I	I	N
	> R50 m <R 100 m		I	FA	FA
	> R100 m <R 500 m	I	FA	RFA	RF/
	> R 500 m	FA	RFA		
FCIP	> R 100 m	RFA	RFA		
CTPC	> R 0 m <R 100 m				RF/
DTPC	> R 0 m <R 25 m				
RTPC/CFSC	> R 0 m <R 10 m				

Legend	
N	Notfication
I	Inform
FA	Final Approval

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SCM Delegations of Authority

r	Board of Control		Chief Executive Officer			Chief Financial Officer			Chief Procurement Officer			Regional M
	Prasa Board	Subsidiary Board	Group CEO	Division CEO	Subsidiary CEO	Group CFO	Division CFO	Subsidiary CFO	Group CPO	Division CPO	Subsidiary CPO	Division - RM
	> R 100 m		< 50 m	>R 10 < 25 m	>R 10 < 25 m	<R50 m	>R 5 < R 10 m	>R 5 < R 10 m	>R 1 < 25 m	>R 1 < 5 m	>R 1 < 5 m	R 1 m < R10 m
							I	I		N	N	I
							I	I	I	FA	FA	N
				I	I	I	N	N	I	RFA	RFA	FA
			I	N	N	N	FA	FA	N	RFA	RFA	FA
		I	I	FA	FA	N	RFA	RFA	FA	RFA	RFA	RFA
	I	I	N	RFA	RFA	FA	RFA	RFA	RFA	RFA	RFA	RFA
	I	FA	FA	RFA	RFA	RFA			RFA	RFA	RFA	
	FA	RFA	RFA			RFA			RFA	RFA	RFA	
	RFA								RFA	RFA	RFA	
	RFA											
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						RFA						
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2 July 2019

To the PRASA Board of Control

1. I refer to my 3 previous letters that have still not been responded to nor acknowledged. I also refer to the Corporate Communiques issued after my letter of the 27th May 2019 being the Corporate Communiques dated 12 June 2019 and 1 July 2019.

2. I have noted that the suspension of Ms Munthali and the dismissal of Mr Zide is associated with "the commitment to good Corporate Governance and the eradication of irregularities within the organization". Although I am happy for Ms Munthali and Mr Zide that their names were not unfairly associated with corruption after my letter of the 27th May 2019 the change of approach without retraction of the corruption that you associated with my name clearly shows that you insist on this association.

3. This association and insistence to associate my name with corruption is grossly unfair and irrational, as I have indicated before. This is because, in law, a suspension and a dismissal are more drastic than special leave. Yet the name of one on special leave is associated with the crime of corruption.

4. This association and insistence on the association is also defamatory. I am writing again to the Board to avoid the Board being viewed as ***"stubbornly refusing to retract, apologise and remove the impugned statement from their ... media platform, when it is evident that they should do so" as was found by Matojane J in the recent case of Manuel v EFF. In this case the learned judge found that "These factors collectively establish the existence of actual malice and a desire to hurt Mr Manuel in his person and professionally ... Such conduct warrants a punitive costs order."***

5. I therefore request that you retract the statement that associates my name with corruption, apologise to me and remove the offending publication amongst PRASA's publications and advise external media as you had done when issuing the statement. Failing which I will have no option but to seek relief elsewhere. I reiterate my belief that this matter is capable of amicable resolution and my reluctance to have to resort to more drastic steps.

6. If the Board and the Group CEO are advised that I have a case to answer for any misconduct, I am willing to cooperate with any investigation and any disciplinary proceedings that may be launched. What I find totally unacceptable is the association of my name with the criminal offense of corruption when there is no such finding by a competent authority.

Yours faithfully,
Martha Ngoye

Members of the Board of Control
K Kweyama (Chairperson), S Ntsaluba,
I Wessie, J Schreiner, B Mthembu, D Tshepe,
X George, R Khan, P Setai, E Nchabeleng

Group Chief Executive Officer
Dr. N Sishi

Acting Group Company Secretary
F. Dingiswayo

SS7-OMN-256

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The Minister of Transport
Mr. F. A. Mbalula (MP)
Room 4111
159 Struben Street
Forum Building
Pretoria
0001

06 August 2019

Honourable Minister

1. PURPOSE

1.1. The submission for the appointment of the DBSA is above the delegation of the PRASA BoC of R 1 billion.

1.2. The purpose of this submission is to seek the Minister's approval to appoint Development Bank of Southern Africa (DBSA) as an implementing agent for PRASA Infrastructure projects.

1.3. To familiarise the Shareholder with the progress PRASA is making to ensure the acceleration of CAPEX for the service delivery improvement agenda.

2. BACKGROUND

2.1. PRASA has been experiencing capacity challenges to implement and rollout its capital expenditure programme over several years; resulting in significant under spending, and more importantly, negatively affecting service delivery.

2.2. PRASA identified the need to implement interventions to expedite the delivery of Capital projects aimed at improving operational efficacy in line with the

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Minister's 100 day programme and the PRASA Boards 2019 priorities.

2.3. The DBSA was identified as an implementing agent that will ensure the delivery of capital interventions within PRASA. They have the capacity through the establishment of their Infrastructure Delivery Division (IDD), it is capacitated to act as an Implementing Agent on behalf of other state organs with services offered to the National Treasury, Department of Public Works, Basic Education, the DTI, Health, and several provincial departments.

2.4. PRASA conducted all the ground work, including obtaining a Legal Opinion, in ensuring that its fiduciary responsibilities would be met through the appointment of the DBSA as an implementing agent.

3. COMPLIANCE

3.1. PRASA invited the DBSA, SANRAL, ACSA, and GAUTRAIN to present to the FCIP on 23 May 2019. The DBSA presentation centered on its role and capability in delivering and accelerating infrastructure delivery on behalf of other organs of state.

3.2. The DBSA presentation focused on their experience as an Implementing Agent and demonstrated the capability to augment the capacity of PRASA to deliver on its infrastructure programme. The conclusion by the FCIP was that the DBSA's value proposition is viable to explore in addressing the current PRASA Capex delivery challenges. In this regard, PRASA would therefore be able to harness and tap into the DBSA's abilities, skills and experience with Programme Management.

3.3. The DBSA as a Major Public Entity listed in schedule 2 of the Public Finance Management Act, 1999 (PFMA) is subject to that Act. 3.2 Section 76(4) (c) of the PFMA enjoins National Treasury to make regulations or issue instructions

Members of the Board of Control
K Kweyama (Chairperson),S Ntsaluba,
I Wessie, J Schreiner, B Mthembu, D Tshepe,
X George, R Khan, P Selai, E Nchabeleng

Group Chief Executive Officer
Dr. N Sishi

Acting Group Company Secretary
F. Dingiswayo

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applicable to all institutions governed by the PFMA.

3.4. Pursuant to this section, National Treasury (in April 2016) issued an instruction note bringing into operation the Standard for Infrastructure Procurement and Delivery Management (Standards).

3.5. The Standards, which have been enforced since 1 July 2016, are applicable to all Organs of State that are subject to the PFMA, namely:

(1) A national or provincial department as defined in the PFMA;
(2) A constitutional institution as listed in schedule 1 to the PFMA;
(3) A public entity as listed in schedules 2 and 3 of the PFMA (the Standard accordingly applies to the DBSA as well as to PRASA); and
(4) Any organ of state, which implements infrastructure delivery, projects on behalf of another organ of state.

3.6. The Standards establish a control framework for the planning, design and implementation of infrastructure projects and establish the minimum requirements for infrastructure procurement.

3.7. However the current Standard that is enforced since 01 July 2016 are applicable to all organs of state that are subject to the PFMA and are applicable to DBSA and PRASA which are both public entities as listed in schedule 2 and 3 of the PFMA.

3.8. In May 2019, the National Treasury published the revision to the Standard for Infrastructure Procurement and Delivery Management (SIPDM) and converted it to the Framework for Infrastructure Delivery and Procurement Management (FIDPM), which will take effect from 01 October 2019 to repeal

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the Standards.

3.9. The DBSA is therefore permitted, in terms of the PFMA and the Standards (and in due course), the FIDM to act as an implementing agent to PRASA in executing PRASA's infrastructure projects. Such implementation need to be in accordance with the Standards and the FIDPM when it comes into effect.

3.10. The Standard for Infrastructure Procurement and Delivery Management (SIPDM) requires that a Service Delivery Agreement or Memorandum of Agreement (MOA) be entered into between the two parties.

3.11. The DBSA will be required in terms of the MOA to provide PRASA with its Supply Chain Management Policy, which must be compliant to the relevant legislative prescripts and applicable National Treasury regulations. In addition, PRASA will require the DBSA to provide an assurance letter in terms of Section 51 of the PFMA.

3.12. In this regard, please note that the responsibility for service delivery, once the Infrastructure Programme Implementation Plan (IPIP) has been completed and approved by PRASA, lies with the DBSA to ensure that PRASA's expectations are met and delivery occurs within the specified budget and periods.

4 DBSA BUILT EXPERTISE

4.1 The DBSA has been the leader in the built programme and project management. It has developed immense capacity during the past five years. It boasts of over sixty-six professionals in the built environment – Civil Engineers, Quantity Surveyors, Construction Project Managers, OHS Specialist, Development Facilitators,

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Architects, Cost Engineers, Construction Law Expert, Financial Administrators, Schedulers and Planners.

4.2 **Development of IPIP / Infrastructure Plan**

4.2.1. From the PRASA Infrastructure Portfolio plan, the DBSA will be required as matter of standard, upon receipt of the allocation from PRASA, to develop an Infrastructure Programme Implementation Plan (IPIP) for approval by PRASA management. The IPIP will be a statement of how the DBSA intends to deliver the projects and outcomes. This document outlines the governance, management and delivery of the projects.

4.2.2. This IPIP will form the contractual relationship of service delivery between PRASA and the DBSA. The Auditor-General will use this IPIP document to determine and evaluate the level of compliance delivery by DBSA.

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5. CRITERIA FOR SELECTION OF THESE PROJECTS

5.1. At the Extended Group EXCO meeting on 30 April 2019, the Board of Control outlined its priorities and directed management to focus on them. These priorities have begun to form the primary thrust of management discussions, and a key driver in support of the PRASA Turnaround Strategy, the Rescue Plan and the Minister of Transport's 100 day Priority Plan.

5.2. The Shareholder's 100 day Priority Plan as outlined for PRASA includes the following:

5.2.1. Increase Metrorail rolling stock in regions;
5.2.2. Reduce train cancelations and delays;
5.2.3. Introduce three new locomotives for the Eastern Cape;
5.2.4. Reinstate KZN flood damage and repair broken rails;
5.2.5. Restore central line in Western Cape – High security walling and reinstate signalling;
5.2.6. Introduce new ring rail service in Gauteng North with re-introduction of 20 new train sets;
5.2.7. Trial runs in the Western Cape;
5.2.8. Introduce a new convenient and cashless ticketing system for Metrorail;
5.2.9. Securitisation of passengers and rail corridors through the fencing program;
5.2.10. Re-in state and increase Shosholoza Meyl routes and services with a locomotive support plan.

5.3. Furthermore, the Minister has also stated that a Steering Committee and Ministerial War Room will guide the interventions to realise three key objectives. This includes a focus on rolling stock availability and reliability, infrastructure availability and reliability and train performance.

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5.4. The second objective is Safety Management, which entails putting in place effective measures to protect critical infrastructure and passengers on board trains, alongside achieving full compliance with the Railway Safety Regulator permit conditions and directives.

5.5. The third objective is accelerated implementation of the modernisation programme. This entails creating urgent capacity for PRASA to manage capital projects and spend its capital budget to achieve the effective sequencing of critical infrastructure that will enable the deployment of the new trains in targeted corridors.

5.6. The aforementioned are the parameters that PRASA utilised in selecting programmes that will assist in the achievement of the maximum benefit for passengers including service availability, service reliability and safety and security.

5.7. The Board tabled the following priorities as key drivers for alignment within PRASA at the beginning of this year:

5.7.1. Stabilising & Improving reliability and safety of trains;
5.7.2. Corridor Modernisation roll out;
5.7.3. Attainment of a 3 Year RSR permit with minimal Special Conditions;
5.7.4. Recruitment of vacant Executive positions & Critical grades;
5.7.5. Effective communication of PRASA services & improvements;
5.7.6. Consolidation of the Property Portfolio;
5.7.7. Autopax Turnaround Plan; and
5.7.8. ICT Support for the business.

5.8. The Capital Programme has experienced significant delays with only a few projects on-track for delivery to meet the train deployment plan this is despite the elevation and prioritisation of infrastructure programs. Furthermore, PRASA has not even been able

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to fully utilise the current batch of new trains in certain corridors due to constraints owing to late delivery of infrastructure and operational readiness, including factors such as the upgrade of depots, network infrastructure, allocation and sufficient training of operational staff (such as train drivers) and station upgrades.

5.9. Despite PRASA's mission to provide sustainable transport solutions through service excellence, innovation and modal integration, commuters experience cancellations, delays, overcrowding and criminal activity on frequent occasions. Most of these are attributable to vandalism or cable theft. These unplanned breakdowns cause major disruptions in operational and maintenance schedules. Equally, the key areas of the rail network stations are not fenced. This creates a feeling of vulnerability for passengers and employees alike. A concerted effort is needed for accelerated technology deployment to act as a force multiplier, in areas where human capacity cannot reach.

5.10. The lack of capacity within PRASA to implement and rollout its capital expenditure programme over the years is the major criteria for sourcing support from the DBSA to address the delivery challenges experienced and rebuild PRASA capacity.

5.11. **Capital Expenditure Financial Year 2019/20: Quarter 1 Performance (April – June 2019)**

5.11.1. On aggregate, PRASA has spent R480 million (or 21%) of the Quarter 1 target of R2.3 billion from the allocated capital budget of R10.2 billion for the Financial Year 2019/20. Corporate Real Estate Solutions (CRES) recorded expenditure amounting to R11.4 million, with PRASA Technical recording expenditure amounting to R23 million and PRASA Rail at R19.1 million. PRASA Corporate recorded an expenditure of approximately R426 million.

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5.11.2. In total, PRASA Group has 465 approved projects with an estimated project value of R 12.5 billion for the 2019/20 financial year (allocated budget of R 10.2 billion for the same period). Of the total number of projects, 389 projects are at various stages of the pre-construction phase (such as planning, design and tender), 58 projects are in the implementation stage and 15 projects were completed at the end of the financial year and a total of three projects were cancelled.

5.11.3. The Signalling and Telecommunication Programme has mainly driven PRASA Corporate performance. Expenditure for the quarter amounted to R318 million, which is 72% of the quarter's budget of R440 million.

5.11.4. Station Modernisation projects have not yet commenced and has delayed the programme indefinitely, due to the National Treasury having declared the contracts irregular.

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5.11.5. **Capital Programme Performance over Financial Year 2019/20 (Status at end of Q1)**

Capital Budget and Expenditure						
Programme Name	**2019/20 Budget**		**Actual Expenditure Q1 FY2019/20**		**Actual Expenditure as % of Project Budget**	
PRASA TECHNICAL	R	2 385 081 985	R	23 047 000		1%
General Overhaul of Metrorail Coaches*	R	1 480 054 000	R	13 501 000		1%
Refurbishment of Smeyl Coaches*	R	169 169 000	R	-		0%
Depots Modernization Programme (Incl hig-tech fencing)	R	295 452 098	R	394 000		0%
Electrical Programmes: Substation, New Ov	R	94 500 200	R	7 193 000		8%
Footbridges, Level crossings and Structures	R	-	R	80 000	#DIV/0!	
120km/h Perway Programme	R	160 912 490	R	1 879 000		1%
Station Modernization Programme (135 stations)	R	109 433 319	R	-		0%
Green View - Pienaarspoort Project	R	85 561 878	R	-		0%
PRASA RAIL	R	745 051 854	R	19 071 000		3%
Capital Intervention Programme	R	158 855 200	R	4 954 000		3%
Depots Machinery and Equipments	R	50 696 530	R	-		0%
Rolling Stock Adhoc Condition Work	R	141 000 000	R	2 226 000		2%
Rolling Stock Components	R	280 400 124	R	11 891 000		4%
Fencing Programme (Stations and Corrido	R	114 100 000	R	-		0%
PRASA CRES	R	1 023 056 387	R	11 398 000		1%
Station Improvement Programme	R	238 253 825	R	317 000		0%
Station Upgrade Programme	R	146 659 193	R	-		0%
Park Station Upgrade	R	100 000 000	R	5 463 000		5%
Mabopane Station Upgrade	R	96 000 000	R	-		0%
Isipingo Station Upgrade	R	110 000 000	R	5 059 000		5%
Workplace Improvement Programme, (In	R	227 143 369	R	559 000		0%
Energy Renewable Programme	R	105 000 000	R	-		0%
PRASA CORPORATE	R	8 407 874 322	R	426 218 000		5%
Rolling Stock Fleet Renewal Programme*	R	5 823 266 000	R	108 240 000		2%
Signalling and Telecommunications Progra	R	2 137 111 000	R	317 178 000		15%
ICT Systems	R	117 001 231	R	749 000		1%
Automatic Ticketing System	R	65 702 000	R	56 000		0%
Asset Protection	R	264 794 091	R	-		0%
TOTAL	R	12 561 064 548	R	479 734 000		4%
2019 Allocation	R	10 209 621 000	R	479 734 000		5%

5.11.6. The above table depicts the actual expenditure for the quarter against allocated budget of R10.2 billion, and against the project value for the same period.

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5.11.7. It must also be noted that on the adjusted budget General Overhaul, Refurbishment of Shosholoza Meyl coaches, Rolling Stock Fleet Renewal Programme and Signalling and Telecommunications remain unchanged as they are considered earmarked funds. During the 2018/19 Financial Year, PRASA embarked on a programme and/or projects acceleration initiative and this trend is expected to pick up momentum in this current 2019/20 financial year, thereby surpassing the 71% standard already set in the previous fiscal year.

5.12. **Performance of Projects targeted for Acceleration in Quarter 2 Financial Year 2019/20**

5.12.1. In addition to the projects already committed for spending in the current financial year, various capital programmes were identified for acceleration to improve capital expenditure. Unfortunately, not all programmes and projects performed due to various reasons and these programmes include: ICT; Security; Fencing; Depots; National Station Improvement; Energy; Platforms; Footbridges, Level Crossings; Structures sub-stations; and Perway.

5.12.2. PRASA's Capital Expenditure budget for the Financial Year 2018/19 was not met mostly due to majority of projects not progressing from the Procurement and Planning Phases into Execution. To overcome this lack of progression, PRASA has implemented the following:

- New procurement committees have been appointed to fast track projects from bid specification to adjudication;
- Amended Supply Chain Management Policy has been approved; and the
- Capital Programme is currently being revised in line with a Corridor Modernisation Approach to fast-track and prioritise corridors based on the roll-out of new fleet.

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5.13. To ensure infrastructure delivery, the criteria utilised to identify the listed projects are informed by PRASA's strategic objectives as well as by the Minister and Shareholder's 100 days Priority Plan. This is with specific reference to ensuring the urgent implementation of interventions aimed at addressing critical challenges facing PRASA. As such the focus will be on:

5.13.1. Projects that specifically meet the Ministers 100 day and Board prioritization. These are mostly projects that seeks to improve train availability, reliability and safety / security of commuters;

5.13.2. Projects that have been in the procurement pipeline for more than six months;

5.13.3. Projects that will assist the RSR in meeting licence requirements;

5.13.4. Projects where procurement has not started and require rapid initiation to realise expenditure; and

5.13.5. Projects that are under execution but that are not progressing and require acceleration.

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5.14. Furthermore, it is important for PRASA to ensure the acceleration of programs and to priorities, the programs not yet commenced, as it will deliver critical force multipliers to improve the security capability for the protection of assets and commuters as well as contributing to effective operational service delivery. The theft of copper cables are linked to the price of copper. This means that as long as the demand for copper remains, theft will continue. The continued surveillance, securing and monitoring of PRASA assets is also of prime importance.

6. PROGRAMMES/PROJECTS IDENTIFIED

6.1. Key areas of the rail network are not fenced, making it freely accessible to the would-be-criminal. Physical barriers are the first line of defence in any security strategy and should be implemented at all stations, priority corridors, criminal hot spot areas and critical infrastructure. This will help to deter offenders throughout the day, during times that are not necessarily hotspots but in which the railway assets are still vulnerable to damage and theft.

6.2. The below programmes are identified for acceleration. These projects also fits with the Ministers 100 day plan, PRASA Board's priorities and are aligned to the PRASA Corporate Plan. These projects will facilitate the rail stabilization, by improving the availability and predictability of the rail infrastructure.

Item	2019-2020 Allocation	Status
120km/h perway programme - construction additional tracks between Knights & Germiston upgrade existing line between Pretoria and Germiston	3,002,664,255.00	BSC
Fencing Programme	335,540,700.00	BSC
Grand Total	**3,338,204,955.00**	

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6.3. These projects above are critical for improving the current rail infrastructure and they will furthermore support the delivery of PRASA's strategic objectives.

6.4. **Project allocation to the DBSA that have not been initiated:**

6.4.1. **Property Improvements and Maintenance:**

6.4.1.1.1. For the period ending May 2019 and in line with the PRASA Rescue Plan, none of the property improvement projects reached practical completion. The majority of the station upgrade and improvement projects have for more than six (6) months, been at the procurement phase. Consequently, the condition of the earmarked Station and Workplace properties has deteriorated and overtime exposed commuters and employees to hazardous environments as the limited maintenance budget is unable to cover the extent of the required improvement.

Infrastructure Category	2019-2020 Allocation	Status
PRASA CRES Modernisation Vereeniging	280,452,098.00	Not Commenced
PRASA CRES Modernisation Roodepoort	220,000,000.00	Not Commenced
PRASA CRES Modernisation Oakmoore	145,000,000.00	Not Commenced
PRASA CRES Modernisation Germiston	79,970,000.00	Not Commenced
PRASA CRES Modernisation Leralla	356,600,000.00	Not Commenced
PRASA CRES Modernisation Durban	121,686,000.00	Not Commenced
PRASA CRES Modernisation Isando	58,116,000.00	Not Commenced
PRASA CRES Modernisation Wolmerton	58,116,000.00	Not Commenced
PRASA CRES Modernisation Elandsfontein	58,116,000.00	Not Commenced
PRASA CRES Modernisation Berea	130,000,000.00	Not Commenced
PRASA CRES Modernisation Park Station	600,000,000.00	Not Commenced
Grand Total	**2,108,056,098.00**	

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7. PROJECT GOVERNANCE

7.1. PRASA has been plunged into a crisis in terms of its ability to deliver on its primary and secondary mandates. This necessitated that the Board of Control and the Shareholder develop a Recovery Plan for consideration. At its meeting on 31 August 2018 the Board of Control of PRASA resolved that a Programme Management Office (PMO) be established in the Office of the Group CEO to drive the execution of the Rescue Plan, which is intended to turnaround the performance of the organization and its subsidiaries.

7.2. Most business turnarounds or recoveries fail because of poor execution and change leadership. It is important at the onset for PRASA to establish a PMO as a nerve centre to drive the implementation of its corporate and recovery plans. This unit will provide the basis for tracking the implementation of key initiatives and the realization of benefits arising from such initiatives and investments.

7.3. The PMO will provide a coherent structure for integration and co-ordination of different initiatives horizontally and vertically across the whole organization and the development of roadmaps for effective management and implementation of envisaged changes.

7.4. The DBSA project, due to its importance and sensitivity will be managed at the PMO in the office of the GCEO. The advantage of this will be to ensure an interface between the relevant divisions within Prasa to ensure integration. The PMO will promote optimal transfer of skills between Prasa project managers and DBSA as well as interdepartmental skills sharing. The whole objective of PMO centralization at the GCEO office is to ensure staff redundancy is avoided during this project implementation.

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7.5. PRASA will appoint a Programme Manager that will be the official representative and contact person in all meetings and communication with the DBSA and the PRASA PMO (Programme Management Office) that will feed into the office of the Group Executive Office. In order for the Board to exercise their due care and diligence, the office of the GCEO will make available on a monthly basis the following:

7.5.1. Detailed monthly reporting to the FCIP that will focus on the following:

7.5.1.1. High level progress on major projects;

7.5.1.2. Key Milestones / hurdles on projects;

7.5.1.3. Budget Utilisation; and

7.5.1.4. Stakeholder Management on the projects.

7.6. Programme and Project Governance structures such as the Strategic Programme Management Committee and Project Steering Committee, will also be established to ensure oversight, monitoring and support to the implementation by DBSA.

8. AMOUNT ALLOCATION

8.1. The identified projects comprise of 9.8% of the total CAPEX Programme of R10.2 billion for the 2020 financial year.

8.2. For PRASA Cres, only 28% of their total Capex budget can be allocated for direct implementation by the DBSA. These amongst other things will include planning, implementation and close out. These are projects that are still at stage 1(Client briefing and project initiation).

8.3. The DBSA Management Fee is charged on a sliding scale of 6% to 9% of the value of approved Programme Funds. For programmes above R450m, the

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management fee is set at 6% of the total programme. The industry norm is currently set between 6% to 10% per project.

8.4. In line with the above and as outlined according to the PRASA Board's Governance Approach, the funds allocated to the DBSA will not be transferred in one lump sum. Instead, and in agreement with the DBSA, each payment will be made subject and specific to the individual project deliverables. In this regard, Prasa GCFO will also monitor the proper management of the allocated funds.

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9. RECOMMENDATION

9.1. The DBSA submission served at the PRASA BoC where and was supported for final approval by the Shareholder, as the submission exceeds the delegation of authority of the PRASA BoC.

9.2. PRASA already engaged National Treasury to seek approval for a deviation. National Treasury supported this in principle and the BoC is awaiting final written approval from National Treasury to this effect.

9.3. It is recommended that the Shareholder approve that the BoC signs the Memorandum of Agreement (MOA) with the Development Bank of South Africa (DBSA) as an Implementation Agent to assist PRASA in the Modernisation and Corridor Programme implementation to the total value of R 5,446,261,053.00.

..... DR. NKOSINATHI SISHI GCEO DATE: 2019 / 08 / 06	**AUTHOR:**

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	RECOMMENDED / ~~NOT RECOMMENDED~~ / COMMENTS
..... MS KHANYISILE KWEYAMA CHAIRPERSON: BOC DATE: 2019/08/06	

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	APPROVED / NOT APPROVED / COMMENTS
.....	
HONORABLE MINISTER FIKILE MBALULA (MP)	
SHAREHOLDER	
DATE:	

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FOR STATE CAPTURE COMMISSION PURPOSES ONLY

AFFIDAVIT

I, the undersigned,

ONICA MARTHA NGOYE

do hereby make oath and state:

1. I am an adult female. I am currently employed as Group Executive: Legal, Risk and Compliance by PRASA at 1040 Burnett Street, Hatfield, Pretoria.

2. Unless the context clearly shows the contrary is intended, the facts herein contained are within my own personal knowledge and are to the best of my belief both true and correct.

3. Insofar as the legal status of PRASA is concerned, I understand that a set of the relevant documents which sets it out formally will be made available to the Court. In essence, PRASA: was established as such in terms of section 22 of the Legal Succession to the South African Transport Services Act; its primary mandate is to

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provide commuter and long distance rail services and long distance bus services in South Africa; its secondary mandate is to generate income by exploiting its assets which consists of the rail network and the land around it, the rolling stock, the buses and the stations; it is organ of state in terms of s 239 of the Constitution; it is listed in schedule 3B of the PFMA; and is bound by s 217 of the Constitution, which requires it to procure goods and services "in accordance with a system which is fair, equitable, transparent, competitive and cost effective".

4. I am an admitted attorney. I have been Group Executive: Legal, Risk and Compliance since 1 September 2014. I annex as **MN1** my experience and career path. As emerges therefrom: I have been a Legal Advisor for two of the big four banks in SA: worked for Transnet during the period it disposed of some of its assets, one of which became PRASA; was CEO of Intersite Asset Investments (Pty) Limited ("Intersite"), a wholly owned subsidiary of PRASA; from August 2011 to August 2014 and then appointed as Group Executive: Legal, Risk and Compliance.

5. Among the tasks the incumbent of the position is required to perform are the following: advise PRASA and its subsidiaries on compliance with the applicable laws and regulations; drafting and vetting of contracts; providing legal advice; providing litigation support; and advising PRASA on establishing a system to identify risks and reduce the effects of risks on PRASA's business.

6. Insofar as these tasks is concerned, I point out the following: the position and its team are regarded as a necessity by those who wish to act in PRASA's best interests

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and believe in the rule of law; and, on the other hand, as a nuisance by those who wish to perpetuate unlawfulness, render the business unsustainable and cut corners. These latter people avoid consulting with us so that they are not told things what they do not want to hear.

7. It is a matter of public record that leaders in PRASA have been found seriously wanting when it comes to upholding the law and propriety. Evidence of this is contained in reports by the Auditor-General, the Public Protector, the National Treasury and investigations commissioned by the Board of PRASA. As a result of the culture within PRASA, I have had disagreements with a number of leaders in PRASA who saw me and the teams that I lead as a nuisance. Although I have had to pay the price for insisting on propriety and the rule of law, as I detail hereunder, I steadfastly continued to do what was and is in PRASA's best interests.

8. I have been asked by the Judicial Commission of Inquiry into State Capture to provide information on maladministration at PRASA of which I am aware insofar as it is related to State Capture.

9. In dealing with these matters, I consider that it will be helpful to begin with the following observation. In my respectful view maladministration and possibly corruption are quite widespread at PRASA. This was particularly while Mr. Lucky Montana was the CEO. However, his departure from PRASA has not resulted in these evils being eliminated. They still exist to this day, as I will try to demonstrate when dealing with more recent processes to assist persons and entities that were known to be close to Mr. Montana.

10. As regards this last mentioned group, two individuals stand out. They are Mr. Roy Moodley and Mr. Makhensa Mabunda. The entities with which Mr. Moodley was/is alleged to be associated are: Siyangena Technologies; Strawberry Worx; Royal Security and Prodigy. The entities with which Mr. Mabunda was/is associated are: the S Group, or the Siyaya Group of companies.

11. These are the individuals and entities who have benefitted most handsomely from contracts that were dubiously awarded to them or implemented in a highly dubious manner. Most of these contracts are the subject of litigation. As a result, in respect of such contracts there are disputes about among other matters the following: the validity of the contracts; whether there has been delivery by the entities; the values of the work they allegedly did or the services that they allegedly rendered; and they amount by which they were overpaid or is due to them.

12. More worryingly, during the course of the litigation, concessions were made by PRASA and settlement agreements concluded.

13. I submit that what should be an even greater cause of concern is that, notwithstanding that these issues have been and still are under scrutiny, attempts have been made to assist those who are the beneficiaries of the dubious contracts, even though PRASA has in the on-going litigation disputed not only the bases of the claims made against it but also the amounts that have been claimed.

14. Having regard to what I have set out above, the matters that I will address in this affidavit are the following: how I became aware of the influence that Mr. Roy

Moodley exercised at PRASA and its subsidiary, Intersite; my interactions with Mr. Montana at the time he was the GCEO of PRASA; the disputes between PRASA and the following entities: Strawberry Worx and the Siyaya Group of Companies.

Strawberry Worx

15. My first encounter with Strawberry Worx was while I was the CEO of Intersite. It came about against the following background and events.

15.1. On or about 23 July 2011, PRASA, through Intersite Assets Investments SOC Limited [a wholly owned subsidiary of PRASA and an agent of PRASA in that agreement] ("Intersite") and Umjanji Media (Pty) Ltd ("Umjanji") concluded an Advertising Agreement following an invitation for companies to submit proposals for media broadcasting advertising and broadcasting services in respects of various assets held by PRASA. The Agreement had commenced on 1 June 2011 and was for a period of five years unless terminated or renewed by the parties.

15.2. However, on 31 August 2011 and with the consent of PRASA, Umjanji ceded portions of its rights under the Advertising Agreement to Strawberry Worx and another entity called Siyathembana Trading. At the time I was already the CEO of Intersite.

15.3. Although Intersite, and not PRASA, was the party to the agreement, during the contract period, we at Intersite received instructions from Mr. Montana on how to deal with the advertising portfolio, more specifically the Strawberry Worx contract. Naturally we did not give any preference to any of the media players.

15.4. However, I was once summoned to a meeting with representatives of Strawberry Worx, a Mr. Maraj, Mr. Ashveer Dwaerkapersadh, Mr. Selwyn Moodley and one other gentleman whose details escape me with Tiro Holele who was the Chief Strategy Officer of PRASA at the time. There I was given instructions by the representatives of Straberry Worx on how I ought to manage the advertising portfolio and how I was expected to take instructions from them. I was even told that they have the power to remove the portfolio from Intersite and had intended to do so because I clearly did not know what I was doing. I responded that I do not take instructions from suppliers and that I report to no one but the Board of Intersite who was responsible for the advertising portfolio through the mandate from PRASA.

15.5. At the meeting, I was also told that there were instructions from Mr. Montana to remove instructions we had given to our legal representatives, Hogan Lovells, who were representing PRASA in a litigation instituted by Primedia challenging the advertising tender

process. I was told that Mr. Montana had instructed that I terminate the mandate of Hogan Lovells and appoint BBM Attorneys. [I record that BBM Attorneys were not on PRASA's panel of attorneys at that time.] I asked the reasons for the instruction, but none were given. I therefore decided not to heed the instruction and continued to work with Hogan Lovells: there was no basis to change from a firm that was familiar with the issues and would, given the circumstances, be more cost effective.

15.6. I did indicate to Mr. Montana that the move would amount to wasteful expenditure and that I was not willing to account for that and further that it was not possible to appoint a firm that was not on our panel. However, in May or June 2013, the portfolio was moved from Intersite to PRASA and Hogan Lovells were promptly removed from the brief by the Special Legal Advisor in the office of the Group CEO, Ms. Marlini Naidoo and replaced with a different firm. The last attorneys who handled the matter was Maraj Attorneys, who, coincidentally happen to also be attorneys of record of Strawberry Worx.

15.7. After the above meeting, Intersite continued to manage the portfolio – but under very difficult circumstances as threats we were constantly receiving of the mandate being removed from Intersite. But we told

Mr. Montana that he was first required to provide a resolution from the Board. No such resolution was provided to Intersite.

15.8. However, on or about 20 May 2013, the threats of removing the portfolio were carried out in a very aggressive and bullish way by a Ms. Naidoo, who was at the time Mr. Montana's Legal Advisor. Ms. Naidoo came to our offices unannounced and conducted "a raid". After I was alerted to their presence, I asked them why they were there. Ms. Naidoo told me that "she was an officer of the court" and had been instructed to remove the Strawberry Worx files from Intersite. When I asked for the document authorizing her to carry out the seizure, she accused me of conducting fraudulent activities on the portfolio and insinuated that that was the reason I did not want to release the files. She said she had strict instructions from Mr. Montana to remove the files and that I was at liberty to call Mr. Montana or whoever I needed to call.

15.9. I immediately called Mr. Montana, but he did not respond to my call. I then called Mr. Benny Boshielo, the lead independent Director on the Intersite Board. He told me that he was not aware of the instruction and that he would enquire from Mr. Montana. However, Ms. Naidoo proceeded to remove the files from Intersite.

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15.10. A Board meeting was scheduled for the following day, 27 May 2013. There, I asked Mr. Montana why he had not advised me of his instruction to have the files removed from Intersite. He responded that he had nothing to do with the instruction and that he did not know what I was talking about. I then asked that he schedule a meeting with all the relevant parties so that this matter could be dealt with. He scheduled the meeting for a few days later. Present at the meeting was Ms. Zinde, Ms. Naidoo, Mr. Holele, Mr. Montana and myself.

15.11. However, we were not even five minutes into the meeting when Mr. Montana started accusing Mr. Holele and I of not following his instructions. Mr. Holele told Mr. Montana that he had no authority to just remove the mandate of the advertising portfolio from Intersite without a proper Board resolution and thus he could not have carried out the instruction from Mr. Montana. Mr. Montana said that if we had followed his instructions for the advertising portfolio to be removed from Intersite and appointing BBM Attorneys we would not be sitting in the meeting.

15.12. I was taken aback by his approach: I had thought that the intended purpose of the meeting was to deal with the alleged instruction, which he had denied having given. Moreover, Ms. Naidoo then accused me of fraud and maladministration of the portfolio and that

I was preferring other media players over Strawberry Worx. I told Mr. Montana to put me on suspension if he believed the allegations against me, so that they could conduct an investigation unhindered.

15.13. However, instead of taking steps against me, Mr. Montana, outraged as he was, instructed that the manager who was responsible for the advertising portfolio at Intersite and had recently been moved to report to Ms. Zinde, Mr. Martin Chauke, be suspended with immediate effect Mr. Montana then instructed me to call Mr. Chauke and tell him to bring back all PRASA property that evening as he was suspended with immediate effect, this happened on 27 May 2013.

15.14. I did call Mr. Chauke and asked him to come to the office, but I refused to place him on suspension. Ms. Zinde said that seeing that she was now responsible for the advertising portfolio, she would issue the suspension letter to Mr. Chauke. Indeed Mr. Chauke arrived at the Intersite offices at about 11:30 pm. He was handed the suspension letter by Ms. Naidoo and Ms. Zinde.

15.15. I must point out that Mr. Chauke was on suspension with full pay for more than two years, but he was never charged. He was one of the employees who was brought back to the office after the Board of Mr. Popo Molefe had instructed that all suspensions of employees be

investigated. I also record that the Auditor General had noted that several PRASA employees were on suspension for very long periods without any charges and that this could constitute wasteful expenditure.

15.16. The effect of moving the advertising portfolio from Intersite to PRASA is that the management of the portfolio was not in the interests of PRASA and PRASA benefited little, if anything, from the portfolio.

15.17. I submit that what I have narrated denotes just how powerful Mr. Roy Moodley was at PRASA.

16. **Mr. Lucky Montana**

17. I first encountered Mr. Montana when I joined Intersite as an Executive in the office of the Intersite's CEO in January 2011. That appointment was made by Intersite's Board, of which Mr. Montana was Chairperson. Nine months later, on 1 September 2011, the Board, still chaired by Mr. Montana, appointed me as Intersite's CEO.

18. I was transferred to PRASA with effect from 1 September 2014. Three months later, Mr. Montana asked me to act in his position of Group CEO for two months, December 2014 and January 2015. These are peak periods for the long-distance businesses of PRASA (Mainline Passenger Services and Autopax) and it was at a

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time when the Board was considering a very important tender for the construction of the biggest depot for PRASA. On his return, Mr. Montana thanked me personally and at a Group EXCO meeting for the hard work and having held the fort for him.

19. On 18 May 2015, Mr. Montana sent an email, a copy of which is attached hereto marked annex **MN2.** The contents of the email are self-explanatory. The email was sent after the Legal Function of PRASA, through Mr. Fani Dingiswayo and me, had indicated that we were not in a position to deal with the Swifambo contract which required some amendments to be effected to the main agreement that was already in place. As the Legal Function, we had asked several questions on the principal transaction to which no satisfactory responses were provided. The Legal Function had not been involved in the negotiations and drafting of the initial contract and we advised the external lawyer that was retained by PRASA to advise on, amongst others, the Swifambo transaction, Ms. Brenda Malongete that the transaction was too far gone and we were not able to participate in the matter. Mr. Dingiswayo had also given advice on an instruction requiring an amendment of a contract between PRASA and Prodigy Business Services. Mr. Dindiswayo's advice did not accord with the instructions given by Mr. Montana to have the contract extended and amended. [I must record that the Swifambo contract was set aside by the Courts, Mr. Makhensa Mabunda was closely associated with Swifambo and that Mr. Moodley was closely associated with Prodigy.]

20. Later that day, that is 18 May 2019, Mr. Montana summarily dismissed Mr. Dingiswayo. Immediately after I was told of his dismissal, I called Mr. Montana and

asked him why Mr. Dingiswayo was dismissed and how he could carry out that decision without first having spoken to me since Mr. Dingiswayo was my direct reportee as General Manager: Group Legal Services. The discussion did not go well: I told Mr. Montana that I am dealing with a repeat of how he had dealt with Mr. Chauke when I was at Intersite and that it was not acceptable. I told him that he should have rather engaged with me on the matter before taking the drastic steps he had taken. I said I had sanctioned all the decisions Mr. Dingiswayo took and supported the advice he had given. I asked to meet him the following day. He agreed to this meeting.

21. We indeed met on 19 May 2015. The meeting started at 18:00. By 18:05, Mr. Montana told me he was dismissing me with immediate effect. I received my dismissal letter on 20 May 2015. I annex a copy as **MN3**. I submit that the dismissal was procedurally and substantively unfair. I record that no charges were preferred against me and there was no hearing. I referred the dismissal to the CCMA. In addition, I told PRASA's Board about the unfair dismissal. The Board's chairperson, Mr. Popo Molefe, discussed the matter with Mr. Montana, who could not advance reasons why the dismissal was fair. He was then directed by the Board to reverse the dismissal and deal with any issues that he may have in a fair manner. Mr. Montana then withdrew the dismissal. However, he decided to the place me on suspension. This suspension was lifted during August 2015 after an investigation by the then acting Group CEO, Mr. Nathi Khena, found no evidence of misconduct on my part.

22. I might point out that I was neither the first nor the last person to be unfairly suspended or dismissed by Mr. Montana. The report of the Public Protector finds that those actions constituted maladministration.

23. As far as the Swifambo contract was concerned, I point out that both the High Court and the SCA described it as corrupt and a form of fronting. The court commented unfavourably of Mr. Montana and Mr. Mtimkulu, who had fraudulently misrepresented that he had a doctorate, when he in fact had no tertiary qualification.

24. Insofar, as Prodigy was concerned, PRASA is in dispute not only with Prodigy, a matter that Mr. Dingiswayo deals with in his affidavit, but also with other entities with which Mr. Moodley is associated, in particular the Siyangena Technologies.

Mr. Mabunda and the S or Siyaya Group of companies

25. I start this part of my affidavit by pointing out the following. First, there is presently a dispute relating to several contracts between PRASA and the Siyaya Group, which is also known as the S Group, which was under the control of Mr. Mabunda, a close associate of Mr. Montana. [One of the companies is now under liquidation.] The companies are controlled by Mr. Mabunda. It is not my intention to persuade this Commission of the merits of PRASA's contentions. That is a matter for the Court seized with the matter to decide. The reason that I mention this matter to the Commission is to show the lengths, often improper, to which people at PRASA went to ensure that PRASA was required to pay to the Siyaya Group moneys that PRASA had been advised was not due to Siyaya. However, in order to understand these

maneuverings it is necessary to set out very briefly the nature of the dispute between PRASA and the Siyaya companies.

26. During 2015 and 2016, the Siyaya entities instituted six actions against PRASA as follows: Case 47597/2016 by Siyaya Rail ("**Siyaya Rail Case**"); Case 73933/2015 by Siyaya DB ("**Siyaya DB Case 1**"); Case 73934/2015 by Siyaya DB ("**Siyaya DB Case 2**"); Case 47598/2016 by Siyaya DB ("**Siyaya DB Case 3**"); and Cases 74281/2015 and 77333/2015 by Siyaya DB. The Siyaya entities claimed payment from PRASA allegedly arising from PRASA's failure to pay them for professional services allegedly rendered in terms of various consultancy agreements. PRASA pleaded to the particulars in each case. After the close of pleadings, PRASA and the Siyaya entities agreed that the four matters (and Case 74281/2015) would be consolidated and referred to arbitration. This agreement was made an order of court on 3 May 2017.

27. On 26 June 2017 the parties held a pre-arbitration hearing before the arbitrator, Judge Brand. It was agreed that the arbitration would commence on 11 September 2017. The parties proceeded with the discovery process.

28. However, PRASA discovered that on 24 March 2017 Siyaya DB had filed for voluntary liquidation and that its liquidators had been appointed on 14 July 2017.

29. The liquidators initiated an insolvency inquiry in accordance with s 417(1) and s 418(2) of the Companies Act ("**the Insolvency Inquiry**"). That inquiry was

held on 28 August 2017 and 31 August 2017. A number of PRASA employees, including Mr. Vincent Kobuwe, Mr. Letsane Rathaba, Mr. Sorin Baltac, Mr. Tonie Vermeulen and Mr. Johan Edwards were served with subpoenas to appear at the Insolvency Inquiry to testify. PRASA appointed Diale Mogashoa Attorneys ("DM Attorneys") to advise and assist these employees in their preparation to testify. PRASA's Group Legal Services held a number consultations with DM Attorneys to discuss the subpoenas and the assistance to be provided to PRASA's employees. Mr. Kobuwe, Mr. Rathaba, Mr. Baltac, Mr. Vermeulen and Mr. Edwards testified at the Insolvency Inquiry. DM Attorneys and senior counsel attended the Insolvency Inquiry and were present when the PRASA employees were testifying. No re-examination or cross-examination was permitted. As emerges from what thereafter transpired, there was a dispute between the parties about the nature of the testimony of PRASA's employees at the hearing. However, I submit that for that for present purposes nothing turns on this.

30. In the meantime, the Siyaya entities failed to respond to PRASA's request to produce further and better discovery and its request for further particulars, and failed to deliver its trial bundles. As a result, the arbitration which had been set down for 11 September 2017, was postponed. PRASA filed applications to compel further and better discovery and a response to the request for further particulars. These applications were not opposed by the Siyaya entities.

31. I had anticipated that the matters would be heard and argued before Judge Brand towards the end of 2017 or early 2018.

32. As part of the essential background I point out that the term of appointment of the Board of Control ("the Board") that was led by Mr. Popo Molefe lapsed on 31 July 2017. On 17th October 2017, an Interim Board was appointed by the then Minister of Transport, Mr. Joe Maswanganyi. Ms. Nana Makhubele, a senior counsel, was appointed its Chairperson. Dr Natalie Skeepers, Professor John Maluleke and Ms. Magdelene Reddy were appointed as the other members. This Board was not properly constituted as it did not have the minimum number of persons that should be appointed to the Board in terms of the Legal Succession Act.

33. On 9 November 2017, Ms. Makhubele asked to meet with me in anticipation of a meeting between the Interim Board and Parliament's Portfolio Committee on Transport. The purpose of the meeting was to explain the role of Group Legal Services, and the status of the forensic investigation conducted by Werksmans Attorneys. I invited the second most senior colleague in Group Legal Services, Mr. Dingiswayo, to the meeting. Mr. Lindikaya Zide also attended the meeting in his then capacity as the Acting Group CEO of PRASA.

34. The following week, Ms. Makhubele asked for another meeting with me – this time to ascertain the status of the matters between PRASA and the Siyaya entities. She, Mr. Zide and I met on 14 November 2017. I told her that PRASA was defending the five matters and that they had been referred to arbitration.

I said PRASA had good prospects of successly defending the claims. But Ms. Makhubele said a colleague had given her access to a report from the Insolvency Inquiry. She said that the report revealed that PRASA's employees had conceded that the Siyaya entities' claims in four matters were valid and payable. But she did not provide me with a copy of the report. I was surprised by what she said as I was aware that DM Attorneys had been present at the hearings and had not told me of concessions having been made. Ms. Makhubele asked that I instruct DM Attorneys to prepare a report on the prospects of success in the Siyaya matters. I did so.

35. DM Attorneys prepared the report and it was forwarded to Ms. Makhubele on 21 November 2017. I annex it as **MN4**. As is clear, DM Attorneys provided a full update on the status of each of the matters as well as PRASA's defences. On 28 November 2017 I received a memorandum prepared by Ms. Makhubele and addressed to Mr. Zide. I annex a copy as **MN5.**

36. In her memorandum, Ms. Makhubele startlingly records the following. First, she had been approached by "attorneys acting for Siyaya Consulting Engineers (In Liquidation) ... on or about 14 November 2017". Second, they had provided her with an interim report of the Insolvency Enquiry. Third, DM Attorneys' statement that it did not have a copy of the interim report "may not be entirely correct". She noted that the interim report records that at the insolvency hearing PRASA's employees and former employees had made major concessions with regard to PRASA's liability in the civil actions.

37. She went on to say that she intended to report to the Interim Board. She therefore instructed the PRASA officials to submit written reports to confirm their testimony and requested DM Attorneys to advise her of PRASA's "defence strategy particularly in view of the concessions".

38. Two of PRASA's employees who testified at the Insolvency Inquiry prepared written reports which were provided to Ms. Makhubele. On 30 November 2017, Mr. Dingiswayo (of Group Legal Services) submitted a report to Mr. Zide in his capacity as the Acting CEO. The report concluded: "we believe that the defences raised against Siyaya's claims are cogent and that PRASA must have a counterclaim against Siyaya" on the basis of a fraudulent misrepresentation. The report is annexed as **MN6.** Shortly after she received the report, Ms. Makhubele responded, expressing her displeasure at the fact that her memorandum had been shared with DM Attorneys.

39. On 30 November 2017, DM Attorneys provided a further report which was also sent to Ms. Makhubele. It is annexed as **MN7.** In essence, it said the following. The parties had agreed that the arbitration proceedings would commence on 26 March 2018. They also noted their concern that Siyaya's attorneys, Mathopo Attorneys, had directly approached Ms. Makhubele, saying: "Ordinarily, and in respect of matters litigated upon and where attorneys have come on record on behalf of such litigating parties, legal representatives of one party may not directly be in contact with their opponent's clients without their colleague's knowledge and/or consent. It is surprising that our opponents have gone on to do so, and that they went

on further to hand over documents to the Chairperson." They also expressed concern that Adv Francois Botes SC, who represented Siyaya, had sent Judge Brand a copy of the interim report of the insolvency inquiry and that it had not been sent to DM Attorneys. They also noted that it was difficult to say how these developments would affect the outcome.

40. On 15 December 2017, Mr. Dingiswayo called Mr. Mogashoa of DM Attorneys to inquire about the progress on the matters. Mr. Mogashoa told Mr. Dingiswayo that Ms. Makhubele had barred him from engaging with Group Legal Services on the Siyaya matters.

41. I was not privy to what happened after 30 November 2017, as Group Legal Services was deliberately excluded from any involvement in the Siyaya matters. However, I have been able to piece together what had happened from various documents that I have come across. What happened may be summarized as follows.

42. On 15 December 2017, Mr. Zide, in his capacity as the Company Secretary, wrote to Mr. Mogashoa referring to a meeting between Mr. Mogashoa and the Board Chairperson on 15 December 2017. [I point out that Mr. Zide's tenure as Acting CEO ended on 6 December 2017. On 7 December 2017, Mr. Cromet Molepo was appointed as Acting CEO. Accordingly all Mr. Zide's actions after 6 December 2017 were performed in his capacity as Company Secretary.] The letter goes on to confirm Ms. Makhubele's instructions as follows: Case 74281/2015 was to be pended until further instructions; in respect of Case

DB2, the matter was to be settled for the amount claimed, namely, R7 098 481.66; Case DB1, the matter was to be settled for the amount claimed, namely, R8 095 950.00; Case DB3, the matter was to be settled for the amount claimed, namely, R15 371 739.87; the Siyaya Rail case, the amount claimed was R21 million, but it was to be settled at R19 583 778.42. In respect of interest, this should be reckoned from the date of summons. The letter concluded as follows: DM Attorneys were to make the following offers: to pay the liquidators of Siyaya DB R30 566 171.53 plus interest; and to pay the attorneys representing Siyaya Rail R19 583 778. 42 plus interest.

43. In a later letter that Siyaya's attorney wrote to PRASA's attorney, after the tender was made, Siyaya's attorney complained that the tender made did not correspond with PRASA's "specific and express instruction". I do not know how or why Siyaya's attorney had knowledge of the instructions given to PRASA's attorneys.

44. On 21 December 2017, Mr. Mogashoa sent a revised offer to Mr. Mathopo. That revised offer was accepted.

45. On 7 February 2018, Adv Botes and Mr. Mogashoa, purportedly representing PRASA, approached Judge Brand. He heard both parties and made an award in terms of the settlement.

Thereafter, in March 2018 we became aware that Siyaya had brought an application in the North Gauteng High Court to make the award granted by Judge Brand an order of court.

We immediately instructed Bowman Gilfillan to file a notice to oppose. The application was set down for 9 May 2018. However, Siyaya's legal representatives challenged Bowman Gilfillan's authority to act on behalf of PRASA. I filed a power of attorney. However, Mathopo Attorneys wrote to Bowman Gilfillan saying they had a text message from Ms. Makhubele to the effect that Bowmans did not have the authority to represent PRASA. Mr. Dingiswayo told the Board of this but they remained unmoved. I also told Minister Blade Nzimande, who had just been appointed Minister of Transport. The letter to the Minister is attached hereto, marked annex **MN8.**

46. At the hearing on 9 March 2018, acting Judge Holland-Muter upheld Siyaya's point that PRASA's lawyers did not have the authority to represent PRASA and entered default judgment against PRASA. The Board, the Minister and Group EXCO were informed of these setbacks. Worse was to follow. Siyaya's representatives instructed the sheriff to attach PRASA's banking account and about R59 million was removed from it. Thereafter, however, the Minister did intervene. He instructed that steps be taken to have the default judgment rescinded and to also recover PRASA's money.

47. To this end, an application was made to interdict the Sheriff from paying any money to the Siyaya entities, pending an application to rescind the default judgment. That interdict was granted. Then a rescission application was brought. That application was granted by Tuchten J. The sheriff was then asked to return the funds that were removed from PRASA's banking account. The effect of the judgment was that Siyaya's application to enforce the award was rescinded.

48. The bases on which the rescission application was sought were as follows. On a proper consideration of PRASA's delegation of authority, neither the Chairperson of the Board nor the CEO had the authority to settle the claims, unless and until certain steps had been taken and certain procedure had been followed. Neither had been complied with. Accordingly, there was no proper authority to settle Siyaya's claims.

49. On the basis of the foregoing, PRASA applied for the award made by Judge Brand to be set aside in terms of s 33 of the Arbitration Act in that it had been "improperly obtained".

50. I record that what is set out above is a summary of what was contained in PRASA's affidavits in the applications.

51. Before I conclude this part of the affidavit, I must point out the following. Ms. Makhubele was nominated to be a Judge in July 2017 and the JSC recommended her for appointment on 4 October 2017, effectively meaning that she would soon be a Judge. Yet, on 19 October 2017, the Minister appointed her as Chairperson of the Interim Board. More surprisingly, she accepted the appointment. On 2 November 2017, the Presidency announced that she had been appointed as a Judge with effect from 1 January 2018. She however deferred the appointment and only took office from 1 April 2018. Her resignation from the Board was announced on 23 March 2018 and said to be with effect from 16 March 2018. It is during her short stay of five months on the Board that her intervention on behalf of Siyaya occurred.

52. I am aware that a complaint has been lodged with the JSC, based on her role in PRASA's dispute with Siyaya.

DG's meeting with contractors in dispute with PRASA

53. In the previous section, I noted the interference by the Chairperson of the Board in management matters. In this section, I describe how the then acting Director-General ("DG") of the Department of Transport sought to play a role in intervening in disputes between PRASA and service providers. The relevant facts may be summarized as follows.

54. On 25 April 2019, a meeting was called at the Department of Transport ("the Department) by the then acting DG of the Department, Mr. Chris Hlabisa.

55. Present at the meeting (from the Department) were: the DG; Mr. JD de Villiers (the Acting DG of Rail); and Ms. Constance Maleho (the Acting Chief Director: Rail Infrastructure & Industry Development). From PRASA, the following were present: the then Acting Group CEO, Dr. Nkosinathi Sishi; the Acting CFO, Ms. Thobeka Mahlati and PRASA's Senior Manager Finance, Ms. Lydia Matloga. Among the suppliers present were: Mr. Makhensa Mabunda and Mr. Prince Phaweni (of Siyaya Consulting Engineers); and Mr. P S Reddy and Mr. Tom Dubek (from Siyangena Technologies). There were other suppliers present but I have focused on the two I have identified. A copy of the minutes of the meeting is annexed as **MN9**.

56. I was not present at the meeting, as I was not invited. I mention this because one

would have thought that in light of the fact that PRASA is litigating with these entities, the head of its Legal Function would be a crucial person to invite. I say this because I would have raised an objection to discussing settlement, especially where Siyaya was concerned as the liquidators were not present. In addition, as I have described above, PRASA had successfully set aside the settlement agreement which had been improperly entered into. Yet, Mr. Mabunda appears to have felt that it was still appropriate to attend the meeting on behalf of a company that is in liquidation and claim that PRASA is indebted to it. I submit that this shows that Mr. Mabunda is relentless in his pursuit to continue to syphon monies from PRASA. As far as Siyangena is concerned, it is a known fact that PRASA is in a massive litigation with Siyangena with an application to review and set aside contracts still pending. It is worrying that instead of discussing their proposal to settle the matter with PRASA's attorneys, Siyangena representatives have chosen to rather approach the Department and not follow the court process. The Review application of the Siyangena contracts related to contracts that are valued at more than R5 billion.

57. On 30 April 2019, PRASA's Group EXCO meeting was held. Being a member of Group EXCO, I attended this meeting. It was chaired by the then Acting Group CEO, Dr Nkosinathi Sishi. Dr Sishi told Group EXCO meeting of the meeting with suppliers and that they had complained about PRASA's Legal Function's handling of their matters. He alluded to the possible settlement of these matters. I made it very clear to Dr Sishi that the suppliers he was referring to were all in litigation with PRASA and that as PRASA we were fighting the cases accordingly.

I also indicated that, as the Legal Function and having consulted extensively with the business on the various matters, we believed that PRASA's prospects of success were good, as evidenced in the Siyaya rescission matter, which had saved PRASA some R60 million, which had been attached by Siyaya. Dr Sishi said that there were complaints even among PRASA staff members about how the Legal Function, together with a particular law firm, whose name he did not mention, was treating employees. I was surprised and asked him to provide details after the meeting. He suggested that a separate meeting will be held on 9 May 2019 to discuss these matters. However, to date this meeting has not happened. But on 22 May 2019, he placed me on special leave. I have dealt with being placed on special leave in a separate affidavit, which has already been given to the Commission.

Conclusion

58. I submit that the foregoing matters prompt the following concern. PRASA concludes contracts with service providers running into tens or hundreds of millions of rinds. As I have pointed out, some contractors have undue influence with persons in key positions at PRASA. When disputes arise, usually about payment, often legitimate questions are raised about the validity of the award of the tender or the terms and scope of the contract. Given that these are often constitutional issues, involving section 217 of the Constitution and administrative action, such disputes ought properly to be decided by the Courts.

59. That is the approach adopted by PRASA's Legal Function. However, what I have described above demonstrates that that approach is often undermined by senior persons at PRASA. Settlements are concluded, and when the Legal Function attempts to act in PRASA's best interests, steps are taken against us.

60. This cannot be in PRASA's best interests. For, our experience is that the "settlement route" is adopted not only when influential persons are involved but is extended to others as well, to PRASA's grave prejudice.

61. Allied to this is the pattern of appointing people in acting capacities. Such persons are easily manipulated.

62. The same, I submit, applies to appointing "Interim Boards". That was the position at PRASA for nearly 30 months now. However, at present PRASA does not even have an interim board: it has someone called an Administrator (a position that is not provided for in any law that applies to PRASA), who in effect is PRASA's accounting authority and Group CEO all in one. I do not believe that this is lawful and have provided the attached opinion in that regard as annex **MN10**.

Onica Martha Ngoye

I certify that this affidavit was signed and sworn before me at Pretoria

FOR STATE CAPTURE COMMISSION PURPOSES ONLY

on this the 17th day of FEBRUARY 2020, by the deponent after the deponent declared that she knew and understood the contents of this declaration, that the deponent had no objection to taking the prescrined oath and has taken the prescribed oath which the deponent considered binding on her conscience, having complied with regulations contained in Government Notice R1258 of 21 July 1972, as amended.

COMMISSIONER OF OATHS

Name: TANDO NGENO

Address: PRACTISING ATTORNEY RSA
COMMISSIONER OF OATHS
UNIT C50 BROOKLYN OFFICE PARK
488 FEHRSEN STREET, BROOKLYN 0181
TEL: 012 004 0424

Designation

Annexure "MN1"

CURRICULUM VITAE

Personal Information

Candidate	:	Onica Martha Ngoye
Nationality	:	South African
ID Number	:	691219 0445 080
Languages	:	Tswana, Zulu English and Afrikaans
Contact No.	:	082 336 6812
References	:	Mark Edwards (General Counsel Barclaycard) Tel: 0944 1604 252901 Clearway: 2500 Mobile: 0944 7775552128 Dr. Popo Molefe (Chairperson of PRASA 2014 -2017) Mobile: 0834546714/0636994433 Siyabulela Mapoma (Advocate) Mobile:083 452 8418

Professional Memberships

Admitted Attorney of the High Court of South Africa (1997)

Education

UNIVERSITY OF THE WITWATERSRAND
Bachelor of Laws LLB (Post-graduate) (1993 – 1994)
Obtained 2 distinctions; received the Deneys Reitz Merit Bursary.

UNIVERSITY OF THE WESTERN CAPE
Baccalaureus Procurationis (1989 – 1992)
Obtained 10 distinctions.

ST TERESA'S CONVENT
Matric, university exemption (1987)
Prefect; Class Captain; Hockey Captain.

BOARD POSITIONS

Executive Director:	Intersite Asset Investments SOC LTD (2011 - 2014)
Vice Chairperson:	Lourdes Primary School (2010 to 2017)
Board Member:	St Teresa's Mercy School (2012 to date)
Board Member:	Transwerk Foundries (2007 - 2010)

MEMBERSHIPS AND OTHER ACTIVITIES

Admitted Attorney
Corporate Lawyers Association 1998 till 2003 through Standard Bank
Lectured on the Black Lawyers Association Commercial Legal programme 2008

Career Overview

PASSENGER RAIL AGENCY OF SOUTH AFRICA ("PRASA")

Group Executive: Legal, Risk and Compliance: September 2014 to date

Primary Purpose: As a member of the Group Executive Committee team ("Group EXCO"), I am a permanent invitee to all the Committees of the Board, report to the Group Chief Executive Officer and Group EXCO.

Lead the following functions: Group Legal Services, Group Enterprise-wide Risk Management; Group Insurance; Group Compliance, Group Business Continuity Management. Responsible for the strategic management of the business and operations of PRASA in respect of the functions mentioned above.

Provide specific strategic direction to the teams. Ensuring that there are policies in place in respect of functions and compliance thereof.

The following General Managers report to me:

General Manager: Group Legal Services;
General Manager: Group Compliance;
General Manager: Group Enterprise Risk Management;
General Manager: Group Insurance;
General Manager: Business Continuity Management

Preparing reports and advising the Board Committees and the Board on matters relevant to the respective committees and the Board.

Leading the Insurance Team in ensuring that Insurance is secured for PRASA assets, thus engaging with both International and Local Market players ensuring that at the commencement of each financial year, a new Insurance Policy is in place for the organisation.

Ensuring that the organisation has an Enterprise Wide Risk Management Strategy at a Group Level as well as assisting the divisions within PRASA to focus on Risk Management.

Leading all strategic litigation cases in the organisation. Lead the Forensic Investigations commissioned by the Board of PRASA and advising the Board accordingly and reporting to the Board on the status of the matters, thus briefing and engaging with various legal firms.

Working closely with law enforcement agencies, including but not limited to, the Directorate for Priority Crime and Investigations (the Hawks), the Special Investigations Unit, the State Capture Commission.

Acting CEO: PRASA RAIL: JUNE 2018 to March 2019

Primary Purpose: to Lead the biggest business unit and the main business of PRASA and to report its performance to the Group EXCO and the Board of PRASA. Lead the Executive Committee of PRASA Rail including but not limited to:

- Overseeing managers responsible for Regional Commuter Rail business ("Metrorail") and the Main Line Passenger Services ("MLPS") (long-distance intercity train service).
- Ensuring the renewal of PRASA's operating permit and managing compliance to RSR permit conditions.
- Managing the protection of assets and passengers.
- Managing the Interface and Agreements with other rail operators.
- Ensuring the interface between train operations and the Engineering function.
- Managing Stakeholders
- Financial Management of the Rail business.
- Managing personnel cost in PRASA Rail.
- Ensuring that the Rail Operations operates in a controlled and compliance manner.
- PRASA Rail Risk Management.
- Ensuring integration of operations and the Modernisation program.
- Developing revised operating model for rail consistent with an enabling regional delivery model.

Acting Group CEO of PRASA: December 2014 to January 2015

Lead PRASA Group and acted in accordance with the Delegated Authority vested in the Group CEO by the PRASA Board.

INTERSITE ASSET INVESTMENTS SOC LTD

Chief Executive Officer: September 2011 to August 2014

Primary Purpose: To lead Intersite in its strategic intent and carry out the Mandate of Intersite as detailed in the Business Plan of Intersite and to ensure the alignment of Intersite's strategy with PRASA's strategy, including monitoring and reporting on implementation of strategic plan and business plan.

Secondary Purpose:

- Attend to the management and monitoring of any internal and external persons appointed by the Company;
- Provide project management assistance and guidance in the Company's business case development process, including monitoring, reporting and control of budgets;
- Ensure that all reporting on strategy implementation and performance of the Company has been completed in accordance with generally accepted documentation standards;
- Employing the best people and developing best practice processes in order to achieve sustainable business growth and maximise the return on investment for PRASA.

Lead the Executive Team comprising of 8 (eight) direct reports namely:-

- The Chief Financial Officer;
- The Company Secretary;
- Executive: Commercial Services;
- Executive: Property Investments;
- Executive: Third Parties
- Investment Officer
- Senior Manager: Strategy, Risk and Compliance
- Executive Personal Assistant

Executive: Office of the Chief Executive Officer Intersite Asset Investments SOC LTD: January 2011 to August 2011

Exercise all the rights, duties and powers of the Executive in the Office of the Chief Executive Officer, and as may be conferred upon the Executive from time to time by delegation from the

Company, and comply with the rules and orders governing this office or any office the Company may assign to her;

Promote compliance with all statutory obligations imposed upon the Company or upon its employees and the Executive;

Provide strategic support to the Chief Executive Officer of the Company;

Develop strategy and business plan of the Company;

Ensure the alignment of Company strategy with the strategy of the Group, including monitoring and reporting on implementation of strategic plan and business plan;

Attend to the management and monitoring of any internal and external persons appointed by the Company in area of responsibility as consultants;

Provide project management assistance and guidance in the Company's business case development process, including monitoring, reporting and control of budgets;

Ensure that all reporting on strategy implementation and performance of the Company has been completed in accordance with generally accepted documentation standards

Oversee the administration of Corporate Support Function to ensure that HCM, IT and SCM support services are provided to the Company in line with Group policies; and

Perform all such duties that may reasonably be required to perform by the Chief Executive Officer of the Company.

TRANSNET LIMITED

Legal Advisor: Corporate and Finance Law April 2006 to 31 December 2010)

- Drafting / Vetting / negotiating the contracts for the Disposal of all the Non – core businesses of Transnet:
    - Sale of shares agreements for South African Airways, South African Express Airways to the Department of Public Enterprise;
    - Sale of business agreements, for Viamax, Freightdynamics, Shosholoza Meyl, Metrorail, Transnet's Lending Book, Marine Growers, and others;
    - Information Memoranda of the various businesses;
    - Tender documents in respect of each sale etc.



- Restructuring related matters

- Various Treasury related transactions including the establishment of the Domestic Medium Term Note Programme, the Global Medium Term Note Programme, drafting, negotiating and vetting Export Credit Agency Facility agreements, drafted, vetted and negotiated various finance agreements, Private placements, International Swaps and Derivatives Agreements, Various Banking Facilities, Club Loans, Legislative reviews;
- Advised the company on various Labour related issues, policies etc.
- General various commercial transactions for the business, advising the company on legislative and regulatory issues, engineering transactions etc.
- Member of Transnet's Investment Forum, appointed by the Chief Financial Officer of Transnet, responsible for review of all investment proposals to be submitted to the Transnet Capital Investment Committee for approval, with specific focus on reviewing proposed investments and divestments, to ensure submissions are complete in all material respects and that proposed projects increase shareholder value; ensuring that all potential financial risks over the life cycle of the planned projects are highlighted in submissions and that plans are in place/developed to mitigate risk; ensure that investment proposals obtain all necessary approvals from operating businesses governing structures, make recommendations concerning investments or divestments opportunities.
- Member of Transnet's Public Finance Management Act ("the PFMA") Steering Committee, ensuring compliance with PFMA legislative requirements, compliance therewith and reporting requirements on wasteful, irregular spends and identifying same and advising on corrective action to be taken by Transnet.
- Member of Transnet's Fraud Committee from 2006 till 2007, advising the company on code of ethics, how to deal with and report all fraud related issues especially from a legal perspective.

BARCLAYS BANK PLC, SOUTH AFRICA BRANCH

Legal Advisor (November 2002 to March 2006)
Co-authored a chapter in a book Cyberlaw @ SA II - the Law of the Internet
Barclays Leadership for the Cutting Edge in conjunction with GIBS

- Drafting / Vetting / Negotiating the following contracts:
    - Joint venture between Barclaycard and Standard Bank - I understood the card business which Barclays was acquiring from Standard and therefore became the internal Legal adviser working together with external attorneys and a team responsible for M&As in the Bank. Worked closely with the bank MD advising him of the status of the transaction and any regulatory issues that were material to

- Restructuring related matters

- Various Treasury related transactions including the establishment of the Domestic Medium Term Note Programme, the Global Medium Term Note Programme, drafting, negotiating and vetting Export Credit Agency Facility agreements, drafted, vetted and negotiated various finance agreements, Private placements, International Swaps and Derivatives Agreements, Various Banking Facilities, Club Loans, Legislative reviews;
- Advised the company on various Labour related issues, policies etc.
- General various commercial transactions for the business, advising the company on legislative and regulatory issues, engineering transactions etc.
- Member of Transnet's Investment Forum, appointed by the Chief Financial Officer of Transnet, responsible for review of all investment proposals to be submitted to the Transnet Capital Investment Committee for approval, with specific focus on reviewing proposed investments and divestments, to ensure submissions are complete in all material respects and that proposed projects increase shareholder value; ensuring that all potential financial risks over the life cycle of the planned projects are highlighted in submissions and that plans are in place/developed to mitigate risk; ensure that investment proposals obtain all necessary approvals from operating businesses governing structures, make recommendations concerning investments or divestments opportunities.
- Member of Transnet's Public Finance Management Act ("the PFMA") Steering Committee, ensuring compliance with PFMA legislative requirements, compliance therewith and reporting requirements on wasteful, irregular spends and identifying same and advising on corrective action to be taken by Transnet.
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    - Joint venture between Barclaycard and Standard Bank - I understood the card business which Barclays was acquiring from Standard and therefore became the internal Legal adviser working together with external attorneys and a team responsible for M&As in the Bank. Worked closely with the bank MD advising him of the status of the transaction and any regulatory issues that were material to

the transaction. Successfully completed the transaction and launched the cards within the time frame stipulated.

- Syndications; - vetting and negotiating contracts for the Bank
- The First and Second City Of Johannesburg Municipal Bond Issues - Legal Adviser as Barclays was appointed as lead manager and lead adviser for the transaction as well as underwriters. Appointed an external firm of attorneys to assist with the transaction. Ensured compliance with all the relevant legislative requirements. Assisted ion drafting and settling the circulars and drafting and negotiating various contracts in the transaction – Underwriting agreement, Subscription agreement, Engagement letter, guarantees for the enhanced portion of the transaction.
- City Of Johannesburg – Domestic Medium Term Note Programme - Advised the Bank as lead managers on legal issues. Ensuring compliance with relevant legislation. Drafting and negotiating relevant contracts.
- Barclays Bank Mauritius Branch Domestic Medium Term Bond Programme - Appointed external legal adviser for the Bank in Mauritius to advise the Bank on the transaction and to ensure compliance with the relevant legislation in Mauritius. Worked closely with the legal adviser in ensuring that the transaction accorded with the Bank's requirements.
- Corporate Lending structures - Drafted, vetted and negotiated various Term sheets, Facility letters, security documents.
- Property transactions - Property Finance transactions. Drafting of various documents – Term sheets, loan documents, security documents etc.
- Trade Finance transactions - Vetting, drafting security documents – Letters of Credit, Guarantees etc.
- Commercial and banking laws - Knowledge of the Bank's Act, PFMA, Companies Act etc.
- HR Legal Business Partner - Identified legal risks, put policies in place, identified training needs for the business and assisted in setting up a training programme. Represented the Bank at the Commission for Conciliation Mediation and Arbitration. Drafted settlement agreements, assisted with Disciplinary hearings etc. Discussed major HR issues with the HR Director. Part of Restructuring Steering Committee. Appointed external legal advisers where the need arose. Assisted the Bank's Africa operations on legal issues working together with the in country legal advisors. Drafted and standard employment contracts etc.
- Acting as Head of Legal from October 2004 - Headed up a team of 4 senior legal advisers within the Bank, 2 personal assistants as well as 2 secondees. Was responsible for South Africa Branch Legal Risk Reports. Appointed to act on the Governance and Control Committee within the Bank where all risks were identified and control measures put in place. Responsible for the legal budget.

- ABSA/Barclays Integration Team - Assisted in identifying and mapping differences between the ABSA legal function and the Barclays legal function. Aligning the ABSA model with the Barclays model.
- Reporting on Legal Risk;
- Various Commercial Agreements:
  - Information Technology;
  - Safe Custody Agreements;
  - Procurement ; etc
- Assisted in various Pan Africa Projects

THE STANDARD BANK OF SOUTH AFRICA LIMITED

Legal Consultant, Group Legal Division (September 1998 – November 2002)

- Drafting and vetting of the following Commercial contracts:
  - Privatisation agreements (all contracts relating to the Telkom Initial Public Offering transaction);
  - Joint venture agreements (between Standard Bank and Edgars);
  - Maintenance agreements;
  - Purchasing agreements;
  - Bank Trading agreements;
  - Treasury medium term note;
  - Software agreements;
  - Service level agreements;
  - Outsourcing contracts (e.g. computer systems, labour, etc.);
  - Loan agreements;
  - Sponsorship agreements;
  - Preference share subscription agreements;
  - Financial and technical guarantees;
  - Pledges;
  - Pension Fund documents.
- Banking Law;
- Transactions in Africa banking - Lesotho Bank, Malawi Bank;
- Bluebean.com project, business to business project (the tradestandard.com);
- Internet and e-commerce within banking;
- Cyber Law;
- Litigation;
- Projects – imaging and workflow, image proof of deposit;
- Standard Chartered and Merchant Bank disaster recovery plan;
- Lecturing MBA students at Wits Business School on e-commerce and related matters.

EDWARD NATHAN AND FRIEDLAND INC

Professional Assistant, Commercial Department (April 1998 – September 1998)

- Due diligence investigations;
- Outsourcing;
- Preference share structures;
- Amalgamating Safcol and the Department of Water Affairs and Forestry;
- Nelspruit concession;
- Drafted contracts e.g. joint ventures;
- General commercial work;
- Prospectus;
- Empowerment transactions.

Professional Assistant, Litigation Department (January 1997 – March 1998)

- High Court and Magistrate's Court commercial litigation;
- Banking law;
- General commercial law;
- Insurance law.

Candidate Attorney, Commercial Department (January 1995 – December 1996)

- Commercial Department:
  - Opinions;
  - Wills and Trusts;
  - Drafting contracts;
  - Tax;
  - Due Diligence;
  - Investigations;
  - Listings;
  - Joint Ventures.
- Litigation Department:
  - High Court and Magistrate's Court Litigation;
  - Contract Law;
  - Insurance Law;
  - Urgent applications.

TN

Annexure "MN2"

MN2

Verda van den Berg{METROHO}

From: Lucky Montana {PRASA CORP}
Sent: 18 May 2015 03:14 PM
To: Nonhlanhla Kondowe; Fani Dingiswayo; Sidney Khuzwayo
Cc: Ramagoganye Ngakane {PRASA CORP}; Boitumelo Kgosana; Moffet Mofokeng; Pearl Munthali {PRASA CORP}; Josephat Phungula; Martha Ngoye
Subject: My Station Programme - Prodigy

Dear Nonhlanhla

There is nothing wrong with the appointment of Prodigy nor with the extension of their contract. I am not surprised because this is part of a much bigger agenda, which has targeted certain contracts and appointments and to project these as being irregular. Some of the contracts had already been leaked to external auditors and the media as part of a strategy to discredit the Group CEO and create a cloud before he steps down at the end of the year.

This is a well coordinated strategy that started in November 2014 when I went on leave. I will at the most appropriate time act against all those who are involved in this dirty campaign. The investigation they are starting is unlawful and part of a plot I am well aware of.

The extent of opportunism by some of our managers really amazes me. A Manager like Sidney Khuzwayo should start first by cleaning the many irregular appointments he has party to within SCM which I have been trying to address and even explaining some of these to the Office Public Protector. Some of the Managers are excited by the new Board and are feeding all sorts of wrong information so that they could carry favour with the Board. They will be the biggest losers at the end of this process.

The decision to partner with Prodigy on the training of customer services remains sound and the extension of the contract is still in order.

Please allow them to continue with their strategy which is bound to fail.

Kind regard

Lucky Montana

Sent from Samsung tablet

Annexure "MN3"

SS7-OMN-319
MN3.

TL Montana
Group Chief Executive Officer

www.prasa.com

prasa
PRASA HOUSE
1040 Burnett Street
Hatfield
Pretoria

Private Bag X101
Braamfontein, 2017
T: +27 12 748 7010

Received By: Martha Ngoye

Date: 21/05/2015

Time: 12:30

Signature: Ngoye

Mrs Martha Ngoye
Group Executive: Risk,Legal and Compliance
PRASA House
1040 Burnett Street
Hatfield
PRETORIA

Dear Mrs Ngoye

RE: **IMMEDIATE TERMINATION OF YOUR EMPLOYMENT**

I refer to your telephone call to me on 19th May 2015 wherein you had raised your objection over my decision to terminate, with immediate effect, the contract of employment of the General Manager: Legal Services, Mr Fani Dingiswayo.

The primary reason which you advanced for your objection was that the dismissal of Mr Fani Dingiswayo was targeted at you. I immediately advised you that I was already engaged in another meeting, however, you began to raise your voice, and demanded that your objection be heard, irrespective of my engagement. Your action amounted to an act of gross insubordination which may attract a drastic sanction such as dismissal. Be that as it may, in light of you daring me to request you to fire you, I in my capacity as the Group CEO, view your daring as an act of repudiation of your employment which I elect to accept.

Directors Dr P Matete (Chairman), TL Montana (Group CEO), S Bathelizi, C Cele, X George, NS Khewa, ZP Hanase, C Manyungwana, MJ Matlala, L McMillan, N Mzenge, WS Steenkamp

Company Secretary L Zide

prasa

You then proceeded to make numerous allegations against me in unrelated matters, including an assertion that the decision to remove you as the Chief Executive Officer of Intersite was malicious. I reminded you that this had no bearing whatsoever to the issues which you called me about. I, with a view to address your concerns, requested that you put all these grievances and/or allegations in writing, to which you refused to do. Your refusal and defiance to act upon my instruction again amounted to an act of gross insubordination.

During this conversation it became clear to me that you as an Executive at PRASA, intentionally failed to accept my authority as the Group CEO and you addressed me with a level of resistance, defiance and great disrespect, to which I cautioned you against.

The level of insolence which you presented towards me is unacceptable and is not in the best interests of PRASA. You have repeatedly reminded me to terminate your employment, which you repeated in our brief meeting this evening. I am therefore acceding to your demand to terminate your employment forthwith.

There is no doubt that the breakdown in the relationship of respect and trust is irretrievable.

Your dismissal is effective immediately and your final day of employment with PRASA is 20 May 2015.

Yours faithfully

TSHEPO LUCKY MONTANA
GROUP CEO
DATE 20/05/2015

Annexure "MN4"

SS7-OMN-322

DIALE MOGASHOA INC
ATTORNEYS

PHYSICAL
Brookfield Office Park
South Block
272 Bronkhorst Street
Nieuw Muckleneuk
Brooklyn
Pretoria 0181

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Postnet
Office Suite 101
Private Bag X15
Menlo Park
0102
Docex 49 Brooklyn

DIRECT
Tel: (012) 346 5436/5939
Fax: (012) 346 5962
Fax to E-mail: 086 260 7135
Email: info@dm-inc.co.za
Web: www.dm-inc.co.za

PRASA HOUSE
1040 BURNETT STREET
HATFIELD
PRETORIA

OUR REF: M MOGASHOA/NAM/MB/PRASA
YOUR REF: F DINGISWAYO/S MOKOTEDI

PER EMAIL: FANI.DINGISWAYO@PRASA.COM
SMOKOTEDI@PRASA.COM

ATTENTION: MR. FANI DINGISWAYO
MRS. SHUMI MOKOTEDI

21 November 2017

Dear Sir/ Madam,

SUBJECT:	**REPORT ON PROGRESS ON SIYAYA FILES**
MATTERS:	**SIYAYA // PASSENGER RAIL AGENCY OF SOUTH AFRICA**
CASE NUMBERS:	**73934/2015, 73933/2015, 74281/2015, 77333/2015 47597/2016, 57598/2016**
ARBITRATION DATE:	**POSTPONED *SINE DIE***
ARBITRATOR:	**RETIRED JUDGE FDJ BRAND**

1. **INTRODUCTION**

1.1 We refer to the above matters and provide herewith our report in respect of same.

1.2 The purpose of this report is to provide client with an update on the background of the Siyaya Summons our office has been instructed to defend, the status of the files and as well prospects of PRASA successfully defending these matters.

1.3 **Kindly be advised that this report is only intended for the purposes as indicated in paragraph 1.2 here-above, and it in no way constitutes an opinion for purposes of advising PRASA on how to best proceed in defending this matter.**

2. **SUMMARY OF THE BACKGROUND ON EACH FILE**

2.1 **CASE NO. 73934/2015 : SIYAYA DB CONSULTING ENGINEERS (PTY) LTD // PRASA**

2.1.1 We received this instruction to defend this matter on or about 01 October 2015.

Directors: Madimpe Mogashoa, Donald Diale
Senior Associates: Ntando Makuyana, Busisiwe Mqingwana, Yagashen Pillay, Mari Wilsnach, Thato Mmamadi
Molebogeng Maakoe, Kobus de Beer, Calvin Salane, Geraldine Burger, Keneilwe Makwela
Associates: Mohlatlego Sekgotha, Precious Mulaudzi, Itumeleng Papo
Nondumiso Dlamini, Mufhati Munyangane, Tshifhiwa Netshisaulu
Finance Manager: Karen Greyling **Office Manager**: Nelisiwe Thabethe

Co. Reg.: 2012/007603/21
VAT Reg.: 4640260487

2.1.2 The Plaintiff alleges, in his particulars of claim dated 09 September 2015, that:

"on or about 8 September 2014 at Braamfontein, Johannesburg, the Plaintiff represented by its Managing Director, Makhensa Mabunda, and the Defendant represented by its Group CEO, Lucky Tshepo Montana, concluded a written consultancy agreement for the PRASA RAIL INFRASTRUCTURE REHABILITATION PROGRAM PHASE II".

2.1.3 Further that, the terms of the agreement were that:

"5.1 The contract price was R 28 819 200.00 inclusive of VAT(clause 1.11).

5.2 the effective date was 1 September 2014 (clause 1.14).

5.3 The completion date was the last day of the 12 months from the effective date(clause 1.23).

5.4 Project terms was defined as a period of 12 months from the effective date (clause 1.22).

5.5 services was defined as the services to be provided by the Defendant as listed in clause 9 of the agreement (clause 1.26).

5.6 The Defendant appointed the Plaintiff to provide the services (clause 13).

5.7 The agreement would commence on the effective date for the provision and would terminate at the end of the completion date (clause 5)

5.8 The detailed scope of services and the timeline for the provision of those services by the Plaintiff was detailed in the scope of service schedule 'A' to the agreement (clause 9.2).

5.9 Payment for the services would be in accordance with the payment schedules which was annexure 'B' of the agreement (clause 10.1).

5.10 Payment for the services would made into Plaintiff's bank account set out in the invoice (clause 10.2).

5.11 The Defendant would effect payment within 60 days after receipt of such invoice (clause 9.3).

5.12 The Plaintiff would issue the Defendant invoices in accordance to payment schedules and the invoices would:

5.12.1 indicate the VAT number of the Plaintiff;

5.12.2 indicate the full details of the Plaintiff and bank account;

5.12.3 be a valid tax invoice in accordance with the requirements of the South African Revenue Service; and

5.12.4 indicate the vendor number provided to the Plaintiff by the Defendant.

5.13 The Defendant chose the dimicilium citandi et executandi at PRASA House, 1040 Burnett Street, Hartfield Preotoria (clause 18.1)".

2.1.4 Further that:

"During December 2014, the Plaintiff represented by Andreas Matthee and the Defendant represented by Portia Xaba agreed on a written variation to the Consultancy Agreement"... The variation is constituted by the amended scope of service in 'POC2' and the amended payment schedule on 'POC3".

2.1.5 The Plaintiff further alleges that he rendered services to the Defendant as per the amended scope of service and to which they have not received payment, despite the lapse of 60 days from date of receipt of its invoices. The Plaintiff alleges that the Defendant is indebted to the Plaintiff in the amount of R 7 098 481, 66, with interest at the rate of 9% per annum.

2.1.6 The Plaintiff, on the 1st of October 2015, filed an application for summary judgement, which application was opposed by the Defendant. The application was heard on the 18th of November 2015, and the court made a ruling in favour of the Defendant on the 1st of December 2015. A copy of the relevant court order granting the Defendant leave to defend this matter is attached herewith for your ease of reference.

2.1.7 On the 9th of February 2016, Defendant served upon Plaintiff its notice of exception based on a number of grounds. A copy of the notice indicating the grounds upon which Defendant relied is attached herewith for your ease of reference. The exception was heard on the 3rd of May 2017 and dismissed by Judge Van der Westhuizen AJ on the basis that plaintiff has sufficiently made out an answerable case. A copy of the relevant judgement is attached herewith for your records.

2.1.8 On the 26th of June 2016, Defendant served its plea, which was at the time a bare denial plea. On the 20th of March 2017, Defendant amended its plea by replacing its previous plea of the 26th of June 2016.

2.1.9 The amended plea raised the issue of jurisdiction in that clause 20 of the agreement upon which Plaintiff relies upon provides that disputes between parties must be referred to arbitration and that the present dispute had not been referred to arbitration.

2.1.10 The second defence raised in the plea is that the services indicated to have been rendered on the invoices upon which the Plaintiff relies are not of any of the services listed in annexure 'POC3'. In other words, the payments claimed for by Plaintiff under these summons are not authorised by the consultancy agreement upon which the Plaintiff relies, and on that basis Defendant is not liable to the Plaintiff on such amounts.

2.1.11 The third defence raised in the plea is that the Plaintiff is not entitled interest because they did not demand payment of such various amounts on the dates alleged in its particulars of claim, and therefore they are not entitled to interest with effect from those dates.

2.1.12 The defence also relied on clause 11.1 of the consultancy agreement to allege that:

"The invoices upon which the plaintiff relies are not in accordance with the payment schedule contemplated in clause 11.1 of the consultancy agreement due to the fact that the amounts claimed therein are not the amounts provided for in the payment schedule contained in Annexure B to the consultancy agreement.

In the premises, insofar as the amounts claimed by the plaintiff are not in accordance with the amounts provided for in the payment schedule contained in annexure B to the consultancy agreement, the defendant pleads that the plaintiff is in law not entitled to claim such amounts in

terms of the consultancy agreement and the defendant is therefore not liable to the plaintiff in terms of the consultancy agreement upon which the plaintiff relies."

2.1.13 The defence also relied on the fact that clause 1.12.4 of the consultancy agreement created reciprocal obligations between the parties. The clause provides that the plaintiff commits an event of default if it does not deliver a certificate of occupation within a period of 20 days from the project completion date. The plaintiff has not delivered the certificate of occupation referred to in clause 1.12.4 of the consultancy agreement and it is for this reason not in law entitled to enforce the consultancy agreement against the defendant.

2.1.14 The plea also contested the lawfulness of the variation of the consultancy agreement to the extent that it is contemplated in clause 23 of the agreement.

2.1.15 Lastly, the plea dealt with Defendant's denial of the fact that the services the Plaintiff alleges to have rendered are in consonant with the services listed in POC2 of its particulars of claim.

2.1.16 The Plaintiff then proceeded to place this matter down for a hearing on the trial roll of the 16th of November 2016. The trial on this aforementioned date was postponed *sine die*, with costs reserved, and on the basis that:

2.4.16.1 this matter was not ripe for trial in that Plaintiff had not adequately replied to Defendant's notice in terms of Rule 35(3);

2.4.16.2 that an expert notice prepared by the Plaintiff was not filed timeously in terms of the court rules, and as a result prejudiced the Defendant in properly defending this matter;

2.4.16.3 a further pre-trial conference needed to be held between the parties to eliminate issues in dispute and issues not in dispute in the parties' final preparation for the trial; and

2.4.16.4 Further, it was not necessary for the Plaintiff to furnish the Defendant with security for costs.

2.1.17 The Plaintiff then proceeded to place this matter on the trial roll of the 3rd of May 2017. Parties then entered into an agreement wherein all these matters, save for the matter with case number 77333/2015, were consolidated and referred to arbitration, and same was noted in the court order of the 3rd of May 2017. A copy of same is attached herewith for your ease of reference.

2.2 **CASE NO. 73933/2015 : SIYAYA DB CONSULTING ENGINEERS (PTY) LTD // PRASA**

2.2.1 We received instructions to defend this matter on 25 September 2015.

2.2.2 The Plaintiff in this matter alleges that:

"On or about 4 December 2013 and at Braamfontein, Johannesburg, the Plaintiff represented by its Managing Director, Makhensa Mabunda, and the Defendant represented by its Chief Executive Officer, entered into a written Accelerated Infrastructure Refurbishment Project Consulting Agreement..."

2.2.3 The Plaintiff alleges further that:

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"5.1 The contract price was R 24 978 000.00 inclusive of VAT (clause 1.9).

5.2 The effective date was 26 April 2013 (clause 1.13).
5.3 The completion date was the last day of the 12 months from the effective date (clause 1.12).

5.4 Services were defined as the services to be provided by the Plaintiff as listed in clause 8 of the agreement (clause 1.25).

5.5 Project terms was defined as a period of 12 months from the effective date (clause 1.21).

5.6 The Defendant appointed the Plaintiff to provide the services (clause 3.2).

5.7 The agreement would commence on the effective date and would terminate at the end of the project term (clause 5).

5.8 The Plaintiff would provide the engineering consulting services with regard to the upgrading and rehabilitation of the parts of permanent way and formation, overhead traction equipment, substations, train authorisation systems (signalling), telecommunication systems, Rolling Stock and Rolling Stock Maintenance Facilities (clause 8.1).

5.9 The detailed scope of work to be provided by the Plaintiff was detailed in the Scope of Service Schedule 'A' to the agreement (clause 8.2), which scope of work provided inter alia for certain options being inter alia option 3, Frameworks Contracts for Perway Material, On-track machine Supplier and Contractor Development.

5.10 Payment for the Service should be in accordance with the payment Schedule which was Annexure 'B' of the Agreement (clause 9.1).

5.11 Payment would be made into the Plaintiff's bank account set out in the invoice (clause 9.2).

5.12 The Defendant would effect payment within 30 days after receipt of such invoice(clause 9.3)."

the remainder of the terms of the contract are similar as the ones indicated in para 5.12 of the Consultancy agreement here-above.

2.2.4 The Plaintiff further alleges that they rendered services and furnished the Defendant with invoices in accordance with Annexure 'B' of the Agreement, and that the Defendant failed to effect the payments for those invoices. It is as a consequence of the aforementioned breach of agreement that the Plaintiff then alleges that the Defendant is indebted to it in the amount of R 8 0950.00, with interest at the rate of 9% per annum from 25 March 2015 to the date of payment.

2.2.5 The Plaintiff, on the 1st of October 2015, filed an application for summary judgement, which application was opposed by the Defendant. The application was scheduled to be heard on the heard on the 11th of November 2015, however on the 10th of November 2015 the parties entered into an agreement that Defendant would be granted leave to defend this matter, with costs reserved. There was an agreement further that Plaintiff would remove the motion application from the roll of the 11th of November 2015. A copy of the relevant court order granting the Defendant leave to defend this matter is attached herewith for your ease of reference.

2.2.6 On the 9th of February 2016, Defendant served upon Plaintiff its notice of exception based on a number of grounds. A copy of the notice indicating the grounds upon which Defendant relied is attached herewith for your ease of reference. The exception was heard on the 5th of May 2016 and dismissed by Judge Van der Westhuizen AJ on the basis that plaintiff has sufficiently made out an answerable case. A copy of the relevant court order is attached herewith for your records.

2.2.7 On the 26th of June 2016, Defendant served its plea, which was at the time a bare denial plea. On the 20th of March 2017, Defendant amended its plea by replacing its previous plea of the 26th of June 2016.

2.2.8 The amended plea raised the issue of jurisdiction in that clause 19 of the agreement upon which Plaintiff relies upon provides that disputes between parties must be referred to arbitration and that the present dispute had not been referred to arbitration.

2.2.9 The defendant also denied that the agreement was entered into by its Chief Executive Officer and as well the correctness of clause 3.2 of the agreement.

2.2.10 The plea also alleges that the Defendant is not liable to the Plaintiff due to the fact that Plaintiff failed to provide it with an occupation certificate as contemplated in clause 1.11 of the agreement.

2.2.11 The Defendant disputed its liability to the Plaintiff in that:

"The invoices upon which the plaintiff rely are not consistent with the provisions of clause 2 of Annexure B to the agreement in that:

2.12.1 they do not set out the work for which the amounts are claimed;

2.12.2 they are not for any of the amounts listed in clause 2.1 of Annexure B to the agreement;

2.12.3 they are not for 25% of the contract price as provided for in clause 2.2 of Annexure B to the agreement; and

2.12.4 they are not accompanied by the deliverables prescribed for each of the invoices provided for in clause 2.2 of Annexure B to the agreement."

2.2.12 The Defendant also denied that Plaintiff rendered the services provided for in clause 8 of the agreement read with Schedule A of the agreement.

2.2.13 The Defendant also challenges the Plaintiff's claim that it is entitled to interest as at 25 March 2015 as no case had been made in its particulars of claim for the interest to be paid with effect from that date.

2.2.14 The Plaintiff then proceeded to place this matter on the trial roll of the 14th of November 2016. On the 11th of November 2016, parties entered into an agreement to postpone the hearing of the 14th of November 2016, with costs reserved.

2.2.15 On the 3rd of May 2017 this matter was then consolidated and referred arbitration with four other matters with summons instituted by Plaintiff against the Defendant as indicated in paragraph 2. 1.17 here-above.

2.3 **CASE NO. 74281/2015 SIYAYA DB CONSULTING ENGINEERS (PTY) LTD // PRASA**

2.3.1 We reived instructions to defend this matter on 23 September 2015.

2.3.2 The Plaintiff, in its particulars of claim dated 09 September 2015, alleges that:

" During about 4 March 2013 at Braamfontein, Johannesburg, the Plaintiff represented by it Managing Director Makhensa Mabunda, and the Defendant represented by Dr. Daniel Mthimkhulu, Head of PRASA Engineering Services, concluded an oral agreement ("the Material Management and Coding Agreement").

2.3.3 Further that, the material express alternatively tacit terms of the Material Management and Coding Agreement were:

"5.1 the Defendant appointed the plaintiff to render certain material management and coding services to the Defendant, being services referred to in the document prepared by the Defendant subsequent to the conclusion of the Material Management and Coding Agreement titled 'PROJECT CHARTER MATERIAL MANAGEMENT AND CODING PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA) PROJECT CHARTER – YEAR 1 MATERIAL MANAGEMENT AND CODING ROLLING STOCK INFRASTRUCTURE (YEAR 1) (' the Manterial Management and Coding Project Project Charter'), recorded under the following headings and detailed further in the Material Management and Coding Project Charter:

*5.1.1 '2. **Overview of Project: Scope and Objectives'**, in particular ' Siyaya is expected to review the Material Management strategy as well as processes, define, recommend and establish the IT Master DATA setup requirements for an accurate and transparent material management system within a 3 year contract period'..*

2.3.4 Plaintiff alleges further that the Material Management and Coding Agreement would be 3 years from 1 May 2013 to 31 October 2016, and that the total fee for services rendered would be R 16 999 322.00 inclusive of VAT.

2.3.5 The Plaintiff alleges further that during May 2014 and at Braamfontein, Johannesburg, Mr Mabunda and Dr. Mthimkulu concluded an oral agreement ('the Data Cleansing Agreement'). That, the material, express, alternatively tacit terms of the Data Cleansing Agreement were that:

"the Defendant appointed Plaintiff to render certain data cleansing services referred to in the document prepared by Defendant subsequent to the conclusion of the Data Cleansing Agreement titled ' PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA) PROJECT CHARTER PROJECT INITIATION DOCUMENT (CHARTER) DATA CLEANSING PRJOECT ROLLING STOCK AND INFRASTRUCTURE' ('the Data Cleansing Project Charter'), being the services recorded under the following headings and detailed further in the Data Cleansing Project Charter..."

2.3.6 It is as a result of these agreements that Plaintiff now claims that they have rendered service to the Defendant, and for whose services the Defendant has failed to pay. Plaintiff alleges that the Defendant is indebted to it to a sum of R 17 628 118.59.

2.3.7 The Plaintiff, on the 1st of October 2015, filed an application for summary judgement, which application was opposed by the Defendant. The application was scheduled to be heard on the heard on the 11th of November 2015, however on the 10th of November 2015 the parties entered into an agreement that Defendant would be granted leave to defend this matter, with costs reserved. There was an agreement further that Plaintiff would remove the motion application from the roll of the 11th of November 2015.

2.3.8 On the 9th of February 2016, Defendant served upon Plaintiff its notice of exception based on a number of grounds. A copy of the notice indicating the grounds upon which Defendant relied is attached herewith for your ease of reference. The exception was later abandoned as Plaintiff indicated that they would be amending their particulars of claim. We attach herewith a copy of such amended particulars of claim for your records.

2.3.9 On the 27th of July 2016, the Defendant filed its plea to Plaintiff's amended particulars of claim.

2.3.10 The plea denied the conclusion of the alleged oral agreements between the Plaintiff and its representatives. In the alternative, it alleged that:

"2.1.2.1 Mtimkulu was not duly authorised by the defendant to conclude the agreement on behalf of the defendant;

2.1.2.2 the defendant did not at any time represent to the plaintiff that Mtimkulu was authorised to conclude the agreement on its behalf;

2.1.2.3 the defendant is in law not bound by the agreement and the agreement is in law not enforceable against it;

2.1.2.4 the plaintiff ought to have attached to its particulars of claim the written part of the agreement and its failure to do so is prejudicial to the formulation of the defendant's defence..."

2.3.11 In addition, the Defendant pleaded that the project charter attached as POC1 of the amended particulars of claim was not prepared by it, that no agreement was reached between parties regarding its contents, that Plaintiff had no capacity and skills to render the services indicated therein, and that Plaintiff did not render any of the services for which payment is claimed.

2.3.12 The Defendant also admitted receipt of Plaintiff's invoices bur pleaded that the Plaintiff did not render services for which the invoices were rendered, and that Plaintiff did not deliver the deliverables contemplated in such invoices. It is pleaded further that, some of the invoices submitted by the Plaintiff do not fall under any of what the Plaintiff alleges was the scope of works as contemplated in POC1 and POC2.

2.3.13 The Plaintiff then proceeded to enrol this matter for hearing on the trial roll of the 2nd of December 2016. This matter was subsequently removed from the roll by agreement between parties, with costs reserved.

2.3.14 The Plaintiff then re-enrolled this matter on the trial roll of the 11th of May 2017.

2.3.15 On the 3rd of May 2017 this matter was then consolidated and referred arbitration with four other matters with summons instituted by Plaintiff against the Defendant as indicated in paragraph 2. 1.17 here-above.

2.4 **CASE NO. 47598/2016 SIYAYA DB CONSULTIGN ENGINEERS (PTY) LTD // PRASA**

2.4.1 We reived instructions to defend this matter on 29 June 2016.

2.4.2 The Plaintiff, in his particulars of claim dated 01 June 2016, alleged that:

"on 31 March 2011, at Braamfontein, Johannesburg, the Plaintiff, DB International Gmbh and the Defendant concluded a written Memorandum of Understanding ('MoU') in terms whereof they agreed to co-operate according to the terms of the MoU, in the field of integrated passenger and railway operations on the basis of the specific agreements for the benefit of the parties in order to improve various initiatives of technical and strategic co-operation in the following projects..."

2.4.3 The Plaintiff alleges further that pursuant to the conclusion of the MoU, the parties entered into a written agreement on the 30th of July 2013, with the Plaintiff duly represented by Ms Solani Bvuma and the Defendant by Mr. Luck Montana.

2.4.4 Further that:
"in carrying out its obligations in terms of the consultancy agreement Plaintiff carried our additional work in relation to the Slat River region which was informed by the following factually averments:

15.1 at the Salt River Steering Committee meeting on 22 January 2014, the region flagged that end user requirements that the design team had adopted from the concept did not cover their requirements on the ground;

15.2 the region complied a detailed user requirements schedule which was revised and later rom on 6 February 2014;

15.3 design works that had been accomplished before the above date were omitted and a new design approach was adopted;

15.4 the user requirements could not be accommodated in the existing administrative buildings. Options were investigated and the preferred option was to construct a new building to accommodate all administrative functions under on roof."

2.4.5 The Plaintiff alleges further that it accommodated these additional requirements at Salt River region , committed resources and incurred an amount of R 15 371 739.87 in order to complete the design. Further that they submitted two motivation in support of variation orders number 28 and 29, which the Defendant rejected on the basis that they do not comply with clause 9 of its governing procedures.

2.4.6 It is a consequence of these services rendered as well as the rejected variation orders that Plaintiff now claims an amount Of R 15 371 739.87 from the Defendant.

2.4.7 On the 22nd of August 2016, the Defendant filed its plea.

2.4.8 The Defendant's plea indicated that:

> *"In the light of the fact that the validity period of the consultancy agreement between the plaintiff and the defendant commenced on 15 July 2013, it follows that such validity period came to an end by no later than 28 February 2014.*
>
> *3.3.2 In the premises, there was no longer an agreement between the plaintiff and the defendant in terms of which the plaintiff could lawfully render services to the defendant and in terms of which the defendant would be obliged to make payment to the defendant due to the fact that the consultancy agreement upon which the plaintiff relies had come to an end by the effluxion of time by no later than 28 February 2014. Accordingly, the defendant is not, in terms of the consultancy agreement upon which the plaintiff relies, liable to the defendant for any services allegedly rendered by* the plaintiff after 28 February 2014 or for the damages claimed in these proceedings."

2.4.9 The plea also denies that the Plaintiff ever carried out additional scope of work which was not contemplated in the consultancy agreement upon which the Plaintiff relies, alternatively that the work that Plaintiff alleges to have carried out was authorised by the Defendant. The Defendant also denies that Plaintiff ever presented a concept design to the deport steering committee.

2.4.10 The plea also raised a defence that by the time the motivations referred to in Plaintiff's particulars of claim were submitted, the term from the consultancy agreement had lapsed and that it was no longer competent for the Plaintiff to submit the motivation/variation orders.

2.4.11 The plea also alleges that the plaintiff acted in an unreasonable and negligent manner in believing that the services were rendered as contemplated in the consultancy agreement in that the variation orders were not authorised by the Defendant, and that Plaintiff failed to realise that the consultancy agreement contract had lapsed.

2.4.12 On the 3rd of May 2017 this matter was then consolidated and referred arbitration with four other matters with summons instituted by Plaintiff against the Defendant as indicated in paragraph 2. 1.17 here-above.

2.5 CASE NO. 47597/2016 : SIYAYA RAIL SOLUTIONS (PTY) LTD // PRASA

2.5.1 We received instructions to defend this matter on 29 June 2016.

2.5.2 The Plaintiff, in his particulars of claim dated 15 June 20116, alleges that:

> *"On 29 January 2013 the Defendant issued a request for proposal wherein it sought to engage consultancy services for the supervision of the works:*
>
> *3.1 installation of all the digital radio system components along the railway track of each region, including the electrical design as well as the erecting of mass poles for the RF (Radio Frequency) components and associated buildings;*
>
> *3.2 the assistance with the application to ICASA, the regulating authority in South Africa for the required license and frequency spectrum for the digital radio system;*

3.3 associated civil, electrical and telecommunication works."

2.5.3 The Plaintiff further alleges that it submitted its bid to the Defendant and that on the 4th of September 2013, the Plaintiff was informed that its bid was successful.

2.5.4 Further that, that the Plaintiff duly represented by its Managing Director Ms Solani Bvuma and the Defendant represented by its Chief Executive Officer entered into a written consultancy agreement which was signed on 20 March 2014. The Plaintiff alleges however that it carried out its obligations in terms of the agreement from the date of its appointment, being 4th September 2014, notwithstanding the fact that there was at that time no signed agreement.

2.5.5 Further that, the parties agreed that the Plaintiff would render services to the Defendant in terms of the aforementioned agreement whose contract price was an amount of R 69 000 000.00, inclusive of VAT.

2.5.6 The Plaintiff alleges further that:

" on 25 September 2013 and subsequent to Plaintiff's appointment referred to in para 5, the Plaintiff duly represented by its Chief Executive officer Makhensa Mabunda and the Defendant duly represented by Sonic Baltac , the parties agreed to extend the scope of services to be rendered by the Plaintiff ("additional service agreement") which additional service fell outside the scope of services as envisaged in the written consultancy agreement.

The additional services agreement was partly oral and partly written, the written portion of the agreement recorded in the correspondence by Plaintiff dated 22 January 2014 and confirmed by the Defendant representative on 23rd January 2014. A copy of the written portion of the agreement is annexed hereto marked 'S3'.

The material, express alternatively tacit and further alternatively implied terms of the additional service agreement (both oral and written) were agreed to as follows:

13.1 the Plaintiff to revise the system architecture proposed by the HAUWEI-Altech Matomo Consortium (HAC) to comply with the Defendant's GSM-R operational requirements;

13.2 the Plaintiff was required to work and engage the HAC to change and optimise their design;

13.3 the Plaintiff was required to evaluate the HAC revised proposal to ensure that it meets the Defendant's requirements;

13.4 the Plaintiff was required to ensure that the system is upgradable for future requirements;

13.5 the Plaintiff was required through revising the proposal of the HAC and engaging the HAC, to ensure that essential post completion services are included....

2.5.7 The Plaintiff alleges further that HAC submitted to the Defendant a variation order and which the Plaintiff assessed in terms of the additional service agreement and upon discharge of its obligation in terms of the agreement. The Plaintiff then produced a detailed report setting out the services it had rendered in terms of this agreement. The Plaintiff then invoiced the Defendant an amount of R 21 626 138.00.

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2.5.8 It is as a result of this breach of agreement that Plaintiff now claims that the Defendant is indebted to it to an amount of R 21 626 138.00.

2.5.9 On the 22nd of August 2016, the Defendant filed its plea.

2.5.10 The Defendant's plea disputed the fact that Plaintiff's current claim is based on the consultancy agreement and same is therefore irrelevant for purposes of these proceedings.

2.5.11 The plea further denied the conclusion of the additional service agreement, and in the alternative, pleaded that:

"In the event that it is found that the additional services agreement was concluded between the plaintiff and the defendant, then in that event, the defendant pleads as follows:

3.1.3.1 the conclusion of the additional services agreement was not duly authorised by the defendant;

3.1.3.2 Sonic Baltac was not duly authorised to conclude the additional services agreement;

3.1.3.3 the defendant did not at any stage represent to the plaintiff that Sonic Baltac was duly authorised to conclude the additional services agreement referred to in paragraph 11 of the plaintiff's particulars of claim; and

3.1.3.4 the additional services agreement upon which the plaintiff relies is not valid and binding upon the defendant and it is in law unenforceable against the defendant due to the fact that its conclusion was not duly authorised by the defendant."

2.5.12 The Defendant also alleged that the contents of annexure 'S3' of Plaintiff's particulars of claim does not indicate or suggest the alleged conclusion of a written agreement, and that same cannot be construed to constitute a written agreement.

2.5.13 The Defendant's plea admits that HAC did not submit a variation order but Defendant denies that same is linked to the alleged additional service agreement.

2.5.14 The Defendant also denied the Plaintiff ever submitted a report setting out services rendered and that the invoices submitted by the Plaintiff were ever adequately explained by the Plaintiff.

2.5.15 The defendant denies that it made any representations relating to approvals, authorisations and variations in relation to services allegedly rendered by the plaintiff.

2.5.16 On the 3rd of May 2017 this matter was then consolidated and referred arbitration with four other matters with summons instituted by Plaintiff against the Defendant as indicated in paragraph 2. 1.17 here-above.

2.6 **CASE NO. 77333/2015 SIYAYA DB CONSULTING ENGINEERS (PTY) LTD // PRASA**

2.6.1 We received instruction to defend this matter on 25 September 2015.

2.6.2 The Plaintiff, in his particulars of claim dated 22 September 2015, alleges that:

"on or about 31 May 2011 an at Brramfontein, Johannesburg, the Plaintiff represented by it Managing Director, Makhensa Mabunda, and the Defendant represented by its Group Chief Executive Officer, Lucky Tshepo Montana concluded a written agreement (" the agreement")."

2.6.3 Further that the agreement also indicated that:
" 6.1 the subject matter of the agreement was the performance of services of Technical Assistance for the Supervision of National Re-signalling Project, Stage 1, Phase 1 – 5, reference number H0/INF(S)203/06/2010 ('the services').

2.6.4 The Plaintiff alleges further that the 13th of August 2014, an at Pretoria a written addendum to the agreement was concluded, wherein the scope of the work as provided for in the addendum was increase, the contract value was increased from R 61 172 864.00 to R 98 500 000.00, and the completion date of the contract revised to the 31st of July 2019.

2.6.5 The Plaintiff further alleges that they rendered services, to the Defendant and for benefit of the Defendant, and produced invoices for payment by the Defendant. The Defendant failed to make such payments. It is as a result of such conduct that the Plaintiff now claims for a sum of R 8 3374 893.31 as well as penalties in the sum of R 27 144.44.

2.6.6 The Plaintiff, on the 1st of October 2015, filed an application for summary judgement, which application was opposed by the Defendant. The application was scheduled to be heard on the heard on the 18th of November 2015. The matter was then postponed to the 20th of November 2015 to be presided over by Judge Kubishi. On the 25th of January 2016 judgement was delivered in terms of which Plaintiff was refused summary judgement. A copy of the judgement is attached herewith for your records.

2.6.7 On the 18th of February 2016, Defendant served upon Plaintiff its notice of exception based on a number of grounds. A copy of the notice indicating the grounds upon which Defendant relied is attached herewith for your ease of reference. The exception was heard on the 3rd of May 2016. The application was removed from the opposed motion roll on the 7th of April 2016.

2.6.8 On the 13th of April 2016 we received correspondence from our opponents who informed us that their client had been paid the full amount that they were claiming, and prosed that the Defendant tenders the cost of the proceedings. We thereafter sought instruction from client to no avail.

2.6.9 We, on the 13th of June 2016 addressed a letter to PRASA to advise that we still await their instructions regarding tendering costs of this matter, and that we will proceed to render our invoice and close the file as there was no longer any notable activity on the file.

3. **ARBITRATION AND INQUIRY PROCEEDINGS:**

3.1.1 As agreed to on the court order of the 3rd of May 2017, five of these matters were referred to arbitration with retired Judge FDJ Brand elected to preside as an arbitrator therein.

3.1.2 On the 26th of June 2017, parties held a pre-arbitration hearing in the Presence of Judge Brand, and at Maisel's Chambers. Sandton, Johannesburg. The purpose of this hearing was for parties to limit issues which would form the subject matter of the arbitration hearing, and agree on the timelines by which to file further pleadings and notices, replies to same and as well preparation of the relevant trial bundles.

3.1.3 It was further agreed in the pre-arbitration hearing the arbitration would commence on the 11th of September 2017 to the 22nd of September 2017. A copy of the signed arbitration minutes

is attached herewith for your records. We as well attach a copy of a simplified timeline of the minutes for your ease of reference.

3.1.4 On the 11th of August 2017, Plaintiff failed to deliver its replies to Defendant's request for further particulars as per the pre-arbitration minutes, and despite an undertaking to file these by the 14th of August 2017, such replies were not filed.

3.1.5 Whilst our office was busy preparing for the arbitration proceedings, and on or about 20th of August 2017, our office received communication from PRASA regarding certain of its members who had been served with subpoenas by the Commissioner on the Liquidation of Siyaya Consulting Engineers. This was in terms of Section 417 and 418 of the Companies Act No.71 of 2008.

3.1.6 We addressed a letter to the Attorneys of Siyaya Consulting Engineers(in liquidation) enquiring about the nature of the inquiry as well as the documents that PRASA's representatives were supposed to bring, and testify on, at the inquiry. We however were not provided with any such documents.

3.1.7 We, nevertheless attended the enquiry on the days that Messrs Letsane Rathaba, Sorin Baltac, Tonie Vermeulen, and Johan Edwards, were called on to testify.

3.1.8 Our extent of involved in the inquiry was very limited as we were not allowed to cross-examine the witnesses or ask any questions during their testimonies.

3.1.9 We nevertheless made representations to the commissioner that we would want to be furnished with his report once it had been finalised. We still have not received a copy of this report and therefore cannot comment as to the nature of its contents and findings.

3.1.10 Again, on 25th of August 2017, Plaintiff failed to deliver its trial bundles. The Defendant subsequently did not supplement these bundles.

3.1.11 The Defendant served Plaintiff with its application to compel Plaintiff to file further and better discovery. The Plaintiff never filed notices to oppose such an application, neither have they filed such discovery.

3.1.12 On the 6th of September 2017, the Defendant served Plaintiff with its application to compel Plaintiff to file its replies to its request for further particulars. Plaintiff has not filed its notices to oppose such an application.

3.1.13 It is as a result of these aforementioned delays that the Defendant addressed letter to the Plaintiff requesting that the arbitration be postponed, with the Plaintiff to tender the costs. A copy of Plaintiff's heads of argument as well as Defendant's reply to the heads of argument regarding the postponement is attached herewith for your records.

4. **We trust that you will find the above in good order and await to hear from you soon.**

Yours faithfully



DIALE MOGASHOA ATTORNEYS
Per: *Madimpe Mogashoa*
Direct Tel: 012 433 7145
Direct Fax: 086 614 0125
Email: madimpe@dm-inc.co.za
W: 6352

Annexure "MN5"

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URGENT MEMORANDUM (paragraphs 9 and 12 AMENDED)

To:	**ACTING GROUP CHIEF EXECUTIVE OFFICER: MR ZIDE**
From:	**CHAIRPERSON, INTERIM BOARD: ADV. TAN MAKHUBELE SC**
Date:	**28 November 2017**
Subject:	**SIYAYA CONSULTING ENGINEERS (PTY) LTD (IN LIQUIDATION):** **ENQUIRY IN TERMS OF SECTION 417(1) AND 418 (2) OF THE COMPANIES ACT 61 OF 1973**

Dear Mr. Zide,

1. I refer to various discussions between us about this matter as well as our brief discussion with the Group Executive: Legal, Risk and Compliance, Ms Martha Ngoye on 14/11/17.

2. I confirm receipt of a report from Prasa's attorneys (Diale Mogashoa Attorneys) dated 21 November 2017. It appears from the contents of the report that Diale Mogashoa Attorneys were appointed to defend five (5) civil actions that were instituted by Siyaya DB Consulting Engineers (Pty) Ltd and Siyaya Rail Solutions (Pty) at the Gauteng Division, High Court, Pretoria. The former, which instituted four (4) of the actions subsequently went into liquidation.

3. It is not clear from the report of Mogashoa Diale Attorneys whether they were subsequently appointed to represent Prasa to deal with the liquidation matter. As Acting Group CEO, such instructions would have come from you.

4. It also appears from the report that at some point the matters were referred to arbitration, but what is not clear is whether this happened before Siyaya Consulting Engineers went into liquidation or not.

5. You are aware that attorneys acting for Siyaya Consulting Engineers (In Liquidation) approached on or about 14 November 2017 and that they provided me with a copy of an Interim Report of the enquiry in terms of the Companies Act that was prepared by the Commissioner and dated 15 September 2017. They also attached copies of email communication between Mr. Madimpe Mogashoa of Mogashoa Diale and Advocate Francois Botes SC. The email communication is also attached in Mogashoa Diale Attorneys report.

6. In their report, Diale Mogashoa Attorneys indicated that they became aware on 20 August 2017 after receiving communication from Prasa that certain "members' have received subpoena to appear in the liquidation enquiry. They attended the enquiry, but were not allowed to cross-examine witnesses. They also allege that the Commissioner has not provided them with a report.

You have noted from the bundle of documents from Siyaya's attorneys (in liquidation) that these assertions may not be entirely correct. However, As Acting Group CEO, the instructions with regard to the liquidation enquiry proceedings and handling of the High Court actions would have come from you. Kindly confirm the nature of the instructions that were given to Mogashoa Diale in this regard. Please attach copies of such instructions.

7. It is clear from the Interim report of the Commissioner that the witnesses that testified at the liquidation enquiry include former and existing employees of Prasa. These witnesses would have attended the enquiry with your knowledge and understanding of the evidence that they were going to tender.

8. Should the contents of the Commissioner's report be correct, it is clear that the witnesses made major concessions with regard to the liability of Prasa in the civil actions launched by Siyaya Consulting Engineers (now in liquidation). However, despite these concessions, Mogashoa Diale Attorneys appear to still want to proceed with the arbitration proceedings. They however did not address the prospects of success at the arbitration proceedings in view of the evidence that has already been led at the liquidation enquiry.

Kindly confirm if these are your instructions to Mogashoa Diale and the nature of evidence (and witnesses) that you intend to lead at the pending arbitration proceedings.

9. Kindly request the officials indicated hereunder who testified at the liquidation enquiry to submit written reports and confirm their testimony.

(a) Mr. AM Vermeulen (Infrastructure Operations at Prasa Rail)

(b) Mr. V Kobuwe (Executive Manager for Infrastructure)

(c) Mr. S Baltic (General Manager: Signaling and Communications)

9.1 I will only and if absolutely necessary and appropriate involve former employees that testified after receiving a report from you and Ms Ngoye as well as Mogashoa Diale Attorneys on your defence strategy particularly in view of the concessions by current employees during the liquidation enquiry.

10. Please advise Mogashoa Diale Attorneys that I have read their report dated 21 November 2017 and that we shall revert to them before the end of next week with instructions and a decision of further handling of this matter.

11. Lastly, it appeared from our discussions in the presence of Ms Martha Ngoye that she was aware of at least the fact that there

was a liquidation enquiry. Kindly request her to write a report about the involvement of her unit, in particular with regard to provision of instructions to Mogashoa Diale Attorneys on the issues that I have raised above.

12. The reports from you, Ms Ngoye and the officials indicated in paragraph 9 must reach me on or before 12:00 on Friday, 30 November 2017 to enable me to report to the Board of Control on 01 December 2017.

Adv. TAN Makhubele SC

Annexure "MN6"

www.prasa.com

Be moved

prasa
PASSENGER RAIL AGENCY OF SOUTH AFRICA

Memorandum

To:	THE ACTING GROUP CHIEF EXECUTIVE OFFICER Mr Lindikaya Zide
From:	GROUP LEGAL SERVICES Fani Dingiswayo
Date:	30 November 2017
Subject:	**Litigation Against Siyaya Consulting Engineers (in liquidation)**

Mr Zide,

1. You furnished us with a memo from the Chairperson of the Board of Control on the above matter dated 29 November 2017. We have shared this memo with Diale Mogashoa Inc ("DM") and Messrs Kobuwe and Baltac and requested them to prepare responses for submission to you and to the Chairperson. Please note that Mr Vermeulen is no longer in the employ of PRASA, we are advised that he retired with effect from the end of September 2017.

2. Below are responses to the matters that have been raised in the memo under reply and which directly relate to Group Legal Services:

2.1. Whether DM were appointed to deal with the liquidation matter

2.1.1. As indicated in their report of 21 November 2017[1], DM was requested to advise and assist PRASA employees who were subpoenaed to appear at the Commission. The liquidation of Siyaya Consulting Engineers (Pty) Limited (In Liquidation) ("Siyaya") was a voluntary liquidation. According to our information, it came shortly after Duetsche Bahn International ("DBI") made application for the liquidation of Siyaya. It appears to have been designed to avoid a liquidation ordered by the court.

2.1.2. DM was therefore not instructed to deal with the liquidation.

[1] Paragraph 3.1.5 thereof

TN

2.2. Referral of the matters to arbitration

2.2.1. The matters were instituted by Siyaya before its liquidation. What was therefore referred to arbitration was an extant litigated dispute between the parties.

2.2.2. The parties agreed to refer the matter to arbitration after the voluntary liquidation of Siyaya.

2.3. The Instructions to DM on the Enquiry

2.3.1. As soon as we learnt of the subpoenas that had been served on PRASA employees, we forwarded these to DM. We subsequently consulted with them on several occasions discussing the subpoenas and the form of assistance to be provided to those PRASA employees that were subpoenaed.

2.3.2. We confirm that our instructions were carried out in a competent and professional manner. The written part of the instructions would be scant and in the form of e-mails which essentially forward the subpoenas that were received. The substantive part was in telephone consultations. Should the Chairperson wish to receive these scant instructions, we can provide these.

2.4. The "concessions" made by PRASA employees at the Enquiry

2.4.1. It would have assisted to have a copy of the report from the enquiry in order to deal with the concessions that are said to have been made and compare those with the pleadings that have been filed. Be that as it may, the instructions that have been given to DM are based on the pleadings submitted, the law on the issues raised in the pleadings and factual accounts from PRASA officials that were involved in issues in dispute.

2.4.2. Had we been aware of the concessions that are said to have been made by PRASA employees, we would be in a position to assess whether these concessions are at a variance to the defences raised in the pleadings. If the concessions are not at variance to the defences, such concessions would not cause Group Legal Services to advise PRASA to settle these claims.

2.4.3. As per DM's report, the following material defences have been raised by PRASA:

2.4.3.1. Rail Infrastructure Rehabilitation Programme (Case No.: 73934/2015)

2.4.3.1.1. That the services indicated in the invoices that are annexures to the claim do not refer to the services as per the agreement that forms the basis of the claim[2].

2.4.3.1.2. In our view, a claim based on a contract must be provided for in the contract that is the subject of the claim. We do not believe that PRASA should pay for services that it did not contract for.

2.4.3.1.3. The second defence raised relates to the failure of Siyaya to provide a certificate of occupation which they are obliged to provide in terms of the agreement. In terms of the contract, this is an event of default by Siyaya[3].

2.4.3.2. Accelerated Infrastructure Refurbishment Project (Case No.: 73933/2015)

2.4.3.2.1. That the services indicated in the invoices that are annexures to the claim do not refer to the services as per the agreement that forms the basis of the claim[4].

2.4.3.3. Material Coding (Case No.: 74281/2015)

2.4.3.3.1. PRASA denied the oral agreement which is pleaded on behalf of Siyaya as the basis of the claim[5]. This is because it is unlawful for a public entity to enter into an oral agreement.

2.4.3.3.2. PRASA denied that the services reflected in the invoices were rendered to PRASA[6].

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[2] Paragraph 2.1.10 *Ibid*
[3] Paragraph 2.1.13 *Ibid*
[4] Paragraph 2.2.11 *Ibid*
[5] Paragraph 2.3.10 *Ibid*
[6] Paragraph 2.3.11 *Ibid*

2.4.3.3.3. That the services indicated in the invoices that are annexures to the claim do not refer to the services as per the agreement that forms the basis of the claim[7].

2.4.3.4. Claim Based on an Alleged Variation (Case No.: 47598/2016)

2.4.3.4.1. PRASA denies that Siyaya carried out any additional work on the agreement which additional would have been the basis for the variation of the agreement.

2.4.3.4.2. PRASA alleges that, in the event that there was a variation, such variation was not authorised by PRASA.

2.4.3.4.3. That the agreement that is alleged to have been varied had lapsed at the time of the alleged variation.

2.4.3.5. Consultancy Agreement in respect of the GSM-R Project

2.4.3.5.1. PRASA denied the conclusion of the agreement for additional services. In the alternative and should it be found that such agreement was concluded, PRASA denies that Mr Sorin Baltac, who is alleged to have represented PRASA was duly authorised to conclude this agreement[8].

2.4.3.5.2. The report that was submitted by Mr Sorin Baltac to the Chairperson is consistent with the above main and alternative defences. In his report Mr Baltac indicates that there was a disagreement about the rates of the professionals employed for this additional work. He specifically states that he indicated to the Commissioner that "[i]n his opinion the value of the VO needed to be revisited and agreed".

2.4.3.6. Supervision of the Re-signalling Project

2.4.3.6.1. There is no need to deal with this matter as it has been settled.

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[7] 2.3.12 *Ibid*
[8] 2.5.11 *Ibid*

2.4.3.7. In our view and because of the self-contradictory claim documents, Siyaya will have a difficulty reconciling their invoices with the provisions of the agreements. Because of the possible counterclaim (dealt with below), we also believe that Siyaya will be at risk for any amounts that they may prove and all the amounts that PRASA will claim as a result of the agreements vitiated by the material fraudulent misrepresentation.

3. General Observations and Further Instructions to DM

3.1. Delays attributable to Siyaya's liquidators

3.1.1. There is no point where PRASA was required to file any documents and failed to do so. All the delays and requests for indulgences were at the instance of Siyaya. At this stage, we have instructed DM to request further particulars and further and better discovery from Siyaya. It appears that Siyaya's liquidators are unable to produce the documents required in the further and better discovery and to respond to the further particulars required. The failure by Siyaya to respond to these requests occasioned the postponement of the arbitration which was set down from 11 September 2017.

3.1.2. Siyaya's liquidators appear to have given preference to proceedings that will not result in a binding outcome (the Enquiry) instead of preparing for the arbitration which, as you know, would have produced a binding outcome.

3.2. Possible Fraudulent Misrepresentation by Siyaya

3.2.1. As stated above, we learned that DBI had made an application for the liquidation of Siyaya before Siyaya resolved to voluntarily liquidate itself. This came as a shock to PRASA as many of the contracts that were concluded between PRASA and Siyaya were concluded on the basis of a misapprehension that Siyaya was an incorporated joint venture company between one of the companies in the Siyaya group of companies and DBI. It is only when DBI made application for the liquidation of Siyaya that we learnt that there was no joint venture, DBI was a subcontractor to Siyaya in some of the projects that Siyaya was engaged in.

3.2.2. That there was no joint venture relationship is a material misrepresentation that may be said to have been fraudulent. Some of the requests for better discovery and requests for further particulars are intended to enquire into whether or not there was this suspected fraudulent misrepresentation that induced PRASA to enter into agreements with Siyaya.

3.2.3. If Siyaya fails to provide the requested information, our view is that we should amend our plea to include a defence that the agreements concluded with Siyaya are vitiated by the fact that they were concluded on the basis of a material fraudulent misrepresentation. Our view is also to include a counterclaim for all the payments that were made to Siyaya under the above agreements and any other agreements concluded between PRASA and Siyaya and that are based on this material fraudulent misrepresentation.

3.3. In the circumstances, we believe that the defences raised against Siyaya's claims are cogent and that PRASA may have a counterclaim against Siyaya.

We will be available on Friday in case the Board would like to ask any questions on this matter.

"OMN12"

Fani Dingiswayo

From: Fani Dingiswayo
Sent: 30 November 2017 04:48 PM
To: Lindikaya Zide; Martha Ngoye
Cc: Tiro Holele {PRASA CORP}
Subject: RE: Siyaya Consulting Engineers (Pty) Ltd (IN LIQUIDATION) v PRASA
Attachments: Siyaya Memo_30 Nov 2017.pdf

Dear Mr Zide,

Find herewith the response to the memorandum from the Chairperson.

Kind regards,
Fani Dingiswayo
Group Legal Services

PRASA House
1040 Burnett Street
Hatfield
Pretoria

Private Bag x101
Marshaltown
2107

Tel: +27 12 748 7595
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Email: fani.dingiswayo@prasa.com

for

prasa

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From: Lindikaya Zide
Sent: 29 November 2017 01:27 PM
To: Martha Ngoye
Cc: Fani Dingiswayo; Tiro Holele {PRASA CORP}
Subject: FW: Siyaya Consulting Engineers (Pty) Ltd (IN LIQUIDATION) v PRASA

Dear Colleagues,

I had a bit of a challenge yesterday receiving my e-mail and I am requesting that we action the amended Memo...

Mr. D, accepting that Sister Boss is not in can you please action the matters contained in the attached amended memo... Can I also request that you alert Mr. Mogashoa, and Messrs. Kubuwe, Baltic and Vermulen of the Chairperson's request.

Kind regards,

LK

From: Tintswalo Makhubele [mailto:tanmakhubele@me.com]
Sent: Tuesday, November 28, 2017 10:54 PM
To: Lindikaya Zide
Subject: Fwd: Siyaya Consulting Engineers (Pty) Ltd (IN LIQUIDATION) v PRASA

Dear Mr. Zide,

I have made certain amendments to the memorandum I sent earlier this morning, namely, paragraphs 9 and 12.

Regards.

Adv. TAN Makhubele SC
Chairperson, Prasa IBOC

Begin forwarded message:

From: Tintswalo Makhubele <tanmakhubele@me.com>
Subject: Siyaya Consulting Engineers (Pty) Ltd (IN LIQUIDATION) v PRASA
Date: 28 November 2017 at 10:02:04 AM SAST
To: Lindikaya Zide <lzide@prasa.com>
Reply-To: Tintswalo Makhubele <tanmakhubele@me.com>

Dear Mr. Zide.

Please find attached herein an urgent memo for your attention .

Best regards.

Chairperson, Prasa IBOC.

Dear Colleagues,

The Chairperson is not impressed with the internal memo shared with External the lawyers, and of course She has indicated that she will take issue with this as the bark stops with me and I can accept that the Board can make a recommendation that it is being undermined...
Equally she feels that the tone of the memo was not taking into account that the memo is addressed to the Chairperson and that the memo does not respond to the questions she has asked? So she is of the view that Management(and in particular me because I am at the helm) is either insubordinate or refusing a valid and a reasonable instruction. In this regard she does not understand why when she wants a report of Treasury she is given a summary on not the whole report when Ground up has the report and the same was discussed by 702 Radio and people were quoting pages of the report. Secondly on the Werksmans report she does not understand that there is final report and failure to place her with the final report means that the Board cannot execute on its work. Is there a report from Treasury that is not the summary? Can I have it please... so that I can give it to the Chairperson. I will equally ask Bernard to provide me with the final report, because the Chairperson is now of the view that as Management we are refusing to give her the report...

Equally she has indicated that she will raise with the Board her displeasure in my having shared the memo with Legal and Legal having shared the same with externals.

She has indicated that her understanding of the submissions that we made on the PP review were only meant to advise the court that we are implementing the remedial actions of the PP and not a full blown opposition of the review application by Lucky, and this was never disclosed. In this regard, She is also of the view in the manner that we deal with the PP's review we don't say the Board instructed the Legal Department, but it's as if the Legal department had taken the matters on their own given the reference of we...

So I need to write to Bernard and I don't even know who is dealing with the investigation at TREASURY to please the reports they have to the Chairperson.

Your comments and inputs please...

Regards,

LK

From: Tintswalo Makhubele [mailto:tanmakhubele@me.com]
Sent: Thursday, November 30, 2017 5:21 PM
To: Lindikaya Zide
Subject: Re: Siyaya Memo_30 Nov 2017.pdf

Dear Mr. Zide.
Please explain to me the reasons for sharing an internal memo with Mogashoa Diale attorneys .

There was a specific instruction that was to be communicated to the attorneys.

Why do you need legal assistance to respond to internal matters?

Thank you.
Chairperson .

Sent from my iPhone

On Nov 30, 2017, at 5:06 PM, Lindikaya Zide <lzide@prasa.com> wrote:

Dear Chairperson,

Please find attached hereto for your attention, the Memorandum received from Legal services in respect of the above subject matter.

Kind regards,

L.Zide

<Siyaya Memo_30 Nov 2017.pdf>

TN

OMN 13

Fani Dingiswayo

From: Fani Dingiswayo
Sent: 30 November 2017 10:48 PM
To: Lindikaya Zide
Cc: Martha Ngoye; Tiro Holele {PRASA CORP}
Subject: Re: Siyaya Memo_30 Nov 2017.pdf

Mr Zide,

The memo that I sent to you was drafted by me. I had regard to the letter that was drafted by Diale Mogashoa and dated 21 November 2017 to include the defense that is in the pleadings. To the extent that the tone of the memo may have not displayed respect for the Chairperson, I apologize for that. I meant no disrespect to the Chairperson. I actually have a great respect and regard for her as an individual and in her capacity as the Chairperson of the Board of Control. Please relay my sincere apology to her for the unwelcome tone.

I attempted to ensure that all the questions that I could glean from the memo from the Chair are responded to. If there is/are (a) question(s) that I omitted to address, I would like to be advised of this so that I can provide a response to such question(s). I believe that all the questions have answers, I may have, however missed one or some of them.

On the Treasury report - you will recall that we were furnished with a CD that contained the different reports from the different investigators that were engaged by National Treasury. As these reports are currently being handled by the office of the Acting GCFO, we requested Brian to provide these to the Acting Company Secretary, please ascertain from Brian if this was done.

On the Werksmans report - our understanding is that there is no executive summary of the entire report. There are a number of executive summaries that the Chairperson has confirmed to be in possession of. It may assist for the Interim Board to engage with Werksmans Attorneys to have a better understanding of how the report was put together and understand what can be provided, alternatively, instruct Werksmans to package the reports in a manner that is different to how the former Board agreed with Werksmans around the format of the reports.

On the approach of PRASA to the review the application against the report of the Public Protector - I am not certain as to what may given the Chairperson the impression that PRASA was not opposing the review of the "Derailed" report. According to PRASA's delegation of authority framework, the decision on whether to oppose any application made by Group Legal Services through the Group Executive identified as the Head of Legal in the delegation of authority framework. The making of this kind of decision is therefore delegated. Should the delegator (the Board of Control) wish to change the decision of the delegated (the Head of Legal), we are happy to share the work that we have, to date, done on the answering affidavit to the supplementary affidavit so that we may be guided on what approach the Board of Control would like to adopt at this stage of the proceedings. I do not recall any communication to the Chair to the effect that we were not opposing this application. Having agreed with the recommendations and remedial steps and implementing them, our view was that the report should be defended by PRASA. After all, PRASA management is primarily responsible for good governance and the report is a welcome reminder of the primary duty of management to engender good governance.

Please advise if there is any other matter that you require our input on.

Kind regards,

Fani

On 30 Nov 2017, at 18:16, Lindikaya Zide <lzide@prasa.com> wrote:

TN

Annexure "MN7"

DIALE MOGASHOA INC
ATTORNEYS

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PRASA HOUSE
1040 BURNETT STREET
HATFIELD
PRETORIA

OUR REF: M MOGASHOA/NAM/MB/PRASA
YOUR REF: F DINGISWAYO/S MOKOTEDI

PER EMAIL: MARTHA.NGOYE@PRASA.COM
FANI.DINGISWAYO@PRASA.COM
SMOKOTEDI@PRASA.COM

ATTENTION: MS MARTHA NGOYE
MR. FANI DINGISWAYO
MRS. SHUMI MOKOTEDI

30 November 2017

Dear Sir/ Madam,

SUBJECT:	**REPORT ON PROGRESS ON SIYAYA FILES**
MATTERS:	**SIYAYA // PASSENGER RAIL AGENCY OF SOUTH AFRICA**
CASE NUMBERS:	**73934/2015, 73933/2015, 74281/2015, 77333/2015 47597/2016, 57598/2016**
ARBITRATION DATE:	**26 – 29 MARCH 2018**
ARBITRATOR:	**RETIRED JUDGE FDJ BRAND**

1. INTRODUCTION:

1.1 We refer to the matters above and in particular to our report dated 21 November 2017, subsequent to which we have now been placed in possession of a report which was prepared by the Interim Board's Chairperson (Advocate Makhubele SC), addressed to the Acting Group Chief Executive Officer (Mr. L Zide), which report is dated 30 November 2017. Given that the report was made available to us yesterday the 29th instant, we can only accept that the date that appears on the Chairperson's report was noted in error as the report could only have been dated the 29th or some date prior to that.

1.2 The above as may be, and by way of updating you further in respect of these matters as normally would be the case, kindly take note that the parties have, with the arbitrator in this matter retired Judge Brand, agreed that the previously postponed arbitration proceedings shall now take place between the **26th and the 29th of March 2018**. In this regard we request that you accordingly diarise the aforementioned dates and that further correspondence from us will soon

Directors: Madimpe Mogashoa, Donald Diale
Senior Associates: Ntando Makuyana, Busisiwe Mqingwana, Yagashen Pillay, Mari Wilsnach, Thato Mmamadi
Molebogeng Maakoe, Kobus de Beer, Calvin Salane, Geraldine Burger, Keneilwe Makwela
Associates: Mohlatlego Sekgotha, Precious Mulaudzi, Itumeleng Papo
Nondumiso Dlamini, Mufhati Munyangane, Tshifhiwa Netshisaulu
Finance Manager: Karen Greyling **Office Manager:** Nelisiwe Thabethe

Co. Reg.: 2012/007603/21
VAT Reg.: 4640260487

follow regarding all aspects that relate to the necessary and relevant preparations to be attended to in respect of the aforementioned dates of hearing.

1.3 We were yesterday requested by your department to give regard to the Chairperson's report referred to above and as well make comments to the extent that the report relates to us as a firm, alternatively to the extent that may be indicated.

1.4 At the outset we wish to make the point that our report of the 21st instant went a long way in delving into the issues that may relate to the merits or otherwise of the claims instituted by Siyaya against PRASA, and furthermore that our report was elaborate on the numerous grounds upon which we were instructed that the claims be defended. Each and every one of the cases was discussed with the precise details blatantly outlined. The defences raised by PRASA would range from factual contestations in response to the allegations pleaded, to the formulation of legal arguments as may be informed by the prescripts and contents of the pleaded basis for such claims. In this way, it is not our intention to be laborious by repeating what has already been summarised which is on record.

1.5 We once again place it on record that our submissions made are purely intended to assist PRASA with the relevant submissions that must be made as may currently be the requirement of the Interim Board.

1.6 We now deal with the Chairperson's report as discussed in paragraphs here-below.

2. **THE LITIGATION AND SIYAYA'S SUBSEQUENT VOLUNTARY LIQUIDATION:**

2.1 It is indeed so that between 2015 and 2016 our office received instructions from PRASA that we defend a variety of summonses issued against it by Siyaya. It seems to still be the case that to date Siyaya is represented by Mathopo Attorneys of Johannesburg.

2.2 The gist of the allegations as pleaded in the various summonses is that various consultancy agreements were entered into between Siyaya and PRASA for the provision of services as may have been contained in such alleged agreements and in respect of a variety of projects. In this regard you would have noted that the common thread of our defences was that in respect of most of such alleged agreements the correct platform from which Siyaya ought to have instituted proceedings against PRASA would have been arbitrations as an agreed to way of resolving whatever disputes that exist.

2.3 As appears on our attached letter, marked **annexure 'A'**, and dated 12 April 2017, the parties at that time had already commenced with discussions relating to the transfer of the matters for arbitration, and furthermore that it may turn out to be convenient to also have them consolidated. This then culminated in the court order of 03 May 2017 in terms of which all the matters were consolidated, were to be transferred from the High Court to the agreed to arbitration proceedings, and that the parties would have had to agree on the name of a retired judge who would serve as an arbitrator. As you are aware, Judge Brand is the appointed arbitrator in these proceedings.

2.4 Also from our letter of the 12th of April 2017 referred to above you would note that our office had gained knowledge that Siyaya had filed for voluntary liquidation on or about the 24th of March 2017. It can then be accepted that our office became aware of Siyaya's voluntary liquidation around the time that the parties were already in discussions regarding referring the matters for arbitration in the stead of continuing to litigate out of the High Court.

2.5 As previously reported the parties agreed with Judge Brand that the matters will proceed on arbitration between the 11 – 22nd of September 2017, which proceedings were subsequently postponed as a result of what was thought was Siyaya's lack of readiness for the proceedings that were supposed to follow. All relevant documents in respect hereof have been made available to you in our previous report, more so the pre-arbitration minute with its relevant time table that had set out what the parties had to be in compliance with prior to the hearing.

2.6 As pointed out earlier on in this report Judge Brand has now set this matter down for the arbitration proceedings for the period between the 26 – 29th of March 2018.

3. **SECTION 417 AND 418 PROCEEDIGS IN TERMS OF THE COMPANIES ACT:**

3.1 We note from the Chairperson's report that Siyaya's attorneys, on or about the 14th of November 2017, approached her and provided her with a copy of an interim report following the proceedings that were constituted in terms of Sections 417 and 418. We pause to make the point that ordinarily, and in respect of matters litigated upon and where attorneys have come on record on behalf of such litigating parties, legal representatives of one party may not directly be in contact with their opponent's clients without their colleague's knowledge and/or consent. It is surprising that our opponents have gone on to do so, and that they went on further to hand over documents to the Chairperson, which documents purportedly carry some weight in enabling the parties to assess the claims properly.

3.2 We would also like to clarify that our previous report of 21 November 2017did not attach any of the e-mail communication between our Madimpe Mogashoa and Francois Botes, and neither did the report make reference to any such communication. We will later in this report, however, append hereto the relevant communication as may assist in clarifying some issues in this submission.

3.3 The above as may be, our office received correspondence from PRASA on 15 August 2017, to which summonses were attached in respect of numerous of PRASA's employees and regarding Siyaya which is in liquidation. Please refer to the attached e-mail marked **'annexure B'**. Subsequent to this communication we were given instructions to proceed to represent PRASA's employees in the inquiry that was to follow – **annexure 'C'.**

3.4 Sections 417 and 418 summons, and in particular those that were dispatched on behalf of the liquidators by their attorneys, Crouse Incorporated, which were served on numerous of PRASA's employees, contained in them the following key features:

3.4.1 That they were in respect of an inquiry into the affairs of Siyaya which had been placed in voluntary liquidation;

3.4.2 That they were issued in terms of Section 417 and 418 of the Companies Act;

3.4.3 That they required the attendance of the person on whom they was served ;

3.4.4 That the person so served was required to bring with documents in their possession that relate to the affairs of the company in liquidation (Siyaya);

3.4.5 That such witnesses who received summonses would be entitled to legal representation at the inquiry/hearing;

3.4.6 That the purpose was to enquire about the facts and information relating to the affairs of the company in liquidation;

3.4.7 That the commission in respect of which such **summonses were served does not sit as a court of law and that such hearings would purely be proceedings for investigative purposes**; and

3.4.8 That any further enquiries would have had to be directed to the attorneys of the liquidators, Crouse Inc.

3.5 Sections 417 and 418 of the Companies Act briefly stipulates that:

3.5.1 A Master may appoint a commissioner for purposes of taking evidence or holding an inquiry under the same Act;

3.5.2 That at such hearings the commissioner, the liquidator, the creditor or any member of the company may through an attorney or counsel be entitled to interrogate any person on whom a summons has been served;

3.5.3 That at such enquiries persons summoned to be in attendance may be represented by an attorney with or without counsel; and

3.5.4 That the appointed commissioner may need to report to the Master.

3.6 Pursuant to our instructions that we represent PRASA's employees in the proceedings that have been described above, you would note from our attached letter dated 21 August 2017 that our office then went ahead to address the liquidator's attorneys, Crouse Inc – **annexure 'D'**. The purpose of this letter was mainly to have the liquidators provide us with the specifics regarding the nature of the inquiry, what our client would be expected to assist the commission with and furthermore that our clients would be placed in a better position to make a determination of what documents to take with to the commission. More importantly, the letter was meant to bring to the commission's attention that there were pending arbitration proceedings against Siyaya, and that our client's position was that it disputes that it is liable to Siyaya. **Annexure 'E'** is a reply by the liquidator's attorneys in which they indicated that it was not necessary for our clients to bring any documents as they will make whatever relevant documents available to our clients at the hearing itself.

3.7 On the 25th of August 2017, our office dispatched a letter to PRASA confirming that we would be present at the scheduled hearings that took place between the 28th of August 2017 and 1st of September 2017 – **annexure 'F'**.

3.8 As already submitted in our previous report, and given what Sections 417 and 418 prescribe, only a commissioner, a liquidator, a creditor, a member of a company and/or their attorneys, with or without counsel, are permitted to put questions to or interrogate witnesses. Although our presence was allowed only when our own clients (PRASA's employees) were asked questions, our role at the actual hearings did not go beyond that. We could only advise our

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clients around the processes that were followed and also on what PRASA's position was regarding liability.

3.9 At the hearing we managed to place on record, however, that PRASA would want to be placed in possession of both the record and the commissioner's report following the hearings of the commission. Commissioner Krige in this regard indicated that we shall receive a copy of both the report and the record, but that they may be limited to only those aspects that have to do with the testimony of PRASA's employees. Up to date our office has not been placed in possession of the commissioner's report and the relevant record in spite the undertakings previously made by our opponents through Advocate Francois Botes' e-mails dated 03 and 06 September 2017 – **annexures 'G' and 'H'**.

3.10 What then followed was a copy of an e-mail by the arbitrator, Judge Brand, dated 17 September 2017 in which he confesses that he wasn't sure why Advocate Botes had on the 16th of September 2017 sent him what is referred to as an interim report by the commissioner of the insolvency inquiry – **annexure 'I'**. You would note from this e-mail annexure that Advocate Botes had only addressed the Judge in an e-mail communication which had attached what is called an interim report. We place it on record that neither our office nor those of PRASA's counsel Advocates Tsatsawane and Seti-Baza were recipients of this interim report. To date, we are yet to be placed in possession of the report alluded to.

3.11 To date, our office has not been placed in possession of any or all of the documents that may have been made available to the Chairperson of the interim board. To this end it is not certain to us under which context the Chairperson concludes that *'these assertions may not be entirely correct'*.

3.12 To this end, and in as far as the commission had instructed that PRASA's employees should make submissions in respect of the inquiry itself, we were instructed to, in respect of each of the matters that our clients gave evidence on to file responses as appears in **annexures 'J', 'k', 'L', and 'M'** appended hereto.

4. **CONCLUSION:**

4.1 Although it has been PRASA's position that it is not liable to Siyaya in spite of the proceedings of the inquiry, we at this stage submit that it would not be possible for us to comment on how the alleged concessions made would now affect the crux of the defences as pleaded in respect of each and every one of the defended matters. We would need to have sight of all the relevant documents that may have been given to the Chairperson, including the interim report.

4.2 Furthermore we submit that we would gladly assist in mapping out a defence strategy, particularly in view of the alleged concessions by the current employees of PRASA during the liquidation inquiry.

4.3 In any event, one opines that if at all, the findings of the commissioner in his interim report may suggest to the Master of the High Court that perhaps there is a strong case to be made against PRASA in respect of the instituted claims, rather than be instructive in that PRASA is liable to pay.

5. We trust that you will find the above in good order and wait to hear from you soon.

Yours faithfully

DIALE MOGASHOA ATTORNEYS
Per: *Madimpe Mogashoa*
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Annexure "MN8"

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The Minister of Transport,
Honourable Dr Bonginkosi E Nzimande
159 Struben Street
Forum Building
Pretoria

By hand:

Dear Minister,

DEFAULT JUDGMENT AGAINST PRASA IN FAVOUR OF SIYAYA COMPANIES ON 9 MARCH 2018

1. We attach hereto a draft affidavit that we prepared as instructions to our lawyers in respect of the application for rescission of judgment. The affidavit contains the facts that are relevant to the matter as well as the documentary evidence of these facts.

2. The Chairperson of the Interim Board is correct to say that the matter in question is by all accounts a small matter in the context of PRASA:

2.1. Monetarily this matter is less than 0,2% of PRASA's annual operational and capital budget (R58 million of R24,8 billion).

2.2. The work that is alleged to have been done in the contracts herein was alleged to have been done before 2015, the alleged contracts in question will not change the commuter experience at all today.

2.3. PRASA is facing unprecedented operational and governance challenges.

Directors: Adv. TAN Makhubele SC (Chairperson), C Molepo (Acting Group CEO), G Maluleke, X George, Dr N Skeepers, MC Reddy, Prof. J Maluleke

Company Secretary: L.Zido

In our view, this matter did not deserve the time and attention of the current leader of the Accounting Authority of PRASA.

3. The summary of the issues is the following:

3.1. The involvement of the Chairperson of the Interim Board was under the pretext that PRASA employees had admitted PRASA's liability at an Insolvency Enquiry. The Chairperson discussed this with Group Legal Services however she neither refused to share nor shared this information with Group Legal Services.

3.2. To confirm the admission of liability, the Chairperson proceeded to demand reports from junior staff and arranged meetings with junior staff without the Group Executives that they report to. None of the persons who met with the Chairperson admitted any liability to the company that was under liquidation.

3.3. The Chairperson proceeded to settle the matters without Group Legal Services and without the involvement of the Group Executives responsible for PRASA Tech and Strategic Asset Development. The terms of the settlement are:

3.3.1. *without the admission of liability and purely for settlement purposes*; and

3.3.2. That *"the existence, nature, terms and conditions of both settlement offers be regarded as strictly confidential and that same shall not be disclosed by either party in any manner or form, directly or indirectly, to any person or entity under any circumstances"*.

4. In the circumstances, from available information, the intervention of the Chairperson of the Board is unlawful in that it offends:

4.1. the Constitution in that it is a secret agreement entered into by a public entity;

4.2. the Public Finance Management Act in that it is *"without admission of liability"*.

4.3. Corporate Governance principles and PRASA's Delegation of Authority Framework of PRASA.

5. In terms of PRASA's current governance protocols, the Board of Control has delegated it's authority to appoint lawyers on Ms Ngoye. Whether a matter should be settled or not must be decided on by Ms. Ngoye and the respective Group Executives. The Delegation of Authority further states that this authority may be revoked and any decision made by the delegee may be changed by the Board in writing and at any time. This has not happened.

6. We therefore request that the Minister directs the Chairperson of the Interim Board together with the Acting Group CEO to respect the law and PRASA's governance protocols.

Martha Ngoye

Group Executive: Legal, Risk & Compliance

12/03/2018

Fani Dingiswayo

General Manager: Group Legal Services

16 MARCH 2018

Annexure "MN9"

transport

Department:
Transport
REPUBLIC OF SOUTH AFRICA

DG MEETING WITH STAKEHOLDERS THAT HAVE FINANCIAL DISPUTES WITH PRASA

DATE: 25 APRIL 2019

TIME: 12h30

VENUE: DG'S BOARDROOM
DOT

Minutes of a meeting with stakeholders that have financial disputes with PRASA, held on 25 April 2019 at the DG's Boardroom, National Department of Transport (NDoT) Offices from 12h30

MATTERS DISCUSSED

Item	Discussion and Resolutions	Responsibility
1.	**OPENING AND WELCOME**	
1.1.	The Acting Director-General Mr Chris Hlabisa, henceforth Chairperson, welcomed all members to a Meeting to discuss financial disputes with PRASA's service providers that were invited to present their cases.	
1.2.	*The Chairperson highlighted the following salient matters*: a. The meeting was as a result of serious allegations by some companies and/or service providers who claimed that they are owed monies for services rendered to Government, especially its entities such as PRASA. b. Other service providers went as far as reporting PRASA to Parliament, to the Minister and to the Accounting Officer of the Department. c. Parliament noted the accusations and referred the matter back to Minister and the Accounting Officer. d. There were also rumours that the service providers were taking Government (PRASA) to Court, that is when the Minister mandated the Director-General to investigate whether indeed PRASA owes them money or not. e. These accusations were to be addressed and concluded before the new Administration is appointed f. During the consultations, companies were to present proof of their appointments, proof of their completed projects, litigation issues, as well as proof of their claims. After that, the panel was going to give feedback to the Minister in a form of a report, with the observations and recommendations. The Minister will have his own view on how to proceed, however the DG will sign the report to the Minister.	
1.3.	The gathered information would be verified before a report is compiled to the Minister	
2.	**ATTENDANCE** **PRESENT** — **ORGANISATION/POSITION**	
2.1.	**DOT REPRESENTATIVES** Mr Chris Hlabisa — Acting Director-General (Chairperson) Mr JD de Villiers — Acting DDG Rail Ms Constance Maleho — Acting Chief Director: Rail Infrastructure & Industry Development Ms Stella Khoza — Secretariat	
2.2.	**PRASA REPRESENTATIVES**	

	Dr Nkosinathi Sishi	Acting Group Chief Executive Officer	
	Ms Thobeka Mahlati	Acting Chief Financial Officer	
	Ms Lydia Matloga	Senior Manager: Finance	
2.3.	**PRESENTING COMPANIES FOR OUTSTANDING CLAIMS**		
	Mr Makhensa Mabunda	Siyaya Consulting Engineers & Duetshe Bahn International (DBI)	
	Mr Prince Phaweni	Siyaya Consulting Engineers & Duetshe Bahn International (DBI)	
	Mr Denis Modipa	Bagale Consulting (Pty)Ltd	
	Mr Neo Tladinyane	Bagale Consulting (Pty)Ltd	
	Mr P.S. Reddy	MD: Siyangena Technologies	
	Mr Tom Dubek	CFO: Siyangena Technologies	
	Mr Andrew Nkambule	Nkambule & Associates Consulting Engineers	
	The Panel consulted with the above mentioned companies independently.		
3.	**PRESENTATIONS**		
3.1.	***1ST Presentation by SGROUP _Siyaya Consulting Engineering*** and ***Duetshe Bahn International (DBI)***		
3.1.1.	The presentation was made by Mr M Mabunda and he also participated during the presentation and discussions. Mr Phaweni handed over two (2) files that contained submissions/evidence to be studied by the panel.		
3.1.2.	The presentation covered the following matters: a. Background as to the appointment of the company by PRASA. The supporting documents and detailed reports were packaged in a file. b. Summary of Contracts awarded to Siyaya/DBI, which were mainly as Transaction Advisors (TA's) for the Signalling and Depot Modernisation. The Executives responsible were Mr Piet Sebola and Mr Vincent Kobue. c. Summary of Claims of all work completed. Noted that PRASA had benefited from work performed contractually, resulting in five (5) outstanding claims. d. Financial devastation of non-payment to voluntary liquidation as well as the effects of liquidation. e. Reasons leading PRASA to stop processing claims to the company, in 2017. f. Litigation issues: legal proceedings that were instituted by Siyaya/DBI against PRASA to recover the outstanding payments.		
3.1.3.	***Discussions*** *were held around the following matters:* a) The Chairperson reiterated that his mandate was to find out if Siyaya/DBI was indeed owed by PRASA, noting that PRASA had not been requested to present their responses as yet, and that people who were responsible for the outstanding payments were yet to be questioned.		

	b) The presentation made mention that there was never an interest by PRASA to settle the debt due to Siyaya/DBI despite acknowledgement of work performed. The panel sought clarity with regard to the statement '*PRASA's refusal to pay after Siyaya/DBI had given them the required documentation*?' Siyaya/DBI responded that PRASA had stopped payments because of the alleged investigations by the Public Protector and the National Treasury. The investigations started around 2015, however Siyaya/DBI claimed not to have been presented with feedback from the Treasury report that came out around 2018. The company has also never been contacted by law enforcement agencies, following the statements in those authorities' reports. c) The Group CEO (GCEO) sought clarity on non-payment issues. He needed to understand the reasons behind Siyaya/DBI continuing to accept appointment for further work by PRASA whilst there were outstanding payments for projects delivered. Siyaya/DBI explained that payment problems started around 2014/2015 when a new PRASA Board was appointed. By then, the service provider was already appointed in most projects and was in PRASA system. d) Siyaya/DBI made mention some of its experiences whilst working with Government. The Chairperson mentioned that there are other companies that commend government policies as amongst the best. He reprimanded Siyaya/DBI that it should not use a platform such as this one to criticise government.	
3.1.4.	*The Litigation matters*: a) Siyaya/DBI further confirmed that due to the outstanding payment dispute they opted to exercise their legal rights. The company also explained the process that led to the litigation process. b) According to Siyaya/DBI, it was never their intention to take the legal route, however they did because they were in distress and felt they had exhausted all the negotiation avenues. c) The company also stated that they would wish to reach a settlement with Government instead of a protracted legal process. d) The Chairperson noted that Siyaya/DBI lawyers were in consultation with PRASA lawyers to discuss the Arbitration that was set for the month of May 2019. e) Siyaya/DBI confirmed that there was evidence of various signed-off correspondence by PRASA Project leaders to back up their claims.	
3.1.5.	*Reason for **liquidation***: a) Siyaya/DBI had applied for voluntary liquidation around 2017 and the liquidation was approved around May/June 2017. b) The company was forced to liquidate because Siyaya/DBI was unable to pay its debts. c) Tshwane Trust took over as liquidators.	
3.1.6.	*The Panel **noted** that:* a) PRASA cancelled Siyaya/DBI's contract on the basis that the company has filed for liquidation.	

	b) Siyaya/DBI was adamant that they have valid outstanding payments from PRASA, which the entity is not making efforts to settle. c) The involvement of Siemens, Bombardier and Thales Maziya consortium was explained. These companies' participation in the signalling programme, was as a result of the *transaction advisory work* (that included evaluation of bids) performed for PRASA by Siyaya/DBI. The total litigation amount by Siyaya/DBI is R111 641 219.18. This amount is made up of capital expenditure of R82 978 039.84 plus interest of R28 663 179.34.	
3.1.7.	***Inputs** by the Group CEO* a) The GCEO noted that Siyaya/DBI was an important stakeholder that had been working with PRASA in the past. b) He was pleased with the presentation and responses to his questions. c) The GCEO thanked the chairperson and the manner in which he had conducted the session. He mentioned that the information derived from the exercise was useful. However, there were a lot of facts to consider and that PRASA was open minded about the matters and would carry the Chairperson's instructions. d) The CFO thanked the Chairperson and mentioned that PRASA would verify the presented outstanding payments information, as well as to verify with various business units and project managers on what transpired.	PRASA
3.1.8.	The DG **summarised** that: a) The Chairperson was going to further consult with PRASA with regards to the information that was presented to the panel. Both the DoT and PRASA will check where the bottlenecks happened, especially with the project managers that were under oath. b) The Panel was going to verify the presented information in order to compile a report that will be signed-off by the DG to the Minister. c) The Chair mentioned that there may be a need to pay the debts and part ways with some companies. d) He further clarified a misapprehension that the GCEO did not comment that Siyaya/DBI was part of the state capture, however the panel will soon find out if the company was implicated or not.	DoT PRASA
3.1.9.	**Decision**: a) The DoT will intervene to address the Litigation issues and see if Government was not unnecessarily losing money through this process. b) Siyaya/DBI to assist the panel by availing itself when requested, to clarify additional facts in their submission should any of the submitted information be unclear.	DoT
3.2.	***2ND PRESENTATION BY BAGALE CONSULTING (Pty) Ltd***	
3.2.1.	Once more, DG reiterated the purpose of the meeting as outlined in Item 1 above. He further summarised that the company was (i) to explain why they say they are owed by PRASA, (ii) explain how they were appointed, (iii) produce proof of completed projects, as well as (iv) providing information on litigation issues.	

3.2.2.	The Chairperson mentioned that the DoT would not want to waste time on issues that can be resolved outside of legal processes. He discouraged the waste of state funds by its entities and the use of lawyers even where there could be amicable ways of resolving the problems.	
3.2.3.	The presentation was done by Mr Neo Tladinyane, who was assisted by Mr Dennis Modipa, and it summarised the following matters: a. Background on the appointment of Bagale Consulting by PRASA. b. A letter containing a Synopsys of events, appointment letter detailing how and what they were appointed for, c. The basis of their fee claims and payments received, d. Project scope and changes which became the basis for current litigation, noting that there were attempts to try and resolve the matters amicably before the matter ended at an arbitration, e. Current status of the arbitration process and the appeal by PRASA. Bagale presented various documents and correspondence as evidence of their relationship and dispute with the entity.	
3.2.4.	***Discussions*** *were held on the following matters:* a) It was explained that the claimable amount was a result of the initial written agreement that was concluded on 10 April 2008. Bagale submitted a proposal in response to an open tender process, and after being shortlisted it was appointed to provide technical Programme and project coordination management services, relating to the upgrade of PRASA's existing infrastructure, and the construction of new infrastructure, in anticipation of the 2010 World Cup. b) Bagale clarified that it was appointed for a contract amount of R21.2m, which was 3% of R706.7m national treasury budget. The Scope of the project later increased by an amount of R36.0m which was 3% of R1.9b – R706.7m. At the commencement of the project, PRASA negotiated a reduction in the company's professional fees from the initial 4% down to 3%, The contractual agreement including professional fees then came up to R1.9b. c) What led to the dispute (which has been a bone of contention since 2009) was that during the project implementation period, there had been a change in the reporting lines within PRASA, whilst additional *project extension* instructions were issued to PRASA, and the variation orders not signed. d) Bagale originally sued the defendant for six different claims, but are no longer pursuing the one (1), which leaves the total claims to five (5) e) The crux of the dispute is an amount of R36.0m, but due to the protracted dispute settlement, chances are that the amount may increase substantially. Through an arbitration process, the company won an award of R26.6m in 2017/18, where PRASA was ordered to pay the costs excluding interest which was to be determined later. In 2019 the company	

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	received a final award- *mora* Interest on R26.6m. The claim amount currently sits at R41m and there could be an additional R+- R40m.	
3.2.5.	Following the arbitration awards in favour of Bagale, PRASA decided to appeal, and both parties agreed through their legal representatives that each party will nominate one person to the Appeals Bench and the two (2) nominees will nominate the third (3rd). The matter is set to be heard in September 2019.	
3.2.6.	The Panel questioned whether Bagale had attempted to enter into source business with PRASA in the past 10 years, that is, during the dispute resolution, and whether they have been doing business with government entities since then. • Bagale responded that they continued tendering but they were never awarded any contracts, as a result they stopped tendering around 2014/15. The company confirmed that they have and are currently doing work for other government departments/entities. The company further stated that they still wish to do business with PRASA, especially because PRASA was their biggest client.	
3.2.7.	*The panel **noted** that:* a. There was no written agreement, that is, no signing of variation when the scope of the infrastructure upgrades was increased, hence the disputes. b. Bagale mentioned that the matter of variation orders was frequently discussed with PRASA, however there were changes of reporting lines during the process. c. PRASA was appealing against R26.6m Award + R11m of interest plus additional costs) that could amount to R41m.	
3.2.8.	***Litigation** issues*: The Arbitration was held in August 2017. Bagale explained its Fee Claim, that it comprised of (i) additional services, (ii) how the *mora* interest was calculated, (iii) the legal costs, as well as the (iv) total loss as per current Arbitration Award. The Bagale directors had taken a decision to accept the Award in order to close the chapter and to "cut its losses. However, PRASA had since filed a notice to appeal and Bagale had also Cross-appealed. Bagale mentioned that the appeal by PRASA was a costly exercise for Government because should PRASA lose the Appeal, chances are that PRASA would be liable for the original claim amount and additional costs. Thus it remained Bagale's hope that, considering all facts, PRASA would consider withdrawing the appeal and settle the matter out of court.	
3.2.9.	*The Chairperson concluded that:* a. The Chairperson advised Bagale that PRASA was to verify the presented information. b. He requested Bagale to electronically furnish their submission to the Scribe. The submissions should detail the litigations and amounts. c. The Panel would, out of the presentations, compile a report that would be presented to our Minister.	Ms Mahlati Ms Maleho Ms Khoza

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3.2.10.	Thereafter, Bagale thanked the chairperson and the panel for having given them an opportunity to present their submission. ~ ~ ~ ~ ~	
3.2.11.	*Panel **discussion** plus **decision** after a meeting with Bagale* The Chairperson recommended that PRASA should instruct its lawyers to stop the Arbitration process for Bagale with the intention to settle the debt. Reason being that the appeals process could be a costly exercise for PRASA and that Bagale had suggested for a settlement of the matter out of court at a lesser amount.	PRASA
3.2.12.	*The GCEO **Summarised** that:* a. The discussions were an eye-opener. PRASA wouldn't have had access to the detailed information had it not been for this forum. b. PRASA wouldn't have chosen to Appeal cases if the funds were to be from its own coffers. c. PRASA would withdraw the Appeal in cases where there are unnecessary arbitrations. d. In some cases, PRASA was not refusing to pay, but it was as a result of invoices that had piled up. e. PRASA together with its Board were in the process of referring some cases to the SIU for investigation. Siyaya/DBI was one of them and they will need to clarify or prove their claim with the SIU. f. There are cases where the Hawks were already on some of Siyaya/DBI's officials. Treasury had already contacted PRASA requesting a list of cases that falls within the state capture commission. g. Some cases would be submitted to both the Zondo commission and National Treasury Investigations. PRASA would pay the outstanding claims should they not appear in both the Zondo Commission and the National Treasury Investigations.	
3.2.13.	***Summary** by the Chairperson:* a. The Chairperson recapped that he would not like Government to continue spending money on litigations. He gave an example of RTMC and Tasima and reiterated that entities must refrain from wasting money on Lawyers and settle the debts where funds are due. b. The Chairperson mentioned that it was important to separate issues. The panel will first allow the two (2) processes of the SIU and the Zondo commission to unfold, for companies allegedly implicated, where the SIU team of experts would do the calculations and assessment. After the processes, then (i) companies must be paid. The Chairperson cautioned that PRASA should not punish service providers because of its own SCM irregularities. Thereafter there would be companies that must be investigated further; that is (i) PRASA should consider investigating some companies and certain individuals who might have been party to these claims.	

	c. The Chairperson noted with concern the concluding statement by Siyaya/DBI about Government killing black business. (See Item 3.3.3.g below). d. He thereafter *advised that the cases that were heard today be prioritized* because they must be part of the Minister's report.	
3.3.	***3RD PRESENTATION BY SIYANGENA TECHNOLOGIES (Pty) Ltd_ Verbal***	
3.3.1.	Once more the Chairperson recapped the purpose of the meeting as outlined in Item 1 above, and thereafter requested panel members to introduce themselves.	
3.3.2.	*Their verbal presentation summarised the following matters:* They have been with PRASA since around 2010 when they started work on Stations identified for the FIFA World Cup. Whilst already doing work for PRASA, Siyangena was approached by PRASA to submit a Request for Proposal (RFP) just before the World Cup. The work which Siyangena was then appointed for, entailed the installation of electronic speed gates (for access control), CCTV and other technological work. Siyangena had never experienced problems with PRASA until the year 2015, when a new PRASA Board was appointed.	
3.3.3.	*The panel sought **clarity** on the following matters:* a. How Siyangena Technologies got involved with PRASA and procurement processes: • It was mentioned that initially the contract was awarded to Siemens. Because of the timelines and the costing, Siemens couldn't accept the contract. That is when PRASA embarked on a search for experienced companies that could take over the task; at that point Siyangena Technologies was identified. It was by means of referrals that they were approached. • Siyangena had acted as an emergency solution for a projects that could have been done by Siemens. It was noted that there were no timelines because of the sense of urgency for projects since the *World Cup* was to commence on 11 June 2010. • Their *invoices* were classified according to phases. They are owed approximately R3.4b for phase one, and R180m for phase two. Phase two work was not completed since they no longer had access to the sites. b. Siyangena was questioned about who prescribed what they needed to do on a number of projects? The order came through *Intersite* to *Siyangena* to perform the Job. c. Siyangena was requested to mention companies they had done work for besides PRASA: previously, they had been appointed by Anglo American, Siemens, Telkom, De Beers, Standard Bank and Capitec bank_ all for Access control & CCTV. d. Siyangena's commitment of maintenance of equipment contract would expire at the end of June 2019.	

	e. Siyangena believes that politics interfered with non-payment of their invoices because of changes in the then PRASA Board. They believed that they were caught up in disputes that arose between the Chairperson of the PRASA Board and the Group CEO because that is when the payments stopped. The DG corrected the highlighted statement about politics. He said that the Minister himself was a politician and doesn't want to be accused of killing businesses. Siyangena should rather separate the two issues and refer to internal political affairs within PRASA, not politics of politicians.	
3.3.4.	The panel **noted** that: a. Siyangena Technologies had taken their matter to Court and the case was scheduled for September 2019. The company had won every court appearance with PRASA, so far. b. Siyangena mentioned that their company had been visited by the SIU, however not on PRASA matters. c. The installation and maintenance contract expires in June 2019. This is the same contract which assisted PRASA to identify through the cameras, the person who burned the two trains in Cape Town on 22 April 2019.	
3.3.5.	**Decision**: a. The DG emphasised that he would not want Government money to be wasted on litigation matters which would only benefit lawyers, and not Government. The CFO must take away the issue of the Legal debacle *re* the September Court date. b. The DG requested the PRASA CFO to: • Check the submissions that are going to be emailed to the scribe and verify the amounts that are owed to them. • The CFO should settle the claims as soon as PRASA had verified that they had a legitimate claim. c. *Litigation matters*: • PRASA to check Siyangena's litigation issues and how much were they litigating PRASA against. • The CFO would also check whether Siyangena was being truthful about not being on the SIU radar, (ii) how many times was Siyangena been favoured or disfavoured by the Courts, (iii) Confirm the September Court date so that the issues could be settled before then. • The DG requested the CFO to have both Siyangena and PRASA Lawyers in one meeting, however, the DoT will initiate the meeting. PRASA CFO would instruct its Lawyers to work with Siyangena Lawyers.	GCEO & CFO CFO Ms Maleho CFO Mr de Villiers Ms Maleho
3.4.	***4th Presentation: Nkambule & Associates Consulting Engineers***	
3.4.1.	The DG repeated the purpose of the meeting as outlined in Item 1 above, and thereafter requested panel members to introduce themselves.	

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3.4.2.	Mr Andrew Nkambule was given an opportunity to present his submission regarding his outstanding claims from PRASA. The electronic copies of the presentation was to be emailed to the DoT. His presentation was summarised as follows: a. His company, *Nkambule & Associates Consulting Engineers*, responded to advertised bids by PRASA in 2012 for the Station modernisation programme. The company was then appointed for the upgrading of five (5) train stations. b. Their appointment was based on a Government Gazette and their invoices were supposed to be structured according to the specifications of the government gazette, at the percentage of 29.9%. However, PRASA negotiated that the claim be curtailed to 15%. c. The work was carried in two Phases. Phase one was reduced from 29.9% to 15%. Going to phase 2, the company used phase 1 as an example to curtail their claim. Even so PRASA articulated that they cannot pay. PRASA was of the opinion that phase 2 was included in phase 1, which is not the case. d. Had the invoices been paid using the percentage of 29.9%, the company was going to receive an amount of R51m. After curtailing to 15% as per PRASA's negotiation, PRASA still refused to pay them. e. There were disagreements and the company was took decision to exercise their legal rights.	
3.4.3.	When questioned about the Litigation process, Mr Nkambule mentioned that the company was yet to register its claim for Arbitration purposes. Currently only a letter of demand was prepared and delivered to PRASA. PRASA had indicated that it will defend the matter.	
3.4.4.	*The Panel **noted** the following:* a. The amounts claimed by Nkambule & Associates Consulting Engineers, as R31m + R3,9m + R11m. The PRASA CFO was to verify the amounts upon receipt of electronic submissions. b. Mr Peter Swart was the Programme manager from PRASA; Mr Vincent Kobuwe (CEO PRASA Technical) was responsible for the projects; Project manager for Mabopane Station representing PRASA was Mr Seabatha Dinthe; Knowledge Kwari was project Manager representing Nkambule & Associates c. The size of the company: was not large, it had four engineers and four technicians. d. Lawyers for PRASA were Ngeno & Mthethwa Inc. e. Mr Nkambule had not been visited by the Law enforcement agencies yet.	CFO
3.4.5.	**Decision**: The DG responded to Mr Nkambule that the panel has heard his claims. Out of his presentation, the panel was to consolidate a Report and see how it can address the matter. The DG advised Mr Nkambule that the consolidated report would first be presented to the Minister. Thereafter the DG would engage with the Group CEO of PRASA to prioritise matter that needs to be flagged.	

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3.5.	***Way Forward***	
3.5.1.	The DG summarised that *Siyangena Technologies* were deceitful because they first claim to have not been visited by the SIU, then later declared that it was in exception with relations to PRASA projects. As a result the DG requested the PRASA CFO to verify whether there were any investigations against them on the PRASA projects.	CFO
3.5.2.	The DG recommended that the debts of the two companies, that is, *Bagale Consulting (Pty)Ltd* and *Nkambule & Associates Consulting Engineers*, should be settled as soon as possible. The recommendation to settle the debts would form part of the report to the Minister.	
3.5.3.	The CFO was requested to scrutinize both the reports of *Siyaya Consulting Engineering / DBI* and *Siyangena Technologies (Pty) Ltd.* During the inspection of the submission, it was important to separate between two issues, that is, issues of (i) Litigation processes and (ii) whether the companies qualify to be paid outstanding invoices. • *Litigation processes*: ensure that the SIU processes are not obstructed, but ensure that PRASA is not litigated unreasonably. • *Payments*: PRASA should do its part and pay its debts where they are due to be paid. Should payments not be made, PRASA should be ready to prove beyond reasonable reasons why the payments were not affected.	
3.5.4.	***Decision regarding the Report to the Minister:*** • Ms Maleho was requested to compile the Minister's report to be signed by the DG. The report to be signed must have been seen by both the PRASA Group CEO and the CFO. • The report must highlight the panel's recommendation that the two creditors, that is, *Bagale Consulting (Pty)Ltd* and *Nkambule & Associates* must be paid since there were no issues; • The panel had recommended that the other two (2) companies, that is, *Siyaya/DBI* and *Siyangena Technologies (Pty) Ltd*, be checked if they were not on the SIU radar. • The report must also highlight litigation issues to date. a. The DG commended *Nkambule & Associates* for trying to settle the dispute out of court. He noted that the initiative was possible and the company has set a precedent that can be used by other companies. The DG recommended that all debts must be settled out of court in order to save Government's funds.	CFO Ms Maleho

Annexure "MN10"

Memorandum

To:	**THE ADMINISTRATOR OF PRASA** Mr. Bongisizwe Mpondo
From:	**GROUP EXECUTIVE: LEGAL, RISK & COMPLIANCE** Ms. Martha Ngoye **GENERAL MANAGER: GROUP LEGAL SERVICES** Fani Dingiswayo
Date:	14 January 2020
Subject:	**GOVERNANCE MATTERS – WHETHER PRASA REQUIRES AN MEMORANDUM OF INCORPORATION AND THE LEGAL STANDING OF AN ADMINISTRATOR**

Dear Mr. Mpondo,

1. PURPOSE

1.1. The purpose of this memorandum is to provide Mr. Bongisizwe Mpondo (Mr. Mpondo) with responses to two queries that have been raised, that is:

1.1.1. Whether PRASA requires a Memorandum of Incorporation (MoI)?

1.1.2. What is the legal standing of the Administrator in relation to PRASA?

1.2. We understand the above two questions as intended to strengthen the governance of PRASA and ensure that PRASA complies with the governance prescripts that are applicable to it.

2. DOES PRASA REQUIRE AN MoI?

2.1. We understand this enquiry to be flowing from Mr. Mpondo's reading of section 2 of the Legal Succession to the South African Transport Services Act of 1989, Act Number 9 of 1989 ("the Act").

2.2. According to the Preamble of the Act, the purpose of the Act is to make provision for the formation of two entities, one referred to as a *"company"* and the other referred to as a *"corporation"* from what was previously referred to as the South African Transport Services. The definitions section of the Act, section 1, defines the *"company"* as *"the company referred to in section 2"* of the Act. In turn, *"corporation"* is defined as *"the Passenger Rail Agency of South Africa established in terms of section 22"* of the Act.

2.3. Chapters I to IV of the Act deal with the affairs of the Company. The Company that was registered in terms of section 2 is Transnet Limited. This Company has an MoI as per the requirements of section 2(3)[1] of the Act. PRASA is not the Company.

2.4. The provisions of the Act that relate to PRASA are Chapter V of the Act. This chapter makes provision for the establishment of PRASA or the Corporation[2], the main object and powers[3], the appointment and composition of the Board of Control[4] ("the Board") and other provisions that specifically relate to PRASA and its governance.

2.5. Section 31(3) makes provision for the Board to request the Minister of Transport to allow some provisions of the Companies Act to be declared applicable to PRASA. Therefore, the only time that any provision of the Companies Act may be applicable to PRASA is if the Minister approves a request made by the Board to this effect. We are not aware of any request that was ever made by any Board to have any provision of the Companies Act made applicable to PRASA. Had there been a request made by any Board and approved by the Minister for the provisions of the Companies Act that require the registration of an MoI to be applicable to PRASA, we are of the view that PRASA would have an MoI at this stage. That PRASA does not have an MoI, suggests to us that no such request was made and/or approved.

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[1] This section empowers the Minister of Transport to sign what was then called the memorandum and articles of association *"and all other documents necessary in connection with the formation and incorporation of the Company"*.
[2] Section 22
[3] Section 23 – the main object and powers are normally included in the MoI
[4] Section 24 – similarly, these would be in the MoI

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2.6. The closest that PRASA can get to an MoI is by incorporating into its Shareholder Compact, provisions that would be common-place in an MoI.

3. THE LEGAL STANDING OF AN ADMINISTRATOR

3.1. Section 24 of the Act, empowers the Minister of Transport to appoint a body of persons called a "Board of Control" to manage the affairs of PRASA. Two things come up from this section:

3.1.1. The legislature ensured that this is a multidisciplinary body of persons who have the expertise and experience in running businesses, who understand public finance management (a nominee from treasury), a person who understands the workings of local government (a nominee by South African Local Government Association) and a person who understands public transport policy (a nominee from Department of Transport). The Act therefore does not contemplate a situation where the affairs of PRASA are managed by one person or even by less than 6 people.

3.1.2. The Act obliged the Minister of Transport to appoint the first Board of Control and that such appointment should take effect from the date of establishment of PRASA. The Act therefore did not contemplate PRASA's affairs being run by any person or structure other the Board of Control. What may be an exception to this is a situation where PRASA is placed in business rescue or in liquidation[5]. We say that this may be an exception, the liquidation of or placing under business rescue of PRASA may only be effected through an Act of Parliament and Parliament may appoint a similarly constituted body in the position of liquidators or business rescue practitioners.

[5] In terms of section 29 of the Act may be liquidated or placed under business rescue is *"on the authority of an Act of Parliament"*. It is only the legislature that may decide on who will manage the affairs of PRASA if PRASA is in financial distress.

3.1.3. It is therefore our view that the appointment of the Administrator does not comply with the multidisciplinary team that is contemplated by the LSA.

3.2. Section 24(5) of the Act, provides that the powers of the Board (to manage the affairs of PRASA) may be delegated to a member of the Board or any employee of PRASA. In our view, this means that, if PRASA does not have a Board, no one has any powers to do anything in the name of PRASA. This is because section 24(1) of the Act vests all power to the Board, section 24(5) permits the Board to delegate the powers. Therefore without the body vested with all powers, we doubt that any person, for example, an employee may claim to have any power. This makes the correction of this situation more than urgent.

3.3. The provisions of the Public Finance Management Act, 1999, Act Number 1 of 1999 ("the PFMA")

3.3.1. The scheme of the PFMA is to create to governance models, one for Departments and Constitutional Institutions[6] and another for public entities[7]. In terms of the PFMA, PRASA is a national public entity[8].

3.3.2. Public Entities are governed by a body called *"an accounting authority"* which may be *"a board or controlling body"*[9] or where the public entity *"does not have a controlling body, the chief executive officer or the person in charge of the public entity is the accounting authority"*[10].

3.3.3. We have always interpreted this difference to point to how the public entity is constituted as per their establishment laws or constitutive documents. That is, if the establishing law provides for a board or

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[6] Chapter 5 of the PFMA
[7] Chapter 6 of the PFMA
[8] an *"entity (other than a national government business enterprise) which is:*
- *(i) established in terms of national legislation;*
- *(ii) fully or subtantially funded either from the National Revenue Fund, or by way of tax, levy or other money imposed in terms of national legislation; and*
- (iii) *accountable to Parliament."*

[9] Section 49(2)(a) of the PFMA
[10] Section 49(2)(b) of the PFMA

controlling body then the board or controlling body is the accounting authority. Similarly, where the establishing legislation or constitutive documents provide for the Chief Executive Officer ("CEO") or another person in charge of the public entity, such CEO or other person in charge is the accounting authority. Put differently, we do not believe that where the establishing laws require a board or controlling body, the absence of such will constitute the CEO or other person in charge to be an accounting authority.

3.3.4. In our view, the situation where there is no board or controlling body in a public entity that is intended to be managed by a board or controlling body, may be remedied by invocation of section 49(3) of the PFMA. This subsection covers *"exceptional circumstances"* and empowers *"the relevant treasury"* to *"approve or instruct that another functionary of a public entity must be the accounting authority for that public entity"*. Therefore:

3.3.4.1. There must be exceptional circumstances that prevent the appointment of a board or controlling body;

3.3.4.2. The appointment of an accounting authority will be by the Minister of Finance (the relevant treasury); and

3.3.4.3. The appointee must be "another functionary of a public entity".

3.4. Therefore, in the context of PRASA, the concept of an Administrator is alien whether one looks at the Act or the PFMA. From the perspective of people that PRASA has entered into contracts with and in ongoing litigation, there has been questions that have been raised about the legal standing of PRASA now that an Administrator has been appointed to manage its affairs. This will definitely imperil the position of PRASA in these relationships and litigation. Particularly in litigation where PRASA is the applicant or the plaintiff and the counterparty wishes to buy time. We are also concerned that the decisions of the Administrator that may not be favorable to any third party may be subject to

challenge, and thus hampering all the efforts that would have gone into making those decisions.

3.5. It is our considered view that the quickest way to resolve this state of uncertainty is for the Minister to urgently appoint a Board of Control in accordance with the provisions of the Act. Although we believe that the short-term appointments of Boards has contributed greatly to instability in PRASA and the sharp deterioration of the business of PRASA, if the Minister is so minded, the Minister may appoint a properly quorate (that is, with a minimum of 6 members[11]) for a short time whilst assessing a Board for the longer term. This appointment will deal with all the questions that relate to the legal standing of PRASA and the Administrator.

4. It must be understood that as the Legal Department, we are not challenging the decision of the Minister but however believe that it is prudent to highlight the challenges occasioned by the decision and believe that the Minister can assist in rectifying the situation so that the business of PRASA and the Administrator may not be hampered.

We advise accordingly

MARTHA NGOYE
GROUP EXECUTIVE: LEGAL RISK & COMPLIANCE

[11] Three members with a business experience and expertise, a nominee from the Department of Transport, a nominee from National Treasury and a nominee from the South African Local Government Association

FOR STATE CAPTURE COMMISSION PURPOSES ONLY

In the Commission of Enquiry into State Capture

AFFIDAVIT

I, the undersigned,

ONICA MARTHA NGOYE

do hereby make oath and state:

Introduction

1. I am an adult female. I am currently employed as Group Executive: Legal, Risk and Compliance by PRASA at 1040 Burnett Street, Hatfield, Pretoria.

2. This is a supplementary affidavit to the affidavit I made on 17 February 2010.

3. In that affidavit, I pointed out that PRASA is involved in a major dispute with Siyangena Technologies (Pty) Ltd and that PRASA has applied to the High Court to have its contracts with Siyangena to be reviewed and set aside. The application papers in PRASA's review application form part of the bundles before the Commission. I was the deponent to PRASA's main affidavits in the review

application.

4. I intend to refer to some of the more important issues that PRASA had raised in the review application. However, I have been advised that to it will be helpful, in referreing to what is set out in those papers, to do so by way of a supplementary affidavit. This is the reason I have made this affidavit.

5. However, before I refer to those issues, I consider that I should point out the following.

Background

6. First, the review application that is now before the High Court is the second application by PRASA to have the Siyangena contracts reviewed and set aside. The first was dismissed on a procedural point: PRASA had not complied with the 180-day period set out in PAJA for a review application to be instituted. Followng a decision of the CC, PRASA contends that it is not time barred from bringing the review application.

7. Second, in the review application, PRASA has applied for the various contracts, and extensions and amendments thereo, to be reviewd and set aside. In brief, the bases on which PRASA applies for the review and setting aside of the contracts is that they were concluded without the requisite authority, and/or in violation of s 217 of the Constitution, the PPPFA and PRASA's SCM policies and procedures. In addition, there were dealings between an attorney associated with Siyangena and two PRASA officials who were central to the conclusion of the contracts.

8. Insofar, as the contracts, and extensions and amendments thereto are concerned I point out the following.

The first contract in issue

9. In 2009, preparation of the Confederation Cup of 2009, two railway stations were to be developed, Nasrec and Doornfontein, by Intersite. It awarded the contracts to the following construction companies: Enza and Rainbow. However, they brought in Siyangena Technologies (Pty) Limited ("Siyangena") as a sub-contractor, with whom they concluded contracts. That process was run by the consultants who had been appointed for these construction projects. There were no complaints about the process. (In refer to paragraph 17.1 of the Founding Affidavit.)

10. Thereafter, for the World Cup preparations in 2010, Siyangena's "contract" was extended to other stations. There were several fundamental problems with this "extension". First, no procurement process, whether open or closed, preceded the "extension". Second, as Siyangena had not been an original contractor, but only a sub-contractor, the "extension" had no legal basis: there was no privity of contract between PRASA and/or Intersite, on the one hand, and Siyangena, on the other: Siyangena had simply been a subcontractor in the pilot phase, which was the Nasrec and Doorenfontein stations.

11. I may point out that in her Report, the Public Protector, had found the extension to have been flawed. And, as she pointed out, the amount was R1,95 billion. This is so because PRASA misled the Public Protector and gave her the document for the

Phaseinstead of the extension of the pilot phase.

12. There were a number of fundamental problems. For example, in paragraph 17.6 of the Founding Affidavit in the review application, I highlight how, in respect of Siyangena's proposal, Mr Gantsho compiled a Report that expressly said the following: the gates were not suitable, Siyangena was very expensive; and the extension had not been budgeted for.

13. However, as I note in paragraph 17.7, following a telephone call with Mr Montana in which Mr Montana advised him to contract with Siyangena, Mr Gantsho requested that Mr Montana approve the "extension" of the Confed Cup Contracts to 7 more stations. Moreover, in the request, Mr Gantsho stated that PRASA had no funds for the project, but the engagement of Siyangena should nevertheless proceed.

14. Thereafter, three days later, Mr. Montana approved the request, subject to engagement with the Finance Department on the availability of the funds.

15. However, as I point out in paragraph 17.16, of the founding affidavit in the review application, Mr Sebola raised a number of concerns about this arrangement. For example, he pointed out that this kind of a contract would be a Public-Private-Partnership. He also pointed out that Siyangena was not CIDB certified and accordingly it could not be appointed. He also raised the other concerns itemized at paragraph 17.16.

16. Instead of addressing these issues, a decision was ostensibly taken that the project would not proceed under PRASA but rather would be undertaken by Intersite.

17. Thereafter, as noted in paragraph 17.21, Mr Jabulani Sindane requested that Mr. Khulu Mchuba approve the "extension" of the Confed Cup Contracts to 7 trains stations that were close to the stadia that would host the 2010 Soccer World Cup. However, Mr. Mchuba refused to approve the request on the basis that it is a matter that was within the purview of the Board of Intersite by virtue of the contemplated contract amount. There is no record of such Board approval. Despite this, Siyangena was appointed to install access gates at the train stations close to these stadia.

18. I should emphasise that, as is clear from what I set out in paragraph 17 of the founding affidavit, it was Mr Gantsho who championed Siyangena's cause and Mr Montana gave his approval to all decisions.

Phase 1 of the project

19. I turn now to what is termed Phase 1 of the project. I deal with this in paragraph 18 of the Founding Affidavit.

20. In respect of this phase, PRASA's the Chief Procurement Officer ("CPO"), Mr. Chris Mbatha, decided that eight companies be invited to a briefing session. Ms Mosholi was advised that the selected invitees were in possession of the Request for Proposals ("RFP") that was issued in respect of the Confed Cup tender. However, after the briefing session, the invited parties requested the RFP from Ms. Mosholi. Ms. Mosholi forwarded this request to Mr Gantsho. Mr Gantsho then sent

two documents to Ms Mosholi and asked her to ask the invited companies to propose the best solution for PRASA. These documents were not the RFP. This confirms that the invited companies did not have the RFP in their possession.

21. The Bid Evaluation Committee ("BEC") sat for two days in December 2010. But Mr Montana decided that PRASA would not proceed with the transaction. However, Mr Gantsho assured "the team" not to relent and requested clarity on the reasons for Mr. Montana's decision.

22. The matter suddenly came back to life on the eve of a sitting of the Bid Adjudication Committee ("the BAC") of 14 February 2011. There, according to a submission made to it, it was a contest between Siyangena and Protea Coin. It said however that Protea Coin had failed because it had not provided something referred to as a "funding model". There is no clarity on the meaning of this.

23. The submission requested the BAC to recommend to the FCIP the appointment of Siyangena for a project called ISAMS[1] for a tendered amount of R1,1 billion and for a period 5 months. Having deliberated on the submission, the BAC decided not to recommend the award to Siyangena. However, PRASA documents show a document with a signature that purports to be that of the then Chairperson of the BAC, Ms. Tara Ngubane, in a minute of the BAC that records a decision recommending the award to Siyangena for an amount of R1,1 billion.

24. Three days after the meeting, on 17 February 2011, the matter was before the

[1] Integrated Security and Access Management System

Finance, Capital Investment and Procurement Committee ("the FCIP") of the Board of Control ("the Board"). The submission requested the FCIP to recommend to the Board of PRASA the appointment of Siyangena for the ISAMS project for an amount of R1,9 billion (no longer R1,1 billion. There is no indication in the minutes how the tendered amount escalated from R1,1 billion to R1,9 billion).

25. According to the minutes of this meeting that were found, the FCIP recommended to the Board the award of this contract to Siyangena at a sum of R1,9 billion. There is no indication in the minutes that the views of the BAC were shared with the FCIP and how the FCIP would have found its way clear to recommend this award.

26. What is also strange is that one of the items on the agenda of this meeting related to PRASA's Medium-Term Expenditure Framework ("MTEF") budget. According to the MTEF budget that was recommended by FCIP at this meeting, this project was allocated R317 million over the MTEF. This is highlighted in paragraph 18.14 of the Founding Affidavit. Yet the contract that was ostensibly recommended for award by the same committee was for R1,9 billion over a period of 18 months (half the MTEF period).

27. The Board approved the recommendation of the FCIP but did not indicate the contract amount. The Board mandated management to negotiate with Siyangena and Mr Mbatha, as the then CPO of PRASA initiated discussions with Siyangena.

28. The irregularities in the processes may be summarized as follows: there was no open tender process and no request to deviate from the normal open tender process

was made; there was no RFP and no evaluation criteria: bidders were asked to make a "shot in the dark" and hope that PRASA would be happy with it; for example, although Protea Coin's tendered contract price was R1,3 billion[2], which was much cheaper than Siyangena, it lost because it did not have a "funding model"; the minutes of the BAC and of the Board were forged; if the minutes of the FCIP that recommended the award and the tendered amount are true, they are self-contradictory in that they approve one amount on the MTEF budget and another one for the contract amount.

29. Phase 1 was followed by an extension of Phase 1.

30. In the extension, 12 stations were selected under the guise of filling gaps in the corridors of the 69 stations that were part of the Phase 1 tender. However, all that happened here is that Siyangena was requested to install the ISAMS on 12 stations for an amount of R350 million which was accepted by Siyangena.

31. The irregularity with this is that there was simply no process that preceded this "extension".

Phase 2 of the project

32. Thereafter followed what has been referred to as Phase 2. I deal with this in paragraph 19 of the Founding Affidavit.

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[2] If one regards the tendered amount as R1,9 billion as per the submissions to the Board and the FCIP

33. This Phase had a number of stops and starts. It is not necessary to detail all of them except for one that goes to the heart of the irregularity of this award.

34. For a change, there was an RFP for this contract. However, instead of requiring functionality, the RFP required that the parties be accredited to procure and install certain equipment manufactured by specific brands. One or two of the parties who bought the RFP complained that this made the requirement restrictive. I point out that PRASA's SCM Policy discourages the use of branded products in RFPs and prefers the requirement for functionality. It is difficult to understand why PRASA had to use branded products in the RFP. Not surprisingly, given that the specs were tailor-made for Siyangena, it was awarded thet contract.

35. Thereafter there was an addendum to the contract. I consioder this in paragraph 20 of the Founding Affidavit.

36. What was strange about the addendum is this. It made its appearance in the midst of an urgent interdict application launched by Siyangena after PRASA instructed it to stop working. A number of enquiries were made to find a PRASA employee who knew something about this document and none was found. It was however produced by Siyangena in its application. The document engages Siyangena to replace some equipment with newer versions of such equipment and to maintain equipment installed under the Phase 1 contract for a period of 3 years. The document was signed by Mr Montana on behalf of PRASA.

37. The document is very thin, about 5 pages, and there is no service level agreement that supports the maintenance obligations of Siyangena. In terms of the document, PRASA was obliged to pay Siyangena about R10 million a month.

38. The obvious irregularity about this contract is that no tender process was followed to appoint Siyangena for the works contemplated in this document.

39. In respect of all these contracts I stress the following. PRASA was simply not authorised to proceed with works contemplated in Phase 1 and Phase 2 and the addendum. These transcactions were not budgeted for and no approvals were obtained from the Minister of Transport.

Financial dealings by Mr Montana and Mr Gantsho

40. I turn now to what I submit are financial dealings that cast a giant shadow over the award of the contracts to Siyangena.

41. I deal with these in paragraph 21 of the founding affidavit in PRASA's review application.

42. In essence, what emerges from what was uncovered by PRASA at the time it brought the review application may be summarized as follows.

43. They involve offers by Montana to purchase four properties but which offers were then taken over by a company controlled by an attorney linked to Siyangena, Mr Van der Walt.

44. At the time some of these transactions were concluded, Mr van der Walt who was the attorneys for Siyangena who were at the time performing work in respect of Phase 1 of the project and bidding to be appointed for Phase 2. Mr Van der Walt was involved in the sale of houses that Mr Montana purchased. I set out the details details in paragraph 21 of the Founding Affidavit.

45. A similar transaction was concluded in a similar manner for Mr Luyanda Gantsho. This is dealt with in paragraph 21.49 of the Founding Affidavit. Mr van der Walt was again involved in the sale of the property acquired by Gantsho.

46. I point out for the record that a hearing was held and Mr Gantsho was dismissed by PRASA for this dealing.

47. Finally, I point out that PRASA reported the irregularities and allegations of corruption to the Hawks. To the extent of this investigation has moved, it has moved at a snail's pace.

48. Among the allegations are that Siyangena paid some R550 was million to a company called Hail Way Trading, which shares a registered address with Royal Security and was directed by Mr Roy Moodley.

49. In addition, criminal charges in respect of the above matters were laid at the Brooklyn Police Station. However, five years later nothing has yet been done.

50. It will be noted that I have throughout been unable to give a complete picture of what precisely had happened or what decisions were taken. As I pointed out in the

review application, various versions of documents and meetings exist.

51. In addition, PRASA had immense difficulties in getting people within PRASA to assist. in pieceing together what has happened. Obtaining information from the business proved to be very difficult. A number of persons actively impeded the investigations by removing hard copies of the documents from PRASA's premises and deleting electronic copies from their computers.

52. Moreover, Mr Othusitse Mogolelwa one of PRASA's IT Specialists was found to have deliberately deleted information from Mr Montana's computer on the instruction of Mr. Montana. Paragraph 23.37 of the Founding Affidavit deals with the arbitrator's award where the said employee was dismissed.

Onica Martha Ngoye

I certify that this affidavit was signed and sworn before me at Sandton SAPS on this the 15th day of March 2020, by the deponent after the deponent declared that she knew and understood the contents of this declaration, that the deponent had no objection to taking the prescrined oath and has taken the prescribed oath which the deponent considered binding on her conscience, having complied with regulations contained in Government Notice R1258 of 21 July 1972, as amended.

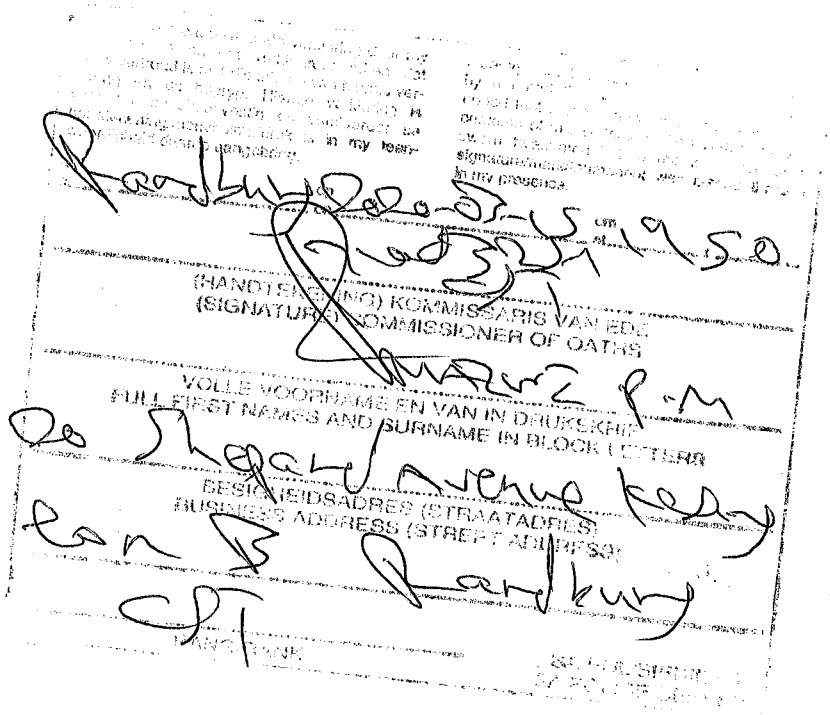
FOR STATE CAPTURE COMMISSION PURPOSES ONLY

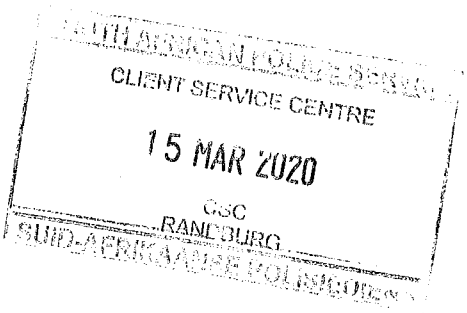
COMMISSIONER OF OATHS

Name:

Address:

Designation





"FA204" 2846

Eudenio Winkler

From: Willis, Ursula: Absa <ursulaw@absa.co.za>
Sent: 02 November 2012 16:59
To: Lucky Montana {PRASA CORP}
Subject: FW: PRIVATE ONE SECURITY HELD

From: Willis, Ursula: Absa

Sent: 02 November 2012 04:58 PM

To: 'Lucky Montana {PRASA CORP}'

Subject: FW: PRIVATE ONE SECURITY HELD

Hi Lucky

Here it is again, for your information. See detailed list below.

Kind regards

Ursula Willis | Private Banker | Absa Private Bank Tyger Valley

Tel +27 (0)21 974 1600 | Mobile +27 (0)82 453 3639 | Email ursulaw@absa.co.za [mailto:ursulaw@absa.co.za]

Tyger Valley Office Park 2, Ground Floor, Cor Willie Van Schoor &Old Oak Roads, Tyger Valley, 7530

absa.co.za

Absa Private Bank Assist - Call 0860 553 553 or e-mail privatebank@absa.co.za [mailto:privatebank@absa.co.za] for personal assistance

COMPANY CONFIDENTIAL

From: Willis, Ursula: Absa

Sent: 30 October 2012 05:51 PM

To: 'Lucky Montana {PRASA CORP}'

Subject: FW: PRIVATE ONE SECURITY HELD

Hi Lucky

Here is the email again, for your records.

Kind regards

Ursula Willis | Private Banker | Absa Private Bank Tyger Valley

Tel +27 (0)21 974 1600 | Mobile +27 (0)82 453 3639 | Email ursulaw@absa.co.za [mailto:ursulaw@absa.co.za]

Tyger Valley Office Park 2, Ground Floor, Cor Willie Van Schoor &Old Oak Roads, Tyger Valley, 7530

absa.co.za

Absa Private Bank Assist - Call 0860 553 553 or e-mail privatebank@absa.co.za [mailto:privatebank@absa.co.za] for personal assistance

COMPANY CONFIDENTIAL

From: Willis, Ursula: Absa

Sent: 30 October 2012 08:14 AM

To: 'Lucky Montana {PRASA CORP}'

Subject: PRIVATE ONE SECURITY HELD

Hi Lucky

I refer to the email below which was sent to you on 12/08 and advise as follows:

1) The valuation amounts as well as the bond amounts are listed below.

2) Should you for example sell ERF 359 Parkwood, we would call for R2 mil plus interest, to pay off this part of the Private One facility.

3) I am in Johannesburg until Thursday so I can only follow up with my admin office then.

I will however confirm within 3 working days who the bond cancellation attorneys are i.e. by Monday or Tuesday at the latest next week.

4) Should you sell 447 Main Street, we would call for at least R2.160 mil (based on the figures below).

I trust this will clarify matters.

Kind regards

Ursula Willis | Private Banker | Absa Private Bank Tyger Valley

Tel +27 (0)21 974 1600 | Mobile +27 (0)82 453 3639 | Email ursulaw@absa.co.za [mailto:ursulaw@absa.co.za]

Tyger Valley Office Park 2, Ground Floor, Cor Willie Van Schoor &Old Oak Roads, Tyger Valley, 7530

absa.co.za

Absa Private Bank Assist - Call 0860 553 553 or e-mail privatebank@absa.co.za [mailto:privatebank@absa.co.za] for personal assistance

COMPANY CONFIDENTIAL

From: Ursula Willis (ursulaw@absa.co.za [mailto:ursulaw@absa.co.za])

Sent: 21 August 2012 09:43 PM

To: 'Lucky Montana {PRASA CORP}'

Subject: PRIVATE ONE SECURITY HELD

Hi Lucky

Here is the information you requested:

1) ERF 161 Waterkloof Pretoria

Physical address: 333 Main Street

Valuation amount R2,6 mil

Bonds: 01 –03 totalling R2.22 mil

2) ERF 1242 Waterkloof Pretoria

Physical address: 447 Main Street

Valuation amount: R3.5 mil

Bond: 01 for R2.160 mil

3) ERF 359 Parkwood, Jhb

Physical address: 10 Newport Road

Valuation amount: R3.5 mil

Bond: 01 for R2 mil

4) Erf 178 Saxonwold, Jh b

Physical address: 23 Griswold Road

Valuation: R5.3 mil

Bonds: 01 for R4.675 mil

Current Private One facility limit : R10 500 000-00

Total security (bonds held): R11.055 mil –usually we call for the bond amount registered when a property is sold. Those are the amounts in bold above.

Total valuations: R14.9mil (LTV currently 71%).

Interest rate:

Up to R 6 250 000	2.2500-	6.2500
Up to R 8 800 000	1.5000-	7.0000
Up to R10 500 000	0.5000-	8.0000

Please bear in mind that when we do a new facility for you and sell some of the current properties, new rates will apply.

Your interest rate will change quite significantly, but can only be determined once we know what security will be released and what security will remain.

Kind regards

Ursula Willis | Private Banker | Absa Private Bank Tyger Valley

Tel +27 (0)21 974 1600 | Mobile +27 (0)82 453 3639 | Email ursulaw@absa.co.za [mailto:ursulaw@absa.co.za]

Tyger Valley Office Park 2, Ground Floor, Cor Willie Van Schoor &Old Oak Roads, Tyger Valley, 7530

absa.co.za

Absa Private Bank Assist - Call 0860 553 553 or e-mail privatebank@absa.co.za [mailto:privatebank@absa.co.za] for personal assistance

COMPANY CONFIDENTIAL

From: Lucky Montana {PRASA CORP} [mailto:tmontana@prasa.com [mailto:tmontana@prasa.com]]

Sent: 21 August 2012 09:03 PM

To: Ursula Willis (ursulaw@absa.co.za [mailto:ursulaw@absa.co.za])

Subject: Emailing: Image.jpg

Dear Ursula

Please find my latest salary advise for the application for the new property in Waterkloof, Pretoria. I will complete the forms and send them back to you over the next two days.

Would you be so kind and also send me latest updates or rather balances on each of the properties. This is important in determining the properties to be disposed under the current economic conditions.

Kind regards

Lucky Montana

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Eudenio Winkler

From: riaan@louwalt.co.za
Sent: 13 June 2014 08:23
To: tmontana@prasa.com
Subject: RE: TL Montana Interiors
Attachments: image001.jpg

Hi Lucky

Hope you are well .

Take note that I could not do the payment due to the bank account being invalid

Kind Regards

Vriendelike Groete

Riaan van der Walt

IMG [64]

LOUBSER VAN DER WALT INC/ING

Attorneys – Notaries Conveyancers

Prokureurs – Notarisse – Aktevervaardigers

375 Justice Mahomed Street, Brooklyn, Pretoria / Justice Mahomed Straat 375, Brooklyn, Pretoria

P O BOX 1935, Brooklyn Square, 0075 / Posbus 1935, Brooklyn Sirkel, 0075

DOCEX 13, BROOKLYN

Tel: (012) 460-1915/6

Fax/Faks: (012) 460-1919

Fax/Faks: 086-720-8747

Email/Epos: riaan@louwalt.co.za

From: Lucky Montana {PRASA CORP} [mailto:tmontana@prasa.com]

Sent: 10 June 2014 12:00 AM

To: riaan@louwalt.co.za

Subject: TL Montana Interiors

Dear Riaan

Can I request that we pay from the proceeds of the sale of my house an amount of R79, 576.92 for interior work done for me. The payment should be made out to the following: Team Austin

Absa Bank

Cheque Account

Account Number: 405 078 07

Code: 632005

Ref number: TL Montana Interiors

I will also send through to you other invoices for payment from the same proceeds within the next two days.

I trust you find the above in order.

Kind regards

Lucky Montana

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It may contain information that is confidential, subject to copyright or constitutes a trade secret. If you are not the intended recipient, any dissemination, copying or distribution thereof is strictly prohibited. If you have received this message in error, please notify us immediately by replaying to the message and deleting it from your computer.

Eudenio Winkler

From: Lucky Montana {PRASA CORP}
Sent: 30 June 2014 16:19
To: 'riaan@louwalt.co.za'
Subject: Request for Various Payments from the Proceeds of the Sale of ERF 359, Parkwood

Dear Riaan

I trust you are keeping well and that you had a greatweekend.

I met with Ursula Willis, my Private Banker from ABSA, inCape Town last week who confirmed that you are the transferring attorney for myproperty, ERF 359 (10 Newport), Parkwood, Johannesburg. I suggest we expedite andconclude the process without further delay. I am under pressure to start payingthe contractor for additional work and his own suppliers from theproceeds of the sale as well as start realizing the savings of my monthlyinstallment of the bond.

In the meantime, I request for you make the following urgentpayments from the proceeds of the sale and we could reconcile the numbers whenthe property is finally registered:

1. City of Johannesburg (Rates and Taxes, Electricity for ERF359, Parkwood)

Account Number - 207541165

Amount: R150, 000.00

Ref no: TL Montana

2. Sincindi Projects Cc

Standard Bank

Business Cheque Account

Account Number: 000135267

Branch Code: 000205

Amount: R350,000.00

Ref no: TL Montana

3. TL Montana

Credit Card

ABSA

AccountNumber –4787 6900 5597 0023

Amount:R250, 000.00

4. Sunburst Corporate Catering Services (Pty) Ltd

VAT No: 4310262680

Invoice Number: INV0000310

Nedbank

Account Number: 1049753127

Branch: 198765

Amount: R110, 800.00

Ref No: TL Montana

I trust that you will find the above in order.

Kind regards

Lucky Montana

"FA 207.1"

Philip Thorne

From: Jasper Mnukwa
Sent: Friday, August 15, 2014 9:03 AM
To: Lucky Montana (PRASA CORP)
Subject: #10...
Attachments: Newport view 1.jpg; Newport view 2.jpg; Newport view 3.jpg; Newport view 4.jpg; Newport view 5.jpg; Newport view 6.jpg

Good morning GCEO

Attached are proposed designs for #10...

Regards
Jasper

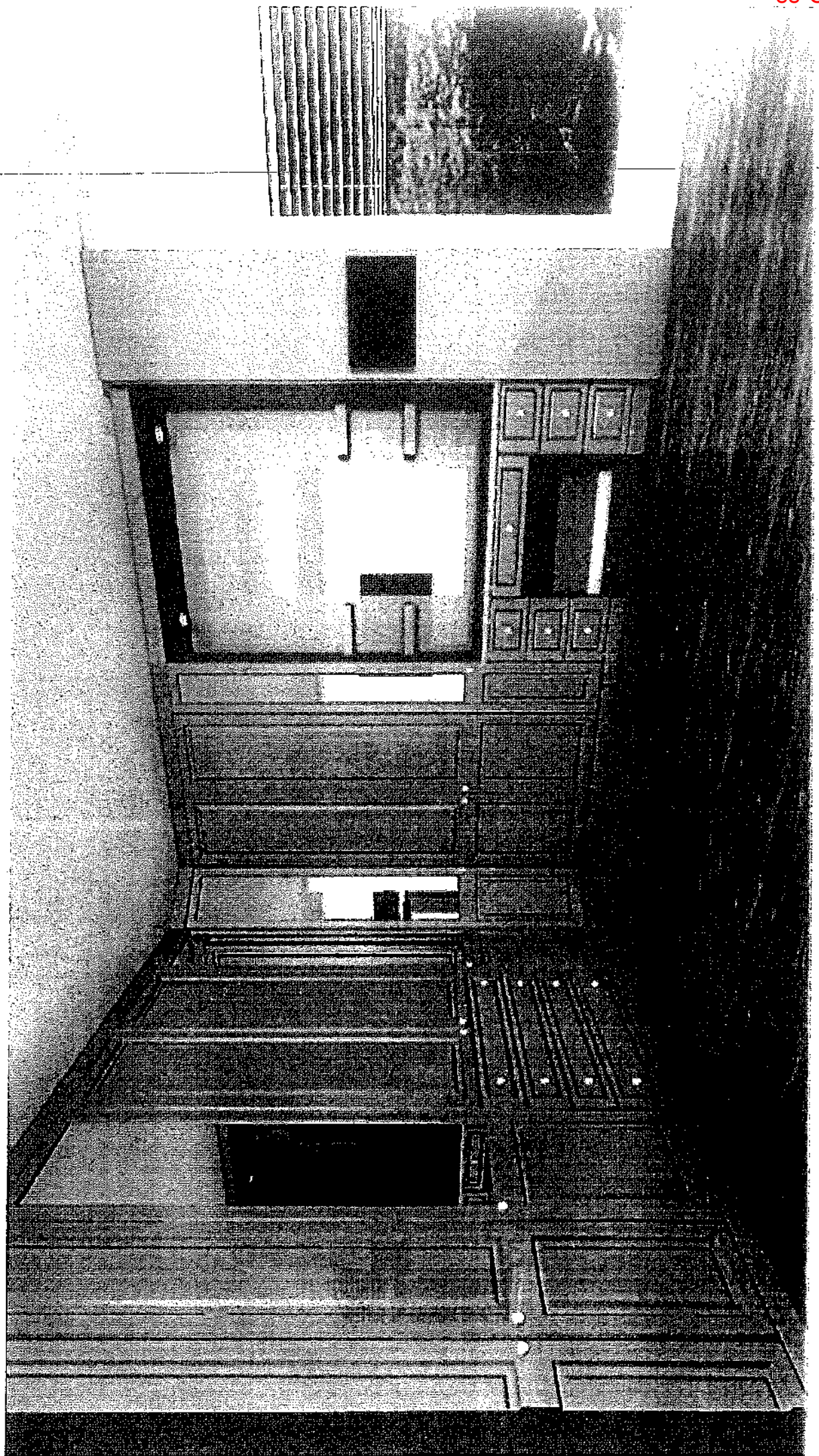
PROJECT: NEWPORT MASTER BEDROOM

SS-OMN-412
2859

PROJECT: NEWPORT MASTER BEDROOM

PROJECT: NEWPORT MASTER BEDROOM

PROJECT: NEWPORT MASTER BEDROOM



SS-OMN-415
2862

PROJECT: NEWPORT MASTER BEDROOM

PROJECT: NEWPORT MASTER BEDROOM

Philip Thorne

From: Jasper Mnukwa
Sent: Tuesday, August 19, 2014 10:09 PM
To: Lucky Montana (PRASA CORP)
Subject: FW: newport masterbedroom
Attachments: Newport view 7.jpg; Newport view 8.jpg; Newport view 9.jpg; Newport view 10.jpg

GCEO,

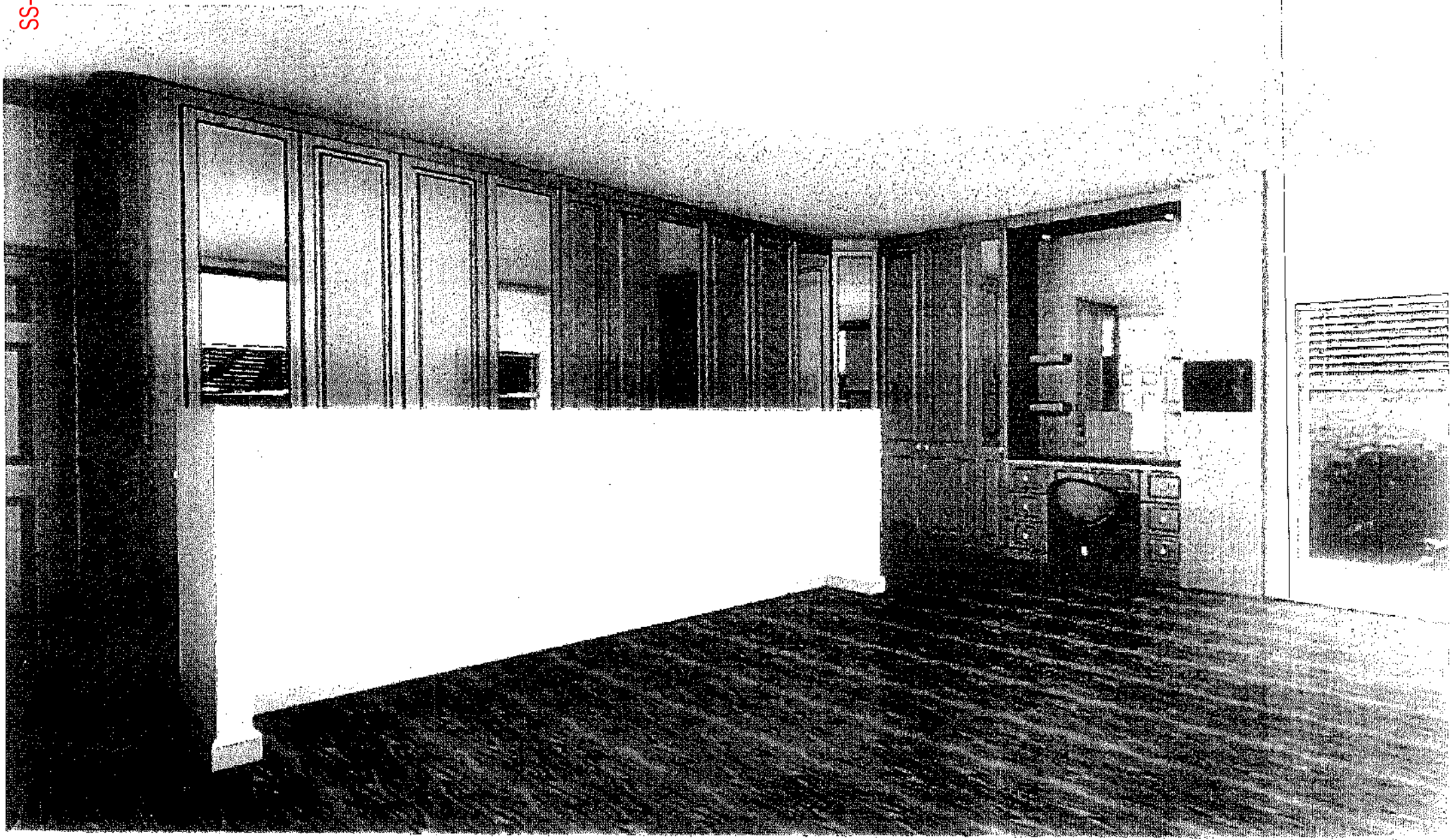
The attached 3D's are in fact part of the set of what I forwarded to you on Friday.

Regards
Jasper

PROJECT: Newport Master Bedroom

SS-OMN-419
2866

PROJECT: Newport Master Bedroom



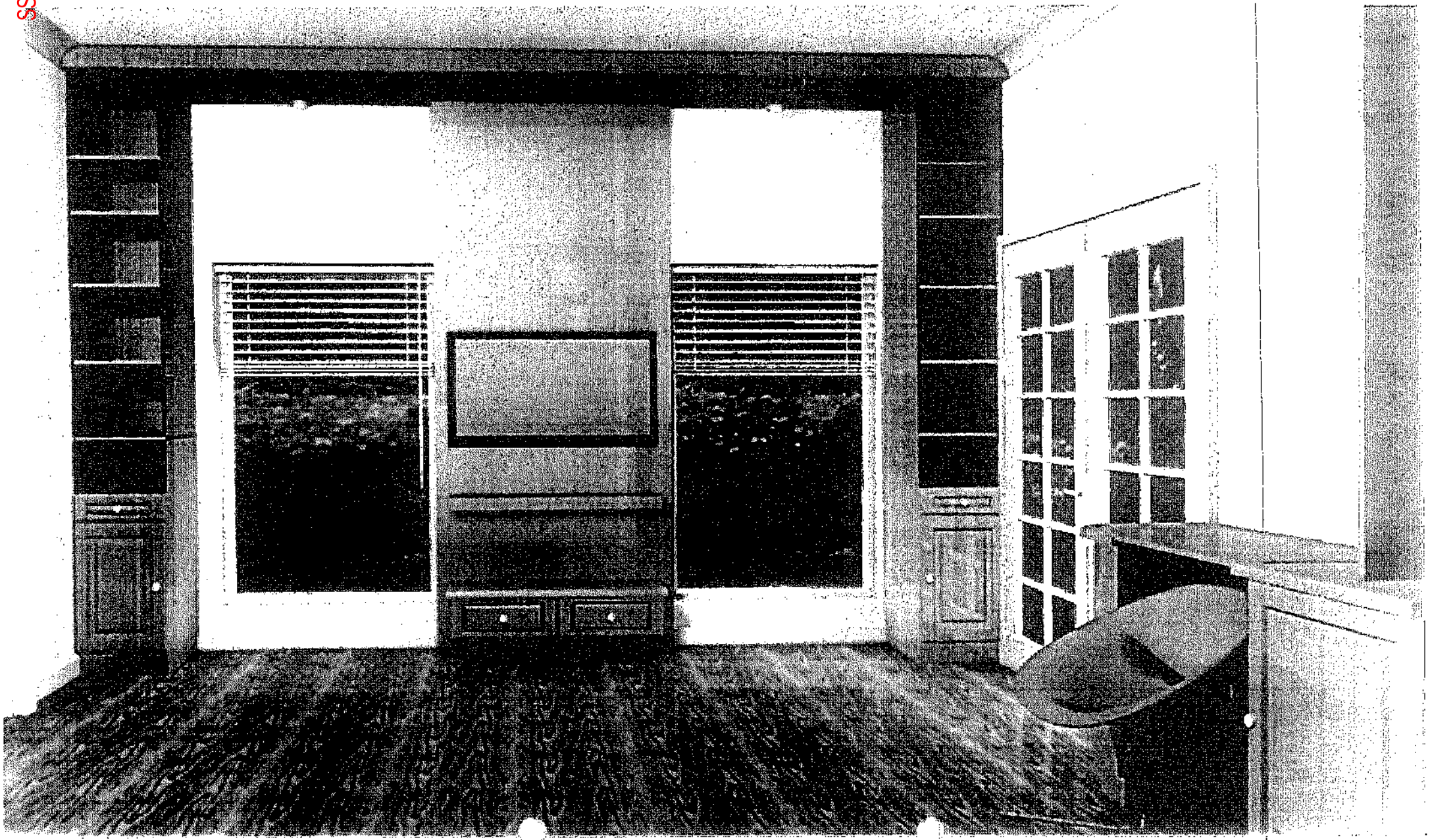
SS-OMN-420
2867

PROJECT: Newport Master Bedroom

SS-OMN-421

2868

PROJECT: Newport Master Bedroom



SS-OMN-422

"FA 207.2"

2869

Philip Thorne

From: Justin John <justin@justinteriors.co.za>
Sent: Tuesday, September 2, 2014 7:14 AM
To: Lucky Montana {PRASA CORP}
Subject: Newport 10
Attachments: NEWPORT REVISED 1.1.jpg; NEWPORT REVISED 1.jpg; newport master bedroom revised.jpg; Newport view 5.jpg; newport master bedroom quote revo2 (1).pdf

Good Morning Mr.Montana

Hope you are well, as per my call yesterday as mentioned I am still waiting to get approval &a deposit to start the master bedroom, we have now lost two full weeks of production & the importance of this project concerns me. Attached are the plans with two options please advise on the layout that you require. I have also changed the dressing table set up please advise?

' have also not yet received the balance of R 165 000 .00 for the kitchen that was supposed to be paid by end off July y Colin.
He as made promises but as not kept to his word, I don't like to put pressure on you but I am a small guy &its more that 30 days &my suppliers are now putting pressure.

I trust that you will resolve the above matter as I am looking forward to start work on the Master Bedroom Project.

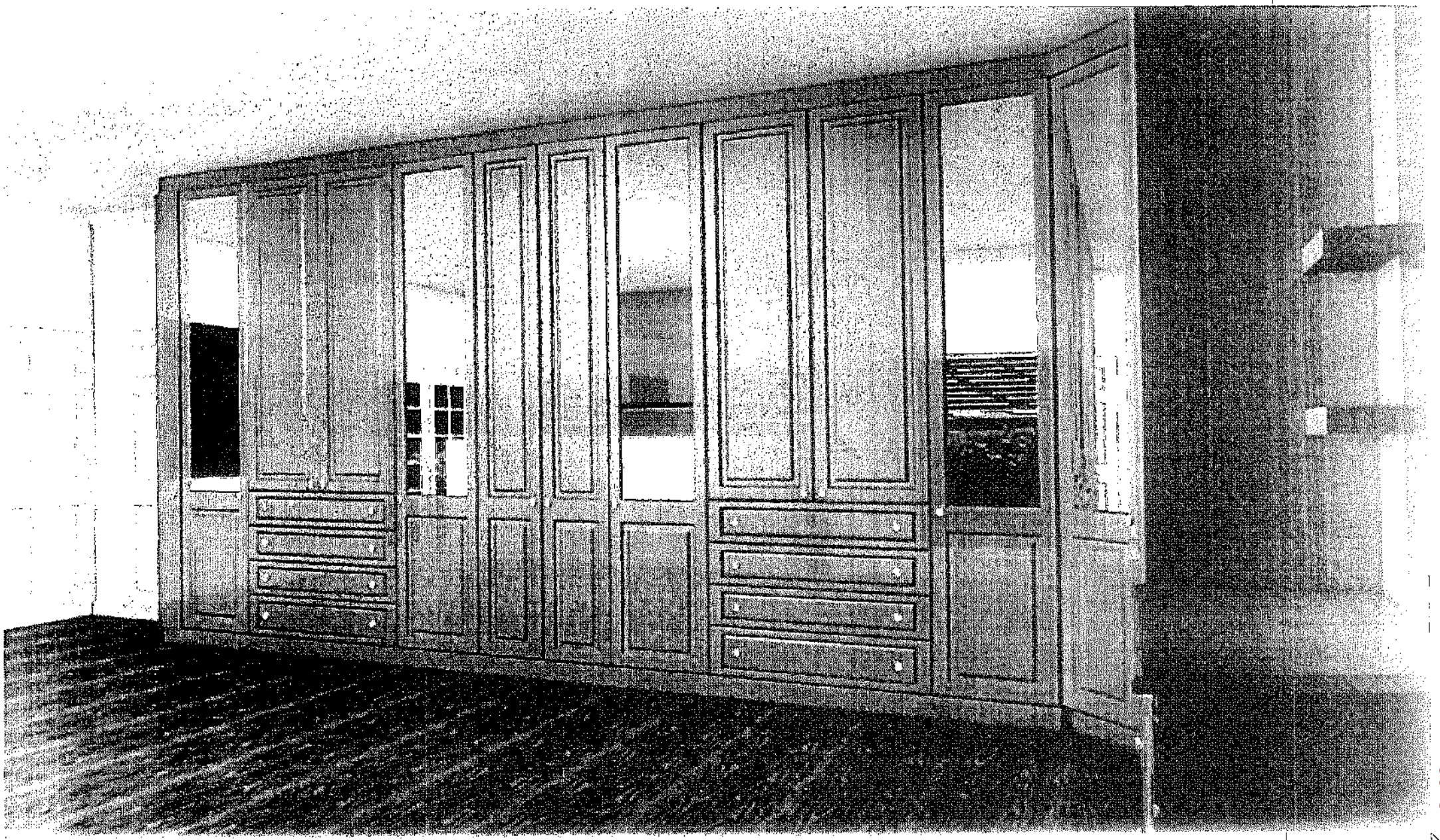
Kind Regards
Justin John
just interiors
0844 33 22 46

PROJECT: Newport Master Bedroom

PROJECT: Newport Master Bedroom

PROJECT: Newport Master Bedroom

PROJECT: NEWPORT MASTER BEDROOM



SS-OMN-8426

riors KITCHEN kitchens bedrooms bathrooms shop-fitting

Job No: 15084 REV01

Project: Newport
Job Description: Design, Manfacture & Install Custom Bedroom Cabinets
Address: Newport 10
Date: 27 August 2014

Quotation

	QTY	RATE	Total
Job Detail			
To supply & install bedroom cabinets as per plan			
1.1 Rounded display cabinet 300mm	1	R 9 650.00	R 9 650.00
1.2 Mirror door cabinet 500mm with shelving	2	R 12 500.00	R 25 000.00
1.3 Drawer cabinet with pull down rails 1000mm	2	R 23 200.00	R 46 400.00
1.4 Angled shoe shelf cabinet with mirror door 500mm	2	R 14 600.00	R 29 200.00
1.5 Double hanging rail cabinet 740mm	1	R 16 500.00	R 16 500.00
1.6 Walk in 900mm x900mm corner cabinet with mirror door		R 21 700.00	R 21 700.00
1.7 Pull down rail & shelving cabinet 1000mm	1	R 19 800.00	R 19 800.00
1.8 Cosmetic cabinet 300mm	1	R 6 800.00	R 6 800.00
1.9 Make-up station & vanity 1400mm	1	R 17 480.00	R 17 480.00
1.10 Book case cabinet 400mm	2	R 9 800.00	R 19 600.00
1.11 Tv wall cladding with floating drawers	1	R 9 800.00	R 9 800.00
1.12 Tv bulk-head	1	R 6 950.00	R 6 950.00

1.13 LED lighting	1	R 11 500.00	R 11 500.00

Carcase Coinbra Melamine 2mm pvc impact edging
Doors and exposed panels PVC Wrap Walnut
cabinet hardware hinges & drawers with soft close
Price includes delivery & installation
Terms:Deposit 70%, balance on completion

Sub Total	R 240 380.00
vat	R 33 653.20
Total	R 274 033.20
Deposit	R 191 823.24
Final total	R 82 209.96

Banking Details
Standard Bank Northgate
Account Name: Just Interiors
Account Number 402491122
Branch Code: 1106
Registration No: 2012/008578/07
Vat No: 4170261111
NHBRC Registration No: 1-121258315
KSA (Kitchen Specialists Association) Feb2012
Director: Justin John

office: 011 042 9075 | cell no: 084 433 2246 | fax no: 086 725 7719 | email: info@justinteriors.co.za
Unit 95 Travallyn Park, cnr River Rd, Kyasand, Randburg

"FA 207.3"

Eudenio Winkler

2876

From: Lucky Montana {PRASA CORP}
Sent: 21 October 2014 13:38
To: riaan@louwalt.co.za
Subject: FW: Jasper Tax Invoice.pdf
Attachments: Jasper Tax Invoice.pdf; ATT00001.txt

Dear Riaan

This Invoice is for the design, manufacture and installation of the modern kitchen units. In Addition, I have spent over R40 000 for the appliances purchased from Miele in Johannesburg. I will forward the invoices from Miele as well.

I trust that you will find the above in order.

Kind regards

Lucky Montana

-----Original Message-----

From: Jasper Mnukwa

Sent: Tuesday, October 21, 2014 1:11 PM

To: Lucky Montana {PRASA CORP}

Subject: FW: Jasper Tax Invoice.pdf

-----Original Message-----

From: Jasper Mnukwa

Sent: 16 October 2014 12:05 PM

To: Lucky Montana {PRASA CORP}

Subject: FW: Jasper Tax Invoice.pdf

2877

GCEO,

Attached is the document per #10.

Regards

Jasper

-----Original Message-----

From: Justin John [mailto:justin@justinteriors.co.za]

Sent: 19 May 2014 10:33 AM

To: Jasper Mnukwa

Cc: jasper.mnukwa@gmail.com

Subject: Jasper Tax Invoice.pdf

Hi Jasper

Please find attached invoice for the deposit please action this.

We need to move with speed.

Thanks

Justin

Just interiors

SS-OMN-431
2878

just interiors KITCHEN DESIGN
kitchens
bedrooms
bathrooms
shop-fitting

Job No: 15082

Attention: Jasper
Job Description: Design, Manfacture & Install Custom Kitchen Cabinets
Date: 19 May 2014

Tax Invoice

	QTY	RATE	
Main Kitchen			
To supply & install Custom cabinets as per plan.			
1.1 Three drawer Blum excludes accessories 3 x 700mm (w) X 720mm (h) x 560mm (d)	3	R	18,760.00
1.2 Tall oven Miele cabinets 2 x 632mm (w) X 2100mm (h) X 600mm (D)	2	R	16,200.00
1.3 Flap door unit standard mechanism 1 x 500mm (w) x 590mm (h) x 320mm (d)	1	R	7,950.00
1.4 Floating shelves duco finish 2 x 600mm (w) x 60mm (h) x 150mm (d)	2	R	3,100.00
1.5 High-Gloss Red back panels Toughen Glass 1 x 2200mm (w) x 400mm (h)	1	R	4,400.00
1.6 Top Bulk-heads High -Gloss 1 x 2200mm (w) x 300mm (d)	1	R	4,150.00
1.7 Three drawer Blum excludes accessories 2 x 825mm (w) X 720mm (h) X 560mm (D)	2	R	19,860.00
1.4 Standard base cabinets 2 x 825mm (w) x 720mm (h) X 560mm (d)	2	R	9,100.00
1.5 Tall Angled Floor cabinet			

1 x 400mm (w) X 2100mm (h) x 560mm (D)	1	R	12,400.00
1.6 Above fridge cabinets			
1 x 950mm (w) X 300mm (4) X 450mm (D)	1	R	5,950.00
1.7 Floating shelves duco finish			
2 x 385mm (w) x 60mm (h) x 150mm (d)	2	R	2,650.00
2 x 405mm (w) x 60mm (h) x 150mm (d)	2	R	2,850.00
1.8 High-Gloss Red back panels Toughen Glass			
1 x 385mm(w) x 900mm (h)	1	R	1,770.00
1 x 405mm (w) x 900mm (h)	1	R	1,950.00
1.9 Top Bulk-heads High -Gloss			
1 x 3400mm (w) x 300mm (d)	1	R	5,950.00
1.11 Caesarstone Counter tops (Nought 20mm)			
1 x 2200mm (w) x 600mm (d)	1	R	5,280.00
1 x 3300mm (w) x 600mm (d)	1	R	7,920.00
Skullery			
2.1 Tall "L" Shaped Pantry cabinet			
1 x 1050mm (w) x 2100mm (h) x 600mm (d)	1	R	17,300.00
2.2 Standard base cabinet			
1 x 500mm (w) x 720mm (h) x 560mm (d)	1		R 5,500.00
2.3 Blind corner cabinet			
1 x 1000mm (w) x 720mm (h) x 560mm (d)	1		R 9,850.00
2.3 Standard base cabinets			
3 x 461mm (w) x 720mm (h) x 560mm (d)	3		R 7,100.00
2.4 Flap door cabinet Standard Mechanism			
1 x 1100mm (w) x 590mm (h) x 320mm (d)	1		R 13,300.00
2.5 High-Gloss Red back panels Toughen Glass			
1 x 1200mm (w) x 1100mm (h)	1		R 6,600.00

2.6 Floating Shelves duco		
2 x 1200mm (w) x 150mm (d) x 60mm (h)	2	R 2,350.00
2.7 Caesarstone counter tops (Noughat 20mm)		
1 x 3700mm (w) x 600mm (d)	1	R 8,880.00
1 x 500mm (w) x 600mm (d)	1	R 1,200.00
2.8 Top Bulk-head High Gloss		
1 x 3700mm (w) x 300mm (d)	1	R 6,660.00
Lighting		
3.1 Under-counter LED lighting	10	R 1,250.00
3.2 LED down lights	7	R 1,250.00
Plugs		
4.1 Supply & install new plug point 4 x 4 double to new position	8	R 1,450.00
Plumbing		
5.1 Supply Frankie Perp bowl with tap & waste fittings	1	R 3,660.00
5.2 Install water & waste points for prep bowl & connection	1	R 4,850.00
5.3 Supply doubl bowl Frankie sink with tap & waste fittings.	1	R 6,250.00
5.4 Installation of sink	1	R 1,250.00
5.5 Washing & Dish-washer connections & pipe work	2	R 1,850.00
Appliance Installation (Miele)		
4.1 Gas installation Install gas copper line with safety vavle Housing for gas bottle 19kg Supply Gas bottle 2 x 19kg Gas connection to hob	1	R 13,960.00
4.2 Electrical connection of gas hob	1	R 1,350.00
Re-position electrical point	1	R 1,450.00

Supply & install new isolator	1	R 1,060.00
4.3 Miele Ovens		
Re-position electrical points	4	R 97S.00
Supply & install new isolator	1	R 1,060.00
Electrical connection of ovens	4	R 1,350.00
4.4 Extractor		
Re-position electrical point	1	R 1,450.00
Supply & install plug point	1	R 87S.00
Install extractor vent pipe with pipe works & grill	1	R 4,850.00
Install extractor	1	R 1,9S0.00

Blum Accessories

7.1 Cutlery /Universal sets	4	R 4,SS0.00
7.2 Kitchen Untensils/ Spice / Bottles	5	R 4,9S0.00
7.3 Pot / Crockery / Plate racks	S	R 4,9S0.00

Notes: Carcase MDF 16mm Double face (Green friendly)
Doors & exposed panels Niemann (Germany) 20mm
Work tops Cearstone 20mm
Blum hinges & Draw slides push to open funcition
Consumables included

Price includes delivery & installation
Terms:Deposit 60%, balance on completion

Sub Total
vat
Total
Discount
Total

Deposit Due 60%
Balance due on completion

Banking Details
Standard Bank Northgate
Account Name: Just Interiors
Account Number 402491122
Branch Code: 1106
Registration No: 2012/008578/07
Vat No: 4170261111
NHBRC Registration No: 1-121258315

KSA (Kitchen Specialists Association) Feb2012
Director: Justin John

office: 011 042 9075 | cell no: 084 433 2246 | fax no: 086 725 7719 | email: info@justinteriors.co.za
Unit 95 Travallyn Park, cnr River Rd, Kyasand, Randburg

Total

R 56,280.00

R 32,400.00

R 7,950.00

R 6,200.00

R 4,400.00

R 4,150.00

R 39,720.00

R 18,200.00

R 12,400.00

R 5,950.00

R 5,300.00
R 5,700.00

R 1,770.00
R 1,950.00

R 5,950.00

R 5,280.00
R 7,920.00

R 17,300.00

R 5,500.00

R 9,850.00

R 21,300.00

R 13,300.00

R 6,600.00

R 4,700.00

R 8,880.00
R 1,200.00

R 6,660.00

R 12,500.00

R 8,750.00

R 11,600.00

R 3,660.00

R 4,850.00

R 6,250.00

R 1,250.00

R 3,700.00

R 13,960.00

R 1,350.00
R 1,450.00

R 1,060.00

R 3,900.00
R 1,060.00
R 5,400.00

R 1,450.00
R 875.00
R 4,850.00
R 1,950.00

R 18,200.00

R 24,750.00

R 24,750.00

R 474,375.00
R 66,412.50
R 540,787.50
R 15,000.00
R 525,787.50

R 315,472.50
R 210,315.00

"FA207.4"

Phillip Thorne

2887

From: Lucky Montana {PRASA CORP}
Sent: Tuesday, October 21, 2014 1:43 PM
To: riaan@louwalt.co.za
Subject: FW: Miele order 94588
Attachments: image001.png; SOlivetti140617180200.pdf

Miele appliances that I paid for.

From: Kgaogelo Ntshwana[mailto:kgaogelomng@yahoo.co.uk]
Sent: Tuesday, October 21, 2014 1:38 PM
To: Lucky Montana {PRASA CORP}
Subject: Fwd: Miele order 94588

Sent from my iPad

Begin forwarded message:

From: "Charlene.Behrendt@miele.co.za"<Charlene.Behrendt@miele.co.za [mailto:Charlene.Behrendt@miele.co.za]
>
Date: 17 June 2014 at 6:10:18 PM SAST
To: "kgaogelomng@yahoo.co.uk [mailto:kgaogelomng@yahoo.co.uk] "<kgaogelomng@yahoo.co.uk
mailto:kgaogelomng@yahoo.co.uk] >
Cc: "tmontana@prasa.com [mailto:tmontana@prasa.com] "<tmontana@prasa.com [mailto:tmontana@prasa.com]
>
Subject: Miele order 94588

Dear Kgaogelo and Lucky

Attached please find the Mieleorder as discussed. Kindly send the proof of payment to my email address as soon as possible as this is the last unit available.
Please do not hesitate tocontact me for further assistance.

Have a special evening.

Kind Regards,
Charlene Behrendt
Gallery SalesConsultant

Miele (Pty) Ltd -South Africa
63 Peter Place,Bryanston, 2194

Tel : (011) 875 9022
Fax: (011) 875 9035
www.miele.co.za

IMG [_x0000_i1025]

From: zaadmin
Sent: 17 June 2014 06:03 PM
To: Behrendt, Charlene
Subject: Message from

SS-OMN-442
2889

Miele Customer Order

Fax to: 0860 336 633

MIELE
IMMER BESSER

Miele (Pty) Ltd
Head Office & Showroom
63 Peter Place
Bryanston
Johannesburg
Gauteng

Miele Galleries:
Miele Johannesburg
Tel: (011) 875 9000
Miele Pretoria
Tel: (012) 346 3030/27

Miele Cape Town
Tel: (021) 946 3148/9
Miele Durban
Tel: (031) 584 6929/84

Contact Details:
Telephone: 0860 000 622
Fax: 0860 000 633
e-mail: sales@miele.co.za
Customer service:
086 006 4353

Order Number: 84587

Date of Order: 17/6/14

A delivery fee for deliveries within 100km from Johannesburg, Pretoria, Durban or Cape Town will be charged.

Required Delivery Date: ASAP

Miele Chartered Agent

Store: MIELE BRYANSTON
Tel: 0118759022
Salesperson: CHARLENE

Miele Banking Details

Standard Bank
Randburg: 018005
Account No. 021648375

FNB
Bryanston: 250017
Account No. 62092144618

Nedbank
Bryanston: 146905
Account No. 1469154013

ABSA
Jhb North: 630255
Account No. 4063476854

Customer Name & Address

Company Name: ..... VAT No: .....
Surname: MONTANA Title: MR. Initials: T. L.
Delivery Address: 10 NEWPORT RD PARKWOOD
Telephone Home: tmontana@pixsa.com Work: MR.
Cell: 072 334 9916 E-Mail: kgaogelomna@yahoo.co.uk

*Connection by Miele: Yes [X] No [ ]
Existing Services: Yes [ ] No [ ]

- Connection is limited to removal of transport brackets and connecting the appliance to existing services.
- Connection covers freestanding appliances: Washing Machines, Dishwashers, Tumble dryers & Refrigeration but excludes Stacking Kits & Vent Kits.
- Connection Excludes: All Built-in Appliances and Integraied Appliances.

Are you a first time Miele purchaser? Yes [ ] No [X]

Special Instructions

Article No.	Model No.	Product Description	Quantity	Unit Price Incl. VAT	Total Price Incl. VAT
	WS5148	ed S/STEEL 7kg	1	19999-	19999-
		W/MACHINE			
	T8828	Cd S/STEEL 7kg	1	19999-	19999-
		S/STEEL CONDENSER			
		DRYER			

Sub Total	39998-
Delivery Incl. VAT	450-
Total Order Value Incl. VAT	40448-

Method of Payment

Cash [ ] Debit Card [ ] Credit Card [ ] EFT [X]
Cheque [ ] Cheque Authorisation No. .....
Paid to Miele [X] Paid to Agent [ ] Cash Receipt No. .....

I have read and agreed to order the goods referred to in this order on the terms and conditions set out on the reverse of the Customer copy.

Customer Signature .....

In the future, would you like Miele to advise you about events, other products, services and special offers. Yes [ ] No [ ]

On Behalf of Miele (Chartered Agent) .....

Credit Card Details

Card Number [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]
Expiry Date [ ][ ] [ ][ ] CVC number on back of card [ ][ ][ ]
Card Type .....
Budget Account 3mth [ ] 6mth [ ] 12mth [ ] 24mth [ ]
Card Holder Signature .....
I confirm the herein-mentioned sale, subject to the conditions governing the use of the card.
Card Holders Name .....
Transaction Authorisation No. .....

SS-OMN-443

2890

"FAZ-08".

Stampduty	
Seëtreg	R.
Fees/Fools	R. 1800/00
Exempted	Cat.
Vrygestel.....	Kat.....

Prepared by me,

Conveyancer
Dina Bosho

T 000005267 / 2015

DEED OF TRANSFER

FOR INFORMATION ONLY
S/FGS. VIR. INLIGTING

BE IT HEREBY MADE KNOWN:

THAT Maria Magdelena Coetzee

appeared before me, REGISTRAR OF DEEDS at Johannesburg the said Appearer being duly authorised thereto by a Power of Attorney signed at PRETORIA on 29 September 2014 and granted by:

TSHEPO LUCKY MONTANA
IDENTITY NUMBER: 700425 5660 081
UNMARRIED

AND the Appearer declared that his/her said Principal had on 5 May 2014 truly and legally sold for the amount of R6 800 000,00 (SIX MILLION EIGHT HUNDRED THOUSAND RAND and that she, the said Appearer in his/her capacity aforesaid, did by these presents, cede and transfer, to and on behalf of:

PRECISE TRADE AND INVEST 02 PROPRIETARY LIMITED
REGISTRATION NUMBER: 2013/059374/07

Its Successors in Title or assigns, in full and free property

ERF 359 PARKWOOD TOWNSHIP
REGISTRATION DIVISION I.R., THE PROVINCE OF GAUTENG

MEASURING: 1006 (ONE ZERO ZERO SIX) SQUARE METRES;

HELD BY Deed of Transfer T48559/2006

SUBJECT to the following special conditions:

1. THAT the Owner of the said Lot shall not have the right to construct reed or grass houses or cattle kraals on the same.

2. THAT the Owner of the said Lot shall not have the right to open or allow or cause to be opened thereon any Canteen, Hotel, Restaurant or other place for the sale of wines, beer or spirituous liquors, or any shop or other business place whatsoever.

3. THAT the Owner or any tenant or occupier of the said Lot shall not do or suffer to be done on the same anything noisome, injurious or objectionable, or which shall be proved to be a public or private nuisance, or a damage or a disturbance of the owners, tenants or occupiers of land and buildings in the neighbourhood of the said Lot.

4. THAT no house, buildings, additions or alterations to houses or buildings whatsoever, shall be erected or made on the said Lot except such as shall have been approved by the TRANSVAAL CONSOLIDATED LAND AND EXPLORATION COMPANY LIMITED and all buildings, except outbuildings, shall be dwelling houses. Drawings and specifications of all houses or buildings proposed to be erected from time to time by the owner or any tenant or occupier of the said Lot, or any alterations and additions to such houses or buildings, shall be first approved by the said Company. Out-buildings shall not be used as dwellings except for servants.

5. THAT the said Lot shall not be subdivided; and there shall not be erected more than one dwelling house, with the necessary out-buildings and accessories on the said Lot.

6. THAT the Owner of the said Lot shall as soon as buildings have been erected thereon be bound to fence the said Lot neatly and properly with wood or iron palings or good wire fence, but he shall not have the right to erect an unsightly fence, such, as for instance, one of galvanized iron; nor shall the owner or any tenant or occupier or the said Lot have the right to erect any out-buildings or other erections on the same within a space of 1.52 metres from such fence, without first having obtained the permission in writing of the said Company in every case. The said Company shall, however, have the right at any time to insist upon the erection by the owner of the said Lot of a painted galvanised iron fence, at least 1.83 metres high, along the boundary of the Lot on the Sanitary Lane, shown on the General Plan of the said Township.

7. THAT the said Company (so long as it remains the Owner of any portion of said farm "BRAAMFONTEIN") or any owner of a Lot in the said Township of PARKWOOD shall at all times be entitled to enforce against the owner of any Residential Lot in the said Township (except such as are set aside for Government) all and every of the aforegoing special conditions – any owner of any lot in the said Township shall be empowered to enforce the fulfillment of any of the said special conditions as fully as if he were acting in the place of the said Company – the special conditions having been imposed for the benefit of the said Company.

AND FURTHER SUBJECT to such conditions as are mentioned or referred to in the aforesaid Deed.

WHEREFORE the Appearer, renouncing all the right and title which the said

TSHEPO LUCKY MONTANA, UNMARRIED

heretofore had to the premises, did in consequence also acknowledge it to be entirely dispossessed of and disentitled to the same, and that by virtue of these presents, the said:

PRECISE TRADE AND INVEST 02 PROPRIETARY LIMITED; REGISTRATION NUMBER: 2013/059374/07

Their heirs, executors, administrators or assigns, now are and henceforth shall be entitled thereto, conformably to local custom, the State, however, reserving its rights.

IN WITNESS WHEREOF I, the said Registrar, together with the Appearer, q.q. have subscribed to these presents and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the office of the REGISTRAR OF DEEDS at JOHANNESBURG on

2015-02-20

q.q.

In my presence,

REGISTRAR OF DEEDS

FOR INFORMATION ONLY
SLEGS VIP INLIGTING

SS-OMN-447

"FA209"

2894

prasa

PASSENGER RAIL AGENCY OF SOUTH AFRICA

CONTRACT NUMBER: HO/FM-CRES/142/09/2013

SUPPLY AND INSTALLATION OF AN INTEGRATED SECURITY ACCESS MANAGEMENT SYSTEMS (ISAMS PHASE2)

ADDENDUM

This addendum seeks to align the maintenance of the ISAMS equipment for Phase 1 and extension with Phase 2 of the project as well as upgrading of the Phase 1 equipment in line with the latest technology. It also includes the extension of the guarantee and maintenance on the full equipment of Phase 1 and the extension of Phase 1. It therefore serves as an integral part of the supply and installation of the ISAMS equipment.

1. MAINTENANCE ENHANCEMENT OF SYSTEM:

The Intergrated Security Access Management System (*"ISAMS"*) project was initiated in 2010 when a project rolling out a bouquet of services coverign the following components was executed at 7 Stations:

1.1) Public Address System

1.2) Display Boards & Help Points

1.3) Video Surveillance System

1.4) Access Control System

1.5) Smoke and Fire Detection

1.6) Structured Cabling

1.7) Civil Works related to the Project

1.8) Access Gates – future ready for Automatic Fare Collection *("Speed Gates")*

Siyangena was involved in all 10 stations but in varying degrees. At 4 stations the full bouquet was rolled out while at a further 6 Stations merely certain portions of the bouquet were installed with the balance including the Access Control, Public Address System and Display Boards being done by others.

In April 2011 Phase 1 of ISAMS (SG/GATES/))/2009 was rolled out and awarded to Siyangena with the full bouquet to be implemented at a further 68 Stations and with upgrades to 3 of the 10 Stations done in 2010 in line with the new specification and requirements.

In September 2013 the initial ISAMS contract was extended to a further 12 stations bringing the total number of stations at which the ISAMS bouquet is installed to 90 stations nationwide. (See attached list of stations)

As part of the Siyangena's service offering, Siyangena has guaranteed all equipment, and currently maintains all the equipment that Siyangena installed of the ISAMS Bouquet, until March 2016 irrespective of whether it was installed as part of the 2010 Rollout or ISAMS Phase 1.

Siyangena was appointed in June 2014 to execute the ISAMS Phase 2 Project (Tender No HO-FM-CRES-142-09-2013) at a total amount R2 536 327 633.60 which entails the rollout of the full bouquet to a further 100 stations nationwide. During the final contract negotiation with PRASA Supply Chain Management and PRASA Facilities Department, the current custodian of the project it was pointed out by PRASA that the extension of the maintenance on the Phase 1 stations is critical and key to overall success of the project and in line with the PRASA objectives.

The current maintenance enhancement to the contract extends the maintenance and guarantee to the various stations and staging yards until June 2019 in line with the contract awarded for ISAMSD Phase 2. This includes maintaining and guaranteeing all the equipment installed both in 2010 and in Phase 1 as well as bringing the 2010 and Phase 1 station installations in line with the improved technical specifications of Phase 2. Refer to Annexures attached to this document for detailed breakdown.

2. COST OF MAINTENACE AND EXTENSION OF GUARANTEE:

The price of the Phase 2 supply and installation of the ISAMS equipment is R2 536 327 633.60 which is provided in the Capital Programme of PRASA, however the cost of the maintenance of the equipment for Phase 1 and the Extension will be borne separately as part of PRASA's current expenditure.

The maintenance cost of the equipment i.e. the guarantees and warranties are fulfilled by Siyangena until June 2019 and is estimated as follows:

- Upgrading of Existing Equipment in line with latest technology R 98 900 852.19
- Extension of Guarantee for a further 3 years R 441 913 610.48
- Maintenance extension for a further 3 years R 253 620 143.10

The addendum provides for the payment schedule and the alignment of the project to meet the maintenance and guarantee extension in accordance with the original signed contract.

All other terms and conditions of the contract remain unchanged.

This addendum forms an integral part of the contract.

Signed by THE CONTRACTOR at PRETORIA on this 19th day of SEPTEMBER 20.14 in the presence of the undersigned witnesses.

CONTRACTOR

AS WITNESSES: (1)

(2)

Signed on behalf of THE CLIENT at PRASA HOUSE on this 30th day of SEPTEMBER 2014 in the presence of the undersigned witnesses.

THE CLIENT
(PASSENGER RAIL AGENCY OF SOUTH AFRICA)

AS WITNESSES: (1)

(2)

SUPPLY AND INSTALLATION OF INTEGRATED SECURITY ACCESS MANAGEMENT SYSTEM – ALIGNMENT OF PHASE 1 AND PHASE 2

ANNEXURE A – LIST OF STATIONS

No	Station Name	Region	Speed Gates	Public Adress	Help Points	Electronic Display Boards	CCTV & Mon.	Access Control System	Fire Detection
1	Naledi	SGR	Yes	x	x	x	Yes	Yes	Yes
2	Merafe	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3	Inhlarane	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4	Ikwezi	SGR	Yes	x	x	x	Yes	Yes	Yes
5	Dube	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6	New Canada	SGR	Yes	x	x	x	Yes	Yes	Yes
7	Luagiaagto	SGR	Yes	x	x	x	Yes	Yes	Yes
8	Braamfontein	SGR	Yes	x	x	x	Yes	Yes	Yes
9	Park Station	SGR	Yes	x	x	x	Yes	Yes	Yes
10	Elandsfontein	SGR	Yes	x	x	x	Yes	Yes	Yes
11	Olifantsfontein	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
12	Nancefield	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
13	Kliptown	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
14	Tshiawelo	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
15	Mlamlankunzi	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
16	Midway	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
17	Kaalfontein	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
18	Malmhloue	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
19	Phomolong	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
20	Longdale	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
21	Doornfontein	SGR	Yes	x	Yes	Yes	Yes	Yes	Yes
22	Orlando	SGR	Yes	x	x	x	Yes	Yes	Yes
23	Rhodesfield	SGR	Yes	x	x	x	Yes	Yes	Yes
24	Phefeni	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
25	Mayfair	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
26	Pretoria	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
27	Hercules	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
28	Mountain View	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
29	Pretoria North	NGR	Yes	x	x	x	Yes	Yes	Yes
30	Wintersnest	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
31	Akasiabouw	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
32	Centurion	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
33	Atteridgeville	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
34	Silverton	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
35	Bosmanstraat	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
36	Saulsville	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
37	Kopanong	NGR	Yes	x	x	x	Yes	Yes	Yes
38	Soshangure	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
39	Denneboom	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
40	Eerste Fabrieke	NGR	Yes	x	x	x	Yes	Yes	Yes
41	Chris Hani	WCR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
42	Kuyasa	WCR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
43	Khayelitsha	WCR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
44	Nongubela	WCR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
45	Nolungile	WCR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
46	Mandalay	WCR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
47	Stock Road	WCR	Yes	Yes	Yes	Yes	Yes	Yes	Yes

prasa

SEYANGENA TECHNOLOGIES

SUPPLY AND INSTALLATION OF INTEGRATED SECURITY ACCESS MANAGEMENT SYSTEM – ALIGNMENT OF PHASE 1 AND PHASE 2

No	Station Name	Region	Speed Gates	Public Adress	Help Points	Electronic Display Boards	CCTV & Mon.	Access Control System	Fire Detection
48	Mitchellsplain	WCR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
49	Kapteinsklip	WCR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
50	Nyanga	WCR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
51	Heideveld	WCR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
52	Bonteheuwel	WCR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
53	Maitland	WCR	Yes	x	x	x	Yes	Yes	Yes
54	Retreg	WCR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
55	Salt River	WCR	Yes	x	x	x	Yes	Yes	Yes
56	Kwamashu	KZN	Yes	Yes	Yes	Yes	Yes	Yes	Yes
57	Thembelihle	KZN	Yes	Yes	Yes	Yes	Yes	Yes	Yes
58	Dalls Road	KZN	Yes	x	Yes	Yes	Yes	Yes	Yes
59	Isipingo	KZN	Yes	x	Yes	Yes	Yes	Yes	Yes
60	Lindokuhle	KZN	Yes	x	x	x	Yes	Yes	Yes
61	Umlazi	KZN	Yes	x	x	Yes	Yes	Yes	Yes
62	Kwa-Mnyandu	KZN	Yes	Yes	Yes	Yes	Yes	Yes	Yes
63	Zwelethu	KZN	Yes	x	Yes	Yes	Yes	Yes	Yes
64	Reunion	KZN	Yes	x	x	x	Yes	Yes	Yes
65	Merebank	KZN	Yes	Yes	Yes	Yes	Yes	Yes	Yes
66	Clairwood	KZN	Yes	x	Yes	Yes	Yes	Yes	Yes
67	Durban	KZN	Yes	Yes	Yes	Yes	Yes	Yes	Yes
68	Rosshugh	KZN	Yes	x	x	x	Yes	Yes	Yes
69	Umbilo	KZN	Yes	Yes	Yes	Yes	Yes	Yes	Yes
70	Congella	KZN	Yes	Yes	Yes	Yes	Yes	Yes	Yes
71	Montdale	KZN	Yes	x	Yes	Yes	Yes	Yes	Yes
72	Dunwart	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
73	Stretford	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
74	Wonderboom	RGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
75	Belle Ombre	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
76	Jeppe	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
77	Van Riebeeck Park	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
78	Hartebeestspruit	RGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
79	Croesus	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
80	President	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
81	Daspoort	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
82	Koedoespoort	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
83	Coltas	RGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
84	Nasrec	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
85	Cape Town	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
86	Century City	NGR	Yes	x	x	x	x	x	x
87	Athlone	NGR	Yes	x	x	x	x	x	x
88	Langa	SGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
89	Mosés Mabhida	SGR	Yes	x	x	x	x	x	x
90	Bridge City	NGR	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Installed by Siyangena		Yes	90	63	70	70	87	87	87
Installed by Others		x	0	27	20	20	3	3	3

SIYANGENA TECHNOLOGIES

SUPPLY AND INSTALLATION OF INTEGRATED SECURITY ACCESS MANAGEMENT SYSTEM – ALIGNMENT OF PHASE 1 AND PHASE 2

ANNEXURE B – DETAILED COST OF UPGRADING

Upgrading of existing CCTV Installation	No	Rate	Total
Upgrade Recorders (12 Channel)	75	175 291.42	13 146 856.50
Platform Cameras (Full HD)	470	26 513.45	12 461 321.50
Ticket Office Cameras (720)	81	25 513.26	2 066 574.06
Concourse Cameras (720)	65	25 513.26	1 658 361.90
PTZ Cameras	2	88 248.01	176 496.02
Switches - 8 Port POE	202	15 125.47	3 055 344.94
Switches - 24 Port POE	20	29 228.83	584 576.60
Switches - 16 Port Fibre	5	26 226.24	131 131.20
Cabling	3	40 000.00	120 000.00
			33 400 662.72

Upgrading of Speedgate Installation			
Speedgate Gearbox	201	22 286.00	6 262 366.00
Glass	476	10 972.50	5 222 910.00
Sensors	476	13 794.00	6 565 944.00
Top Glass Display	476	7 040.00	3 351 040.00
			21 402 260.00

Upgrading of PA Installation	No	Rate	
Repalcement of DOM	32	R 236 915.54	7 581 297.28
Repalcement of AMP	32	R 124 349.84	3 979 194.88
Platform Speakers	160	R 3 465.38	554 460.80
Indoor speakers	128	R 1 417.47	181 436.16
Allowance for cabling	32	R 35 000.00	1 120 000.00
Allowance for decomissioning existing installations	32	R 12 461.54	398 769.28
			13 815 158.40

Upgrading of Display Boards Installation			
Double Sided Platform Boards	88	169 771.10	14 939 856.80
6 Line Concourse Board	12	102 050.52	1 224 606.24
8 Line Concourse Board	4	183 728.76	734 915.04
10 Line Concourse Board	2	268 837.15	537 674.30
Allowance for cabling	20	R 35 000.00	700 000.00
			18 137 052.38

Total Excluding VAT	86 755 133.50
VAT @ 14%	12 145 718.69
Total Including VAT	98 900 852.19

SIYANGENA TECHNOLOGIES

SUPPLY AND INSTALLATION OF INTEGRATED SECURITY ACCESS MANAGEMENT SYSTEM – ALIGNMENT OF PHASE 1 AND PHASE 2

ANNEXURE C – PAYMENT PLAN

DATE	UPGRADE	GUARANTEE	MAINTENANCE	TOTAL
April 2016	R 98 900 852.19	R 110 478 402.62	R 9 949 749.61	R 219 329 004.42
May 2016			R 9 949 749.61	R 9 949 749.61
June 2016			R 9 949 749.61	R 9 949 749.61
July 2016		R 110 478 402.62	R 9 949 749.61	R 120 428 152.23
August 2016			R 9 949 749.61	R 9 949 749.61
September 2016			R 9 949 749.61	R 9 949 749.61
October 2016		R 110 478 402.62	R 9 949 749.61	R 120 428 152.23
November 2016			R 9 949 749.61	R 9 949 749.61
December 2016			R 9 949 749.61	R 9 949 749.61
January 2017		R 110 478 402.62	R 9 949 749.61	R 120 428 152.23
February 2017			R 9 949 749.61	R 9 949 749.61
March 2017			R 9 949 749.61	R 9 949 749.61
April 2017			R 10 305 097.81	R 10 305 097.81
May 2017			R 10 305 097.81	R 10 305 097.81
June 2017			R 10 305 097.81	R 10 305 097.81
July 2017			R 10 305 097.81	R 10 305 097.81
August 2017			R 10 305 097.81	R 10 305 097.81
September 2017			R 10 305 097.81	R 10 305 097.81
October 2017			R 10 305 097.81	R 10 305 097.81
November 2017			R 10 305 097.81	R 10 305 097.81
December 2017			R 10 305 097.81	R 10 305 097.81
January 2018			R 10 305 097.81	R 10 305 097.81
February 2018			R 10 305 097.81	R 10 305 097.81
March 2018			R 10 305 097.81	R 10 305 097.81
April 2018			R 10 761 974.06	R 10 761 974.06
TOTAL	R 98 900 852.19	R 774 913 610.48	R 258 820 749.10	R 794 634 605.77





SS-OMN-454

2901

"FA210"

VAN RENSBURG INC.
PROKUREURS / ATTORNEYS

DEED OF SALE OF MEMBER'S INTEREST

MEMORANDUM OF AN AGREEMENT ENTERED INTO BY AND BETWEEN:-

KAREN DE BEER
Identity Number: 600831 0132 086
Unmarried

of: 225 Rose Street
Waterkloof

hereinafter referred to as the "Seller" of the member's interest;

- and -

TSHEPO LUCKY MONTANA
Identity Number: 700425 5660 082

of: 333 Main Street
Water Kloof
Pretoria 0181

hereinafter referred to as the "Purchaser" of the member's interest;

- in respect of -

AANMANI GUEST HOUSE CLOSE CORPORATION
REGISTRATION NUMBER: 2007/182748/23

hereinafter referred to as the "**close corporation**".

WHEREAS the Seller is the registered and beneficial owner of all the members interest and loan accounts in the Close Corporation; and

WHEREAS the Purchaser intends to acquire the full member's interest and loan account from the Seller in the Close Corporation; and

WHEREAS the Seller is prepared to sell its full member's interest and its claim against the Close Corporation in terms of the loan account to the Purchaser, subject to certain conditions;

THEREFORE the parties hereby agree that the Seller sells to the Purchaser who purchases the Seller's full member's interest in the Close Corporation, its claim against the Close Corporation in terms of the loan account, subject to the terms and conditions stated in this agreement, namely:

1.

PURCHASE PRICE:

The purchase price for the Seller's full member's interest and loan account in the Close Corporation is the sum of **R10 500 000.00 (Ten Million Five Hundred Thousand Rand)**.

2.

PAYMENT:

2.1 The purchase price shall be paid in cash against signature of this agreement by both parties to Van Rensburg Inc Attorneys, trust account at: **Nedbank, Branch code 116535, Account number 1620 230 463.**

2.2 The purchase price will be paid to the Seller on the "effective date" as determined in clause 6 hereunder.

2.3 All monies received from the Purchaser shall be held in an interest bearing account and such interest prior to the effective date shall accrue to the Purchaser.

3.

WARRANTIES re LIABILITIES:

The Seller hereby warrants in favour of the purchaser that -

3.1 save and except the liabilities specifically referred to in this agreement, the Close Corporation shall have no other liabilities (including contingent liabilities) as at the fixed date, and should such liabilities become known or arise, the Seller warrants that he shall immediately pay all such liabilities and the Seller hereby indemnifies and hold harmless the Purchaser and the Close Corporation in respect of all such liabilities or any loss or damages which may arise there from for which he might be liable;

4.

WARRANTIES re ASSETS:

The Seller hereby warrants in favour of the Purchaser that the Close Corporation has the following assets:

4.1 The Close Corporation is the owner of the loose assets as listed in annexure "B" hereto and the Purchaser herewith confirms that he inspected all the assets and it will be handed to the Purchaser "voetstoots" on the effective date.

4.2 The loose assets as listed in annexure "B" are the property of the Close Corporation, unencumbered and are not subject to any cession, lien or any other claims.

4.3 The Close Corporation is the owner of the fixed property, situated at 225 Rose Street, Erf 587 Waterkloof.

4.3.1 A mortgage bond is registered in favour of ABSA Bank over the fixed property. The parties agree that the purchase price should firstly be utilized to settle this outstanding mortgage bond. The balance after settlement of the mortgage bond is payable directly to the Seller by the attorneys on the effective date.

4.3.2 Should the purchaser choose to take over the responsibilities in terms of this mortgage bond, he will apply with an accredited financial institution for such finance. Guarantees for this finance should then be obtained within 30 (thirty) days from date of signing of this agreement.

5.

GENERAL WARRANTIES:

The Seller hereby warrants in favour of the Purchaser that on 12 March 2013 (herein after referred to as ' the effective date'):

5.1 the Close Corporation shall be registered in the Republic of South Africa according to the laws of the Republic of South Africa.

5.2 the existing member and public officer of the Close Corporation will resign and their respective written resignations will be handed to the Purchaser;

5.3 the Auditors of the Close Corporation will also resign as soon as they have transferred the member's interest in the Close Corporation from the Seller to the Purchaser;

5.4 It is hereby recorded that 'the close corporation' is an entity which is currently registered for VAT purposes with VAT registration number:

4340241373

The Seller however acknowledges that there will be no VAT payable on this transaction.

5.5. Neither the Seller nor anyone else will have bound the Close Corporation to any deed of surety ship, guarantee, warranty or act of indemnity other than the mortgage bond stipulated in clause 4 hereof.

The Purchaser warrants in favour of the Seller:

5.6 That he will consent the registration of a separate entity at the CIPC offices in the name of Aanmani Rose Guest House by the Seller.

6.

FIXED DATE:

6.1 Occupation of and effective control of and authority over the Close Corporation

shall be given to the Purchaser on Registration provided that payment has been made as provided for in clause 2 hereof, which date shall be the "fixed date" for the purposes of this agreement. Until such payment has been made, the right of ownership in the member's interest and claim to the loan accounts shall remain vested in the Seller.

6.2 As from the effective date the benefit and risk in the member's interest shall vest in the purchaser.

7.

GENERAL:

7.1 Entire Agreement:

7.1.1 This agreement contains the entire agreement between the parties and no agreement in conflict with the provisions thereof shall bind the parties unless it be reduced to writing and signed by all the parties.

7.1.2 No indulgence or extensions granted by one party to the other shall prejudice in any way the rights of the party who grants such indulgence or extension nor shall it create new rights nor be construed as a waiver.

7.1.3 Each party acknowledges that he has acquainted himself fully with the relevant facts which may influence the terms of this agreement and neither of the parties shall be liable for failure to disclose any facts within his knowledge.

7.2 Implementation:

The parties undertake to perform all such acts and to sign all such documents as may from time to time be required to give effect to what is intended in this agreement.

7.3 Jurisdiction Magistrate's Court:

The parties agree to submit to the jurisdiction of the Magistrate's Court in respect of any action or process arising from this agreement or its cancellation.

7.4 Domicilium Citandi:

The parties nominate as the addresses to which notices may be addressed, and as their respective domicilia citandi et executandi for any action which may arise directly or indirectly from this agreement or the cancellation thereof, their respective addresses mentioned in the preamble to this agreement.

8.

CANCELLATION CLAUSE:

8.1 Should the Purchaser fail to comply with any of the provisions of this agreement, and the Seller in writing addressed to the Purchaser at his selected domicilium citandi, demand compliance therewith and the Purchaser remain in default 10 (TEN) days after despatch of such notice, then the Seller may -

8.1.1 cancel this agreement, in which event the Purchaser shall forfeit all amounts which have been paid in terms of this agreement (whether to the attorneys or not) in favour of the Seller as liquidated damages, or the Seller may claim damages from the Purchaser in lieu of the liquidated damages mentioned above;

SS-OMN-461

8.1.2 alternatively and in his sole discretion, the Seller may claim immediate payment of the full balance of the purchase price still outstanding in terms of this agreement without prejudice to any claim for damages which he may have against the Purchaser.

9.

COSTS:

The Purchaser shall pay all costs incidental to this agreement and all Legal costs and costs are payable on demand to the attorneys.

THUS DONE AND SIGNED AT Pretoria ON 10/02/2013
AS WITNESSES:

1. _____

2. _____

_____
SELLER

THUS DONE AND SIGNED AT Pretoria ON 10/02/2013
AS WITNESSES:

1. _____

2. _____

_____
PURCHASER

Annexure "B"

LIST OF ASSETS AND CONDITIONS

1. Fixed assets:
   The only fixed property of Aanmani Guest House CC (2007/182748/23) (hereafter the CC) will be the property better known as 225 Rosestreet, Erf 567 Waterkloof on the date set out in clause 5 of this agreement.

2. The parties agree that the auditors of Aanmani Guest House CC (2007/182748/23) is Botha Accountants and that the auditors are hereby irrevocably authorized to prepare the necessary CK documents to be signed by the parties to give effect to the transfer of the members interest, and that the parties to this agreement will sign the CK documents within 7 (seven) days after the signing of this agreement.

3. In terms of clause 4.2 it is agreed between the parties that the fixed asset mentioned in clause 1 of annexure "B" will be unencumbered on the effective date.

4. In terms of clause 5.4 of the agreement the parties acknowledge that there is no VAT payable on the sale of the members interest as it is an exempt supply for VAT. The purchaser acknowledge that the CC is registered for VAT on the effective date and will as such carry on trade in the CC after the effective date.

5. In terms of clause 5.6 of the agreement, and for clarity reasons, the parties agree that the name Aanmani Guest House will form part of the assets of the CC but the seller may use the name Aanmani Rose Guest House or any variation thereof.

PS KM

SS-OMN-463

6. The Seller will finalize the financial statements of the CC on the effective date and will the balance sheet of the financial statements on the effective date only show the following :
   6.1 the members interest
   6.2 the accumulated reserves
   6.3 the loan account of the member (ceded to the purchaser on the effective date)
   6.4 the fixed property as mentioned in clause 1 of annexure "B"

4 FAZIL 4

2911

SWORN STATEMENT

I, the undersigned Karen de Beer, ID NO 600831 0132 086 state under oath as follows:

1

I am an adult female businesswoman and live at 55 Nicolson Street, PRETORIA, with telephone number +27 82 569 2305. I am giving this statement as a result of my knowledge about certain events, as set out herein, and do so freely of my own will, without any promise of fear or favour.

2

I used to be the owner of a property situated at 225, Rose Street, Waterkloof, Pretoria. I owned it through my company Aanmani Guest House cc 'Aanmani'. I decided in or about the end of 2012, to sell the property and I subsequently entered into a contract with a certain Lucky Montana, 'Montana', to sell the property. I attach a copy of that contract dated 2013-02-10, as Annexure 'KdB-1'. It will be seen that Montana was purportedly buying my interests in Aanmani for the sum of R10.5million, and thereby acquire the property.

3

I attach a copy of an e-mail sent out, dated 11 March 2013, by Ursula Willis of ABSA bank, who gave the address for delivery of the approved building plans as Annexure 'KdB-2'. This was in pursuit of an application for a mortgage bond, by Montana. It will be seen that ABSA copied Lucky Montana on that e-mail. The deal eventually fell through, as there was one problem after another, and Montana claimed the bank would not pay the bond, which I did not believe, as there was more than enough value. I decided to withdraw the property form the market.

4

I put the property on the market again, in or about August 2014. Within days Lucky Montana contacted my agents, Daniel de Lange and Liesel Theunissen. These people work for me. I told them I was not prepared to entertain an offer, unless Montana first of all pay a substantial deposit. Montana agreed to pay non-refundable deposit of R3.5m. I note that the contract was entered into by a certain 'Johan Smith', for and on behalf of 'MINOR PROPERTY TRUST' IT634/2014. I attach a copy of this contract as Annexure 'KdB-3'.

5

The balance of the payment, of R7.5million was late in being paid, and my attorneys had to write and threaten to cancel the contract. I should mention at this stage, that the first contract, was in the personal name of Lucky Montana, the next contract in the name of Johan Smith. He subsequently contacted us and requested that the contract be changed from JOHAN SMITH, to 'Precise Trade and Invest 02 (Pty) Limited'. I have instructed my attorney PJ Vivier telephone number 012 460 8047, to supply a copy of the relevant documents if same are requested by the investigators.

6

The monies were eventually paid in full, by Riaan van der Walt, Montana's attorney and the deal went through. The first meeting I had with Montana was in or about mid-November 2014. Montana walked through the house at that stage, as he wanted to 'check some things'. I moved out, and on the morning of 26 November 2014, I again met with Montana and handed him the keys for the property.

7

On 2014-11-27 I also sent out an e-mail to my neighbours, telling them the new 'owner' of my property was Lucky Montana. I attach a copy of two examples of that e-mail as Annexure 'KdB-4'. There was no doubt that Lucky Montana was the 'buyer'.

8

Despite the fact that there are corporate entities involved, there is no doubt in my mind whatsoever, that the house in question, was sold by me (through my CC) to Lucky Montana, first to him directly, then to a trust run by Johan Smith and eventually through his attorney's company Precise Trade & Invest 02 (Pty) Limited. The various contracting entities, such as JOHAN SMITH, MINOR PROPERTY TRUST and Precise Trade and Invest 02 (Pty) Limited, are merely the alter ego of Montana.

9

Prior to me signing this statement, I have carefully read through it and am satisfied that the facts are correctly and accurately recorded. The following questions were put to me in person by the commissioner of oths and I entered the answers thereto in my own handwriting:

"Do you know and understand the contents of this statement?" Yes

"Do you have any objection to taking the prescribed oath?" No

"Do you consider the prescribed oath binding on your conscience?" Yes

Karen de Beer

I certify that the deponent has acknowledged that he knows and understands the contents of this statement which was sworn to before me and the deponents signature was placed thereon in my presence at PRETORIA on TWENTY FIRST day of SEPTEMBER 2015

Commissioner of Oaths

Kim Marriott
COMMISSIONER OF OATHS (EX-OFFICIO)
Certified Freud Examiner
7 Janine Road, Sandown Estate
JOHANNESBURG, Republic of South Africa

SS-OMN-466

2913

"FAZIZ"

AGREEMENT TO PURCHASE PROPERTY

MEMORANDUM OF AGREEMENT ENTERED INTO BY AND BETWEEN

AANMANI GUEST HOUSE CLOSE CORPORATION
Registration Number: 2007/1827480/23
Herein represented by **KAREN DE BEER** she being duly authorized hereto
(Hereinafter referred to as "the Seller")

and

JOHAN SMITH
As Trustee of
MINOR PROPERTY TRUST
Registration Number: IT634/2014
He/she being duly authorized hereto by virtue of a resolution
(Hereinafter referred to as "the Purchaser")

IN TERMS OF WHICH THE PARTIES AGREE AS FOLLOWS:

1. **PURCHASE AND SALE**

The Seller hereby sells to the Purchaser, who purchases:

REMAINING EXTENT OF ERF 567, WATERKLOOF TOWNSHIP,
Registration Division J.R., Province of Gauteng;
MEASURING: 2398 (Two Thousand Three Hundred and Ninety Eight)
square metres
HELD BY Deed of Transfer T166836/2007

(The "Property")

PS KM

97

2. PURCHASE PRICE

The purchase price of the property amounts to R11,000,000.00 (Eleven Million Rand) which amount will be paid as follows:

2.1. A deposit in the amount of R3,500,000.00 (Three Million Five Hundred Thousand Rand) which amount will be paid into the trust account of the transferring attorneys within 14 (fourteen) days from date of signature hereof.

2.2 This amount is a non-refundable deposit and on receipt thereof this amount may immediately be paid to the Seller.

2.3 The Bank particulars of the attorneys are as follows: Borchardt & Hansen, Absa Bank, Account Number 01004432297, branch 632005, reference: PJ

2.4 As security for the payment of the balance purchase price of R7,500,000.00 (Seven Million Five Hundred Thousand Rand) the purchaser shall, within 60 (sixty) days from date of signature hereof be obliged to render approved bank guarantee/s to the seller or his representative, which guarantee/s

2.4.1 must be payable in Pretoria upon registration of transfer, free of bill of charges and bank commission; and

2.4.2 Must be payable in favour of the seller or the person/instance nominated by him.

The Seller will present the Purchaser with the particulars of the guarantees to be issued.

3. TRANSFER, LEGAL COSTS AND VAT

3.1 Transfer of the Property shall be executed by the conveyancers of the Seller, messrs **BORCHARDT & HANSEN INCORPORATED**, Brooklyn Court A Block, 1st Floor, 361 Veale Street, Brooklyn, Pretoria, after the Purchaser has complied with the terms of this contract, more specifically paragraph 2 hereof, and has paid all transfer fees and the costs hereof to the aforesaid conveyancers. The Purchaser undertakes to pay such

monies immediately upon demand.

3.2 The parties shall also be obliged upon request to sign all necessary documents in order to effect transfer of the property into the name of the Purchaser.

3.3 The Purchaser will pay a similar amount as the transfer duty payable on a purchase price of R11,000,000.00, to the Seller. This amount will also be paid on request by the transferring attorneys and it will also be paid into the trust bank account of the transferring attorneys.

3.4 The Seller will pay the VAT on the transaction to the South African Revenue Services.

4. OCCUPATION, RISKS AND TAXES

4.1 Occupation of the Property will be given to the Purchaser on transfer.

4.2 Risk of profit or loss related to the Property shall pass over to the Purchaser upon registration of transfer. The Purchaser will be obliged to insure the Property against all risk as from date of transfer.

4.3 From date of transfer the Purchaser shall be liable for payment of all taxes, levies and other costs related to the Property.

5. VOETSTOOTS

6.1 The Property is sold voetstoots. The Seller does not assume any responsibility for any obvious or hidden faults that may exist in the Property, and the Purchaser acknowledges that he buys the Property voetstoots. The Seller does not furnish any expliolt or tacit guarantees in regard to the Property. The Purchaser acknowledges that he was not persuaded into entering this Agreement by any presentations made to him by the Seller or any representative of the Seller.

6.2 The Property is sold together with all improvements thereon, and subject to all conditions or servitudes mentioned or referred to in the existing deed of transfer of the Property and the rights accrued thereupon.

6.3 Notwithstanding the "voetstoots" clause, the Seller will at his own costs be obliged to supply his Conveyancer with an Electricity Certificate, in terms of Regulation 2920 of 1992, issued by an Electrical Contractor, who is registered at the Electrical Board of South Africa, who specifies that the electricity in the building or buildings complies to the Safety SABS 0142 Act.
If the said Electrical Contractor traces and reports a fault, the Seller hereby undertakes to, within 20 days after receipt of the report and suggestion, appoint a qualified Electrician at his own cost, to attend to the necessary repair.

6. BEACONS

6.1 The Seller shall not be responsible for the identification of any surveyor's beacons, pegs or boundaries, and shall also not be responsible for any related costs, nor for surveying the Property.

6.2 In the event of there being a difference between the size of the Property as described herein and as defined in the title deed, the description in the title deed shall be preferred, and neither of the parties shall be entitled to any claim against the other.

7. BREACH

If any of the parties in this Agreement should fail to comply with the conditions of this Agreement the other party shall be entitled to give notice in writing of such failure, and to demand that the party concerned should remedy such breach of contract within 10 (ten) days of the date of dispatch of such notice in writing. Aforesaid notice in writing shall be sent by registered post, or delivered by hand, or by fax or by e-mail to the domicilium citandi et executandi of the party concerned, as indicated below. If the party concerned neglects to remedy the breach

of contract after expiry of the period of 10 (ten) days as mentioned, the other party shall be entitled to:

7.1 Demand specific performance by the other party of the terms of this Agreement; alternatively to

7.2 Cancel this Agreement and to institute proceedings against the party concerned for damages.

8 **CONDONATION**

Any condonation by any party in this Agreement or any failure by the other party to fulfill his obligations in terms of this Agreement shall not be regarded as being renouncement by such party of his rights in terms of this Agreement, nor as novation thereof.

9 **DOMICILIUM**

9.1 As domicilium citandi et executandi the parties choose the following addresses respectively:

The Seller: 55 Nicolson Street
Balley's Muckleneuk
PRETORIA

e-mail: bookings@aanmant.co.za
Tel: (012) 460-5211
Fax: (012) 346-0303

The Purchaser: 49 Parliament Street
Cape Town, 8001

E-mail: jsmith@mprs.co.za
Tel: 0214619986
Fax: 0214612838 / 8291

9.2 Aforesaid domicilia may only be changed by means of notice in writing by registered post or by fax or by e-mail to the domicilium citandi et executandi of the other party.

10 **COMMISSION**

The Parties record that no commission is payable by either the seller or the purchaser.

THUS EXECUTED AND SIGNED at PRETORIA this the 25 day of August 2014

AS WITNESSES:

1.

2.

pp SELLER

THUS EXECUTED AND SIGNED at PRETORIA this the 25 day of August 2014

AS WITNESSES:

1.

2.

pp PURCHASER

SS-OMN-472

2919

"FA213"

130

BORCHARDT AND HANSEN
INCORPORATED
BROOKLYN COURT
BLOCK A, 1st FLOOR
361 VEALE STREET
BROOKLYN
0181

Prepared by me

CONVEYANCER
DIRK JOHANNES LOTZ

SEELREG
STAMP DUTY R
FOO!
FEES R2800-00

For information Only

DEED OF TRANSFER

T. 000023385/2015

BE IT HEREBY MADE KNOWN THAT

DIRK JOHANNES LOTZ

appeared before me, REGISTRAR OF DEEDS at Pretoria, he the said Appearer being duly authorised thereto by a Power of Attorney signed at PRETORIA on 20 February 2015 and granted to him by

AANMANI GUEST HOUSE CC
Registrasienommer 2007/182748/23

VERIFIED
DATA
2015 -04- 15
DEEDS PRETORIA
J.S.M. BOSCH

GhostConvey 15.3.4.2

And the Appearer declared that his said principal had truly and legally sold on 20 February 2015 and that he, the said Appearer, in his capacity aforesaid, did, by these presents, cede and transfer to and on behalf of

PRECISE TRADE AND INVEST 02 PROPRIETARY LIMITED
Registration Number 2013/059374/07

its Successors in Title or assigns, in full and free property

REMAINING EXTENT OF ERF 587 WATERKLOOF TOWNSHIP
REGISTRATION DIVISION JR PROVINCE OF GAUTENG

MEASURING 2398 (TWO THOUSAND THREE HUNDRED AND NINETY EIGHT) Square metres

FIRST TRANSFERRED by Deed of Transfer Number T 3669/1936 and held by Deed of Transfer Number T166836/2007

SUBJECT to the following conditions:

(a) The said Lot shall be used for residential purposes only. Not more than one dwelling house with the necessary outbuildings and appurtenances shall be erected on the said lot and the said lot shall not be subdivided. The sale of all wines, malt or spirituous liquors is prohibited on the said Lot. No slaughter poles, cattle-kraals, canteens, shops or other business place whatsoever, shall be opened or carried on by any person whomsoever on the said Lot without the previous consent in writing of the SOUTH AFRICAN TOWNSHIPS, MINING AND FINANCE CORPORATION LIMITED (hereinafter referred to as "the Company") or its successors in title (being the owner of the Township for the time being) first had and obtained, nor shall the owner, tenant or occupant of the said Lot do or suffer to be done thereon anything which shall be proved to be a public or private nuisance or a damage or disturbance to the tenants, occupiers or owners of the land for the time being in the neighbourhood of the Lot.

The transferee shall be entitled to keep a cow or cows on the said property for the supply of milk for his own domestic purposes, but in such event he shall be obliged to construct a stable for the housing of the same to the satisfaction of the Company.

(b) The building to be built upon the said Lot shall be of a substantial character and constructed of brick or stone or other material to be approved by the Company and the transferee shall not commence building until he shall have submitted the plans and specifications of such building to the Company and shall have received the consent and approval of the Company in writing of such plans and specifications.

(c) The Company reserves the right to erect or lay down in or on the streets, roads, squares or other public areas, telegraphs m, telephones, tramways, pipes or other apparatus for the purpose of lighting, locomotion,

communication, water-leading and drainage, either by methods at present in use or methods which may hereafter come into use, and the further right at all times to the free and unimpeded passage of electric, telegraph or telephone wires over or above any portion of the said Lot, together with the right to affix, free of cost, such wires to any buildings or erections thereupon at a height of not less than 3,15 metres from the ground with the right of access to the said wires at any time for the purpose of removal or maintenance.

(d) The Company shall be entitled at all times to close any of the streets, roads, thoroughfares or open pieces of ground for the purpose of the repair or maintenance thereof, or for any of the purposes recited in paragraph (c) above.

(e) The Company reserves the right to plant trees along the sidewalks in the Township, such sidewalks extending to a distance of 3,15 metres on each side of the roads, the roads themselves being 12,59 metres in width.

SUBJECT to such conditions as are mentioned or referred to in the aforesaid Deed/s.

WHEREFORE the Appearer, renouncing all right and title which the said

AANMANI GUESTHOUSE CC
Registrasienommer 2007/182748/23

heretofore had to the premises, did in consequence also acknowledge it to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

PRECISE TRADE AND INVEST 02 PROPRIETARY LIMITED
Registration Number 2013/059374/07

its Successors in Title or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R11 000 000,00 (ELEVEN MILLION RAND).

IN WITNESS WHEREOF, I the said Registrar, together with the appearer q.q., have subscribed to these presents and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the REGISTRAR OF DEEDS at Pretoria on

q.q

In my presence

08 04 15

REGISTRAR OF DEEDS

For Information Only

SS-OMN-476

2923

"FA 214"

bookings

From: bookings
Sent: 27 November 2014 03:51 PM
To: 'Karlien Mitchell'
Subject: ROSE AVE SECURITY

Importance: High

To all my Neighbours,

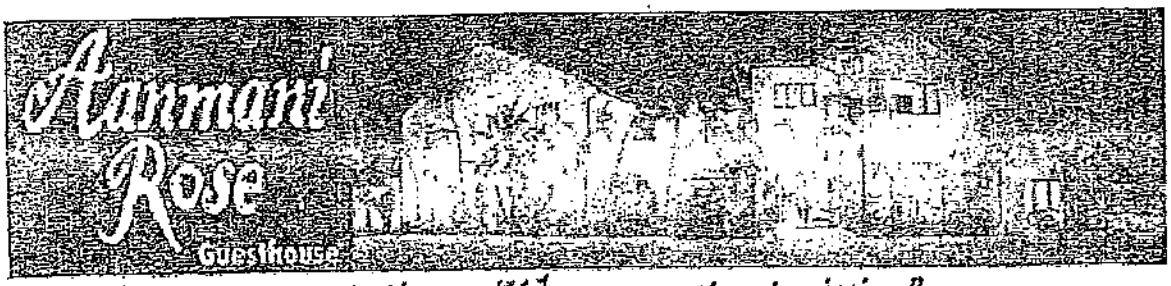
I would like to inform you that I have sold my home to Mr Lucky Montana current CEO of Prasa .
He is a very nice gentlemen and would take full responsibility of the property on 1st December 2014.11.27
I would like to find out whether you would be interested to continue with our arrangement concerning the security ,if not I would remove the guard house and continue with their services at my new residence.

Thank you very much for your kind and faithful friendship over the past seven years and hope you have a prosperous Christmas and new year

Regards
Karen De Beer & Family

Tel :012 460 5211
Tel:012 346 0303
Fax: 012 460 2493
E-mail: bookings@aanmani.co.za
www.aanmani.co.za
Twitter: @aanmanirose

★ ★ ★ ★



"exceeding your expectations will be our constant mission"

bookings

From: bookings.
Sent: 27 November 2014 03:59 PM
To: 'vision@tiscali.co.za'
Subject: ROSE AVE SECURITY

Importance: High

To all my Neighbours,

I would like to inform you that I have sold my home to Mr Lucky Montana current CEO of Praşa .
He is a very nice gentlemen and would take full responsibility of the property on 1st December 2014.11.27
I would like to find out whether you would be interested to continue with our arrangement concerning the security ,if not I would remove the guard house and continue with their services at my new residence.

Thank you very much for your kind and faithful friendship over the past seven years and hope you have a prosperous Christmas and new year

Regards
Karen De Beer & Family

Tel :012 460 5211
Tel:012 346 0303
Fax: 012 460 2493
E-mail: bookings@aanmani.co.za
www.aanmani.co.za
Twitter: @aanmanirose



"exceeding your expectations will be our constant mission"

SS-OMN-478

"FA215"

2925

SWORN STATEMENT

I, the undersigned Louis Green, ID NO 590512 5119 086 state under oath as follows:

1

I am an adult male estate agent, with my business address as Pam Golding, Investment Place, 10th Road, Hyde Park, JOHANNESBURG and with telephone number 082 820 3040. I am giving this statement as a result of my knowledge about certain events, as set out herein, and do so freely of my own will, without any promise of fear or favour.

2

On or about mid 2014 I was instructed by Mr N G Kholer to market and sell a property, known as Portion 18 of Erf 1, Sandhurst, IR Gauteng, situated at 119 Empire Place, Sandhurst, Johannesburg. As a result thereof I placed the property on show a number of times and on or about 2014-10-26 a gentleman now known to me as Mr Lucky Montana, visited the show day and expressed interest in buying the property. Either that day, or the next day, I cannot now remember, Montana signed an offer to purchase, for the property, in the amount of R13.9 million. I cannot now recall where the offer was signed, as I do many offers. It may even have been signed on the show day. The offer was accepted by the seller on 2014-10-28.

3

I was subsequently contacted by a certain Mr Adriaan (Riaan) van der Walt, by e-mail on 2014-11-06. The e-mail contained a letter from Loubser van der Walt Inc attorneys, confirming that they had R5,000,000 in a trust account with Investec Bank. A true copy of the e-mails, the attorney's letter and the offer to purchase signed by Montana, is attached hereto, marked as Annexure 'LG-1'.

4

On 2014-10-07, I received a further mail from van der Walt, with proof of payment of the amount of R5,000,000 into Pam Golding's trust account, for and on behalf of Lucky Montana. I attach a true copy of that e-mail as Annexure 'LG-2'.

5

On 2014-11-25, I received a further facsimile from van der Walt, with a letter attached, marked 'URGENT'. The effect of the letter, as will be seen, was to change the 'Buyer' from Lucky Montana to a company called Precise Trade and Invest 02 (Pty) Limited. I then sent a fresh offer to purchase to van der Walt, in the name of Precise Trade & Invest 02 (Pty) Limited, which was immediately signed by van der Walt and returned to me. I note that at clause 15 I wrote the expression *'THE DEPOSIT IN 2.1 WAS RECEIVED ON 07 NOVEMBER 2014'*. The effect of this, is that the deposit paid for Lucky Montana, was not being held for Precise Trade and Invest 02 (Pty) Limited. A true copy of the relevant e-mails, and new offer to purchase is attached hereto as Annexure 'LG-3'.

6

The conveyancing was carried out by Snymans Inc, Fourways office and the property was transferred on 2015-03-06. Within a few days of transfer I went to the property and met with Riaan van der Walt. He was on his own and to the best of my memory, this was the first time I saw him. I walked him through the property and handed him the keys.

7

There is one more document I want to attach, from my file. I do not know when I got it, but it is a copy of the bank guarantee for the payment of the remaining R8.9 million, from Investec. I attach a true copy of this as Annexure 'LG-4'.

(Initial here)

SG.

8

Coincidently, I was also the selling agent on another property, that was purchased by Lucky Montana. This is the property located in Hurlingham, on 12 Montrose Road, and known as Remaining extent of ERF 70 Hurlingham. The seller was a Mrs M H Gevisser and Montana bought it from her, with myself as the agent. The conveyancing was done by Janine Bredenkamp, in Parkview.

9

I distinctly recall Janine Bredenkamp calling me one day and saying that Montana had contacted her and requested her to change the 'buyer' from himself to another entity. I do not now recall what that entity was, but she refused to go along with it, as she wanted to finalise the transaction. That transfer went through on 2015-07-28. I attach a copy of the title deeds hereto, as Annexure 'LG-5'. As far I know, the seller of that property, is still in occupation and paying occupational rent.

10

Prior to me signing this statement, I have carefully read through it and am satisfied that the facts are correctly and accurately recorded. The following questions were put to me in person by the commissioner of oaths and I entered the answers thereto in my own handwriting:

'Do you know and understand the contents of this statement?' YES

'Do you have any objection to taking the prescribed oath?' NO

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

LOUIS GREEN

I certify that the deponent has acknowledged that he knows and understands the contents of this statement which was sworn to before me and the deponents signature was placed thereon in my presence at GALLO MANOR on FIRST day of OCTOBER 2015

Commissioner of Oaths

Bowling Ave Gallomanor Sandton

SOUTH AFRICAN POLICE SERVICES
CLIENT SERVICES CENTRE
GALLO MANOR
2015 -10- 01
KLIËNTE DIENSSENTRUM
GALLO MANOR
SUID AFRIKAANSE POLISIEDIENS

Louis Green

From: Louis Green <louis.green@pamgolding.co.za>
Sent: 07 November 2014 10:04 AM
To: 'Loubser van der Walt'
Cc: Ingrid Judge (ingrid.judge@pamgolding.co.za); Avril Aaronowitz
Subject: RE: TL MONTANA TRANSACTION
Attachments: Final Agreement Signed Kohler - Montana.pdf

Hi Riaan

Attached please find a copy of the Agreement of Sale for 119 Empire Place, Santhurst.
I confirm the deposit is R 3,900,000 (three million nine hundred thousand) and was due on the 6th November 2014.

I look forward to receiving your confirmation of payment, and thank you in advance.

Best regards

Louis Green | Property Consultant | C.E.A | PPRE L4
Gold Club Agent
PAM GOLDING PROPERTIES (PTY) LTD
Investment Place, Cnr William Nicol Drive and 10th Rd, Hyde Park,Johannesburg, Gauteng
Tel: +27 (11) 380 0165 Fax: +27 (86) 561 2609 Cell: +27 (82) 820 3040

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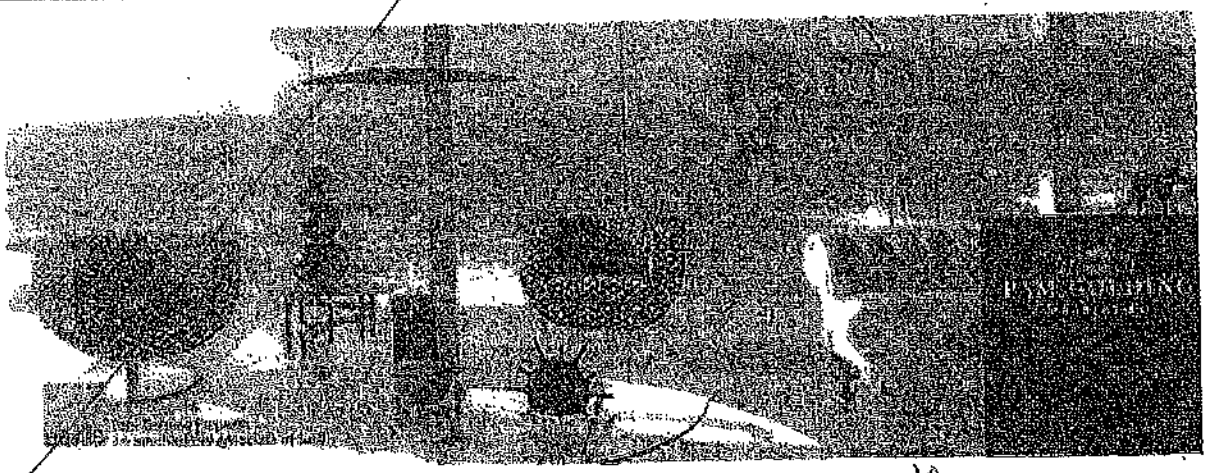


From: Loubser van der Walt [mailto:info@louwalt.co.za]
Sent: 06 November 2014 03:03 PM

To: louis.green@pamgolding.co.za
Subject: RE: TL MONTANA TRANSACTION
Importance: High

Good day,

We refer to the above matter.

Find attached hereto our letter with contents which is self-explanatory for your urgent attention.

We trust you find the above in order.

Kind Regards
Vriendelike Groete
Connie obo Riaan van der Walt

LOUBSER VAN DER WALT INC/ING
Attorneys – Notaries Conveyancers
Prokureurs – Notarisse – Aktevervaardigers

375 Justice Mahomed Street, Brooklyn, Pretoria / Justice Mahomed Straat 375, Brooklyn, Pretoria
P O BOX 1935, Brooklyn Square, 0075 / Posbus 1935, Brooklyn Sirkel, 0075
DOCEX 13, BROOKLYN
Tel: (012) 460-1915/6
Fax/Faks: (012) 460-1919
Fax/Faks: 086-720-8747
Email/Epos: info@louwalt.co.za

Loubser van der Walt Inc.

Prokureurs • Notariisse • Aktevervaardigers
Attorneys • Notaries • Conveyancers
1093 Justice Mahomed Street (formerly 375 Charles Street), Brooklyn //
P O Box 1935, Brooklyn Square 0075.
Tel (012) 460-1915/6 // Fax (012) 460-1919
Direct Fax: 086-720-8747 // E-mail: info@louwalt.co.za
DOCEX 13, BROOKLYN // Website: www.attorneys.co.za//louwalt

Our Ref: **R VAN DER WALT/R2091**

Your Ref: **MR LOUIS GREEN**

Date: **06 NOVEMBER 2014**

PAM GOLDING PROPERTIES **URGENT!!!**
BY E-MAIL: louis.green@pamgolding.co.za

Dear Sir,

RE: TL MONTANA TRANSACTION

We refer to the above matter and the telephone conversation between writer hereof and yourself on today's date.

We herewith confirm that we hold in our trust investment account, with Investec Bank, an amount of R5 000 000.00 (Five Million Rand), which amount is available to be allocated towards the purchase price of the property.

We kindly request your offices to forward the Offer To Purchase to our offices, and to confirm, in writing, the deposit amount to be paid.

We herewith confirm that we are already in possession of Pam Golding's trust account details.

We await your urgent response herein.

Yours faithfully
LOUBSER VAN DER WALT INC

Direkteure/Directors: N J Loubser (B.Proc LLB) J A van der Walt (B.Proc) Dip. Sportslaw (UP) R P van Wyk (LLB) M C Bernard (LLB; CPE)
Assosiate/Associates: D Boshoff (B.IURIS LLB) (Aktevervaardiger/Conveyancer) P E V Smith BA (Law); B.Proc; Dip. Insolvency Law & Practice A.J Burger (LLB)
Konsultante/Consultants: T A Becker B.Iuris; LLB; LLM (Contracts & Insolvency Law) (UP) (Aktevervaardiger/Conveyancer) J A Kruger (B.Proc UP) LLM (Tax & Insolvency)(UP) Dip. In Fin. Planning (UOVS)
Reg no. 2002/010392/21

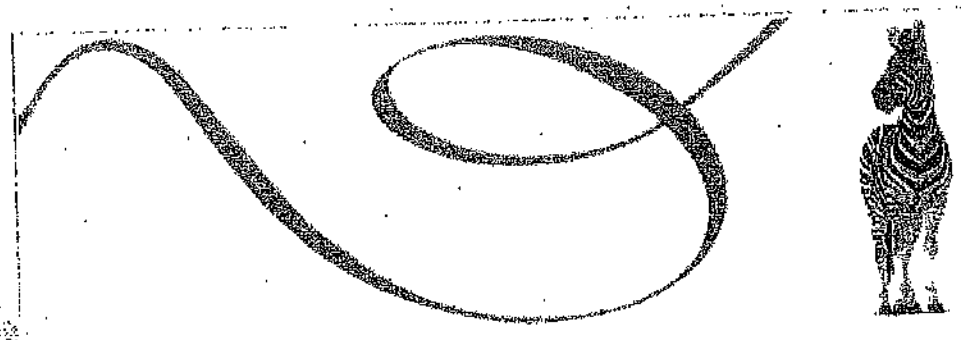
SG

"FA217"

2930

Louis Green

From: Jan Adriaan van der Walt <riaan@louwalt.co.za>
Sent: 07 November 2014 02:08 PM
To: louis.green@pamgolding.co.za
Subject: Confirmation of Payment
Attachments: Payment Confirmation.pdf



Beneficiary Payment Confirmation

Attached please find Confirmation of Payment. Should you have any further queries, please do not hesitate to contact Jan Adriaan van der Walt

Yours sincerely
Investec Private Bank

Out of the Ordinary

Investec
Private Bank

Investec Private Bank, a division of Investec Bank Limited registration number 1969/004763/06. Investec Private Bank is committed to the Code of Banking Practice as regulated by the Ombudsman for Banking Services. Copies of the Code and the Ombudsman's details are available on request or visit www.investecprivatebank.co.za. An authorised financial services provider. A registered credit provider registration number NCRCP6.

S.G.

Investec
Private Bank

Investec Private Bank
100 Grayston Drive Sandown Sandton 2196
Private Bag 8003 Randburg 2125
Telephone (2711) 286 9663
Facsimile (2711) 286 9665
Website www.investecprivatebank.co.za

To whom it may concern

Investec Private Bank hereby confirms that the following payment has been made:

Payment From	PRECISE
Amount	5000000.00
Payment Date from Investec	07/11/2014
Payment Reference	P0018350148
Beneficiary Account Name	pam goldingtrust
Beneficiary Bank	STANDARD BANK
Beneficiary Branch Number	025109
Beneficiary Bank Account Number	071864504
Beneficary Reference or Account Number	kohler/montana

Should there be any problems with the payment detailed above please contact:

Jan Adriaan van der Walt

Day Phone 0124601915
Cell 0827781720
E-mail rlaan@louwalt.co.za

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*Executive

Company Secretary: B Coetsee

Investec Private Bank A division of Investec Bank Limited Reg. No. 1969/004763/06.
A member of the Investec Group An authorised financial services provider

S.G.

"FA218" 2932

Sarah Moerane

From: NicK@hollard.co.za
Sent: 27 November 2014 16:38
To: ingrid.judge@pamgolding.co.za; yvonne.vanrooyen@pamgolding.co.za; avril.aronowitz@pamgolding.co.za; Talita@snymans.com
Cc: tmontana@prasa.com; louis.green@pamgolding.co.za; info@louwalt.co.za
Subject: Re: Kohler / Precise Trade & Invest 02 (Pty) Ltd
Attachments: image001.jpg; image002.jpg; image003.jpg; image004.jpg

Thanks Ingrid.

Lucky, do you have any interest in taking occupation before transfer? 63
Cheers
Nic

From: Ingrid Judge <ingrid.judge@pamgolding.co.za [mailto:ingrid.judge@pamgolding.co.za] >
Date: Thursday 27 November 2014 at 4:32 PM
To: "yvonne.vanrooyen@pamgolding.co.za [mailto:yvonne.vanrooyen@pamgolding.co.za] " <yvonne.vanrooyen@pamgolding.co.za [mailto:yvonne.vanrooyen@pamgolding.co.za] >, "il.aronowitz@pamgolding.co.za [mailto:avril.aronowitz@pamgolding.co.za] " <vril.aronowitz@pamgolding.co.za [mailto:avril.aronowitz@pamgolding.co.za] >, 'Talita Holding' <Talita@snymans.com [mailto:Talita@snymans.com] >
Cc: Nic Kohler <nick@hollard.co.za [mailto:nick@hollard.co.za] >, "tmontana@prasa.com [mailto:tmontana@prasa.com] " <tmontana@prasa.com [mailto:tmontana@prasa.com] >, Louis Green <louis.green@pamgolding.co.za [mailto:louis.green@pamgolding.co.za] >, 'Loubser van der Walt' <info@louwalt.co.za [mailto:info@louwalt.co.za] >
Subject: Kohler / Precise Trade &Invest 02 (Pty) Ltd

Hi Talita,

Please find attached signed Offer To Purchase from Precise Trade &Invest 02 (Pty) Ltd signed by all parties.

Attached is the CIPRO documentation, confirming that J.A. van der Walt is the only Director appointed on Precise Trade and Invest 02 (Pty) Ltd.

uld you have any queries, please do not hesitate to contact us.

d regards,
Ingrid

Ingrid Judge|Assistant to Louis Green
PAM GOLDING PROPERTIES (PTY) LTD
Investment Place, 2nd Road off William Nicol, Hyde Park
Office: +27 (11) 380 0041 Mobile: +27 (83) 326 1600 Facsimile: +27 (11)325 0659

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http://www.hollard.co.za/binaries/content/assets/hollard/hollard-legal-requirements/email_disclaimer.pdf



Sarah Moerane

From: Talita@snymans.com
Sent: 28 November 2014 08:12
To: louis.green@pamgolding.co.za; yvonne.vanrooyen@pamgolding.co.za; ingrid.judge@pamgolding.co.za; avril.aronowitz@pamgolding.co.za
Cc: nick@hollard.co.za; tmontana@prasa.com; info@louwalt.co.za
Subject: Progress Report
Attachments: image001.png; image002.png; image003.png; image004.png

Parties
Property

NG KOHLER / PRECISE TRADE AND INVEST 02 (PTY) LTD PORTION 18 / ERF 1 SANDHURST (119 EMPIRE PLACE)

To Estate Agency

PAM GOLDING HYDE PARK
louis.green@pamgolding.co.za; yvonne.vanrooyen@pamgolding.co.za; ingrid.judge@pamgolding.co.za; avril.aronowitz@pamgolding.co.za

To Transferor

Mr NG KOHLER
nick@hollard.co.za

To Transferee

KOHLER / PRECISE TRADE AND INVEST 02 (PTY) LTD
ntana@prasa.com [mailto:tmontana@prasa.com] ;info@louwalt.co.za [mailto:info@louwalt.co.za]

Date Instruction received
Bond cancellation figures requested

10 11 2014
11 11 2014

Date Title Deeds received

Rates Clearance Figures requested

28 11 2014

Rates Clearance Figures received

Rates Certificate Received

Deposit due(if applicable)

06 11 2014

osit paid(if applicable)

11 2014

Seller/s signed

Purchaser/s signed

Costs paid

rantees requested

28 11 2014

Guarantees received

Transfer duty paid to SARS

Transfer duty receipt issued by SARS

PSM

Electrical compliance certificate

Lodgment

Registration

00 000.00 deposit held by Pam Golding Properties.
Transfer documents drafted parties will be called upon to sign same on receipt of transfer duty assessment from SARS.

Date of occupation : Registration @ R75 000.00 rental/month.

Thank you for taking the time to peruse the report. If you have any queries, please do not hesitate to contact the writer hereof

IMG [0]

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IMG [0]

"FA219" 2937

Sarah Moerane

From: Lucky Montana {PRASA CORP}
Sent: 03 February 2015 18:51
To: NicK@hollard.co.za
Subject: RE: Progress Report

Dear Nic

Compliments of the new seasonand a blessed 2015 to you and family. Please accept and convey my sincere apologyto your family and PGP for the inconvenience caused.

We were not aware of the delaysin the payment of fees and the consequent breach of Contract. It was onSunday, 1 February 2015, when Kgaogelo and I met Louis Green (PGP) at yourhouse that the matter was first brought to our attention. I had family bereavementsin December and January and could unfortunately not attend to the transfer ofthe property. I therefore left this to the attorneys to finalise.

I am aware that our attorneyswere busy with vat registration of the trust, which involve two other properties.This may have contributed to the delays. However, better communication onour side would have created a common understanding. I have asked the attorneysto abandon the vat registration for now and ensure transfer is concludedimmediately without further delay.

I discussed the matter with ourattorney, Mr Riaan Van Der Walt who has since been in contact with Talita. He madean undertaking to settle the fees by today or latest tomorrow morning.

I trust that you will find theabove in order.

Warm regards

Lucky Montana

From: Nic Kohler[mailto:NicK@hollard.co.za]
Sent: Thursday, January 29, 2015 3:43 PM
To: Talita Holding; 'Louis Green'; yvonne.vanrooyen@pamgolding.co.za;Ingrid Judge; Avril Aronowitz
Cc: Lucky Montana {PRASA CORP}; Loubser van der Walt
Subject: RE: Progress Report

Hi Talita
Has there been any progress onthe payment of transfer costs?
Regards
Nic

From: Talita Holding[mailto:Talita@snymans.com]
Sent: Friday, January 23, 2015 10:09 AM
To: 'Louis Green'; yvonne.vanrooyen@pamgolding.co.za; Ingrid Judge;Avril Aronowitz
Cc: Nic Kohler; tmontana@prasa.com; Loubser van der Walt
Subject: Progress Report

Parties
Property

NG KOHLER / PRECISE TRAOE AND INVEST 02 (PTY) LTD
PORTION 18 / ERF 1 SANDHURST (119 EMPIRE PLACE)

To Estate Agency

PAM GOLDING HYDE PARK
louis.green@pamgolding.co.za; yvonne.vanrooyen@pamgolding.co.za; ingrid.judge@pamgolding.co.za [mailto:ingrid.judge@pamgolding.co.za] ; avril.aronowitz@pamgolding.co.za [mailto:avril.aronowitz@pamgolding.co.za]

Transferor

Mr NG KOHLER
nick@hollard.co.za

To Transferee

PRECISE TRADE AND INVEST 02 (PTY) LTD
tmontana@prasa.com; info@louwalt.co.za

R5 000 000.00 deposit held by Pam Golding Properties.
Following up with purchaser re payment of transfer costs.

Oate of occupation : Registration @ R7S 000.00 rental/month.

Compliance certificate/s received : copy of ECC and copy of electric fence installation.

Date Instruction received
Bond cancellation figures requested

10 11 2014
11 11 2014

Date Title Oeeds received

04 12 2014

Rates Clearance Figures requested

28 11 2014

Rates Clearance Figures received

08 12 2014

Rates Certificate Received

23 12 2014

Deposit due (if applicable)

06 11 2014

osit paid (if applicable)

07 11 2014

Seller/s signed

03 12 2014

Purchaser/s signed

17 12 2014

Costs paid

Guarantees requested

28 11 2014

Guarantees received

16 01 2015

Transfer duty paid to SARS

Transfer duty receipt issued by SARS

Electrical compliance certificate

16 01 2015

Lodgment

Registration

nk you for taking the time to peruse the report. If you have any queries, please do not hesitate to contact the writer hereof

IMG [Picture_x0020_1] [http://www.snymans.com/]

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mans on Facebook [http://www.facebook.com/Snymans]

IMG [Picture_x0020_3]

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image001.png


image002.png


image003.png

Sandhurst, JHB

SS-OMN-495
2942

"FA 220"

412

SNYMANS INCORPORATED
DOCEX 7, NORTHCLIFF

SEEREG
STAMP DUTY R.....
FOOI
FEES R 2500.00

Prepared by me

CONVEYANCER
CLIVE DERRICK SMITH

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

T0000 15043 / 2015

~~HENRY JOHN DAVIS~~
SALOMINA SALOMÉ DERRKER

appeared before me, REGISTRAR OF DEEDS at Pretoria, he the said Appearer being duly authorised thereto by a Power of Attorney signed at JOHANNESBURG on 3 December 2014 and granted to him by

NICOLAS GODFREY KOHLER
Identity Number 700206 5084 08 8
Married out of community of property

And the Appearer declared that his said principal had truly and legally sold on 27 November 2014 and that he, the said Appearer, in his capacity aforesaid, did, by these presents, cede and transfer to and on behalf of

PRECISE TRADE AND INVEST 02 PROPRIETARY LIMITED
Registration Number 2013/059374/07

its Successors in Title or assigns, in full and free property

PORTION 18 OF ERF 1 SANDHURST TOWNSHIP
REGISTRATION DIVISION I.R.
THE PROVINCE OF GAUTENG

MEASURING 2099 (TWO THOUSAND AND NINETY NINE) SQUARE METRES

FIRST TRANSFERRED by Certificate of Consolidated Title Number T16120/2003 with Diagram Number 3318/2002 relating thereto and held by Deed of Transfer Number T101136/2004

SUBJECT to the following conditions :-

1. The right of the State President described in Section Thirty Four of the Land Settlement Act 1912.

2. Not more than one dwelling house, which shall mean a house designed for use as a dwelling for a single family, together with such outbuildings as are ordinarily required to be used in connection therewith, shall be erected on the land, except in special circumstances, and then only with the consent, in writing of the Administrator (or body or person designated by him for the purpose) who may prescribe such further conditions as he may deem necessary.

3. As to that portion marked ABCDcbaA on the said diagram to the following conditions :-

(a) The former Portion 9 of Erf 1 represented by the figure FxE on Diagram S G Number A2969/1981 annexed to Certificate of Consolidated Title T59874/1981 is subject to the following condition :-

(b) The erf is subject to 2 (TWO) metres wide for municipal purposes on any two boundaries except street boundaries.

SUBJECT to the following conditions imposed by the transferor in favour of the ERF 1 SANDHURST HOMEOWNERS' ASSOCIATION, NPC ("the Association");-

(a) Every owner of the property, or owner of any subdivision thereof, shall become and shall remain a Member of ERF 1 SANDHURST HOMEOWNERS' ASSOCIATION, NPC and be subject to its constitution, until he ceases to be an owner as aforesaid.

(b) Neither the property, nor subdivision thereof, shall be transferred to any person who has not bound himself to the satisfaction of such Association to become a Member of the Homeowners' Association.

(c) The owner of the property, or owner of any subdivision thereof, shall not be entitled to transfer the property or any subdivision thereof, or any interest therein, or any unit thereon, without a clearance certificate from the Homeowners' Association that the provision of the Homeowners' Association have been complied with.

As will more fully appear from Notarial Deed of Servitude K765/2003S dated 26th November 2002.

AND SUBJECT FURTHER to such conditions as are mentioned or referred to in the aforesaid Deed/s.

For illustration purposes only

WHEREFORE the Appearer, renouncing all right and title which the said

NICOLAS GODFREY KOHLER, Married as aforesaid

heretofore had to the premises, did in consequence also acknowledge him to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

PRECISE TRADE AND INVEST 02 PROPRIETARY LIMITED
Registration Number 2013/059374/07

its Successors in Title or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R13 900 000,00 (THIRTEEN MILLION NINE HUNDRED THOUSAND RAND)

IN WITNESS WHEREOF, the said Registrar, together with the Appearer q.q., have subscribed to these presents and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the REGISTRAR OF DEEDS at Pretoria on 06 03 15

q.q.

In my presence

REGISTRAR OF DEEDS

Electronically Submitted

412

SNYMANS INCORPORATED
DOCEX 7, NORTHCLIFF

Prepared by me

CONVEYANCER
CLIVE DERRICK SMITH

POWER OF ATTORNEY TO PASS TRANSFER

I, the undersigned

NICOLAS GODFREY KOHLER
Identity Number 7002065084 08 8
Married out of community of property

do hereby nominate, constitute and appoint HENRY JOHN DAVIS and/or SALOMINA SALOME DEKKER and/or JACQUES LE ROY KAPP and/or HERMANUS JANSEN GILES SNYMAN and/or MARIETTE VAN ZYL and/or DIAAN MARINUS VAN WYK and/or CLIVE DERRICK SMITH and/or ANNEMARIE GRIFFIN and/or ARMAND COETZEE and/or JANENE MOCKE and/or STACEY JANE BARNARD and/or JEAN-MARI DE BEER

with power of substitution to be the true and lawful Attorney/s and Agent/s of the Transferor to appear before the REGISTRAR OF DEEDS at Pretoria and there to declare that on 27 November 2014 sell to:-

PRECISE TRADE AND INVEST 02 PROPRIETARY LIMITED
Registration Number 2013/059374/07

for the sum of R13 900 000,00 (Thirteen Million Nine Hundred Thousand Rand) the below mentioned property, namely-

PORTION 18 OF ERF 1 SANDHURST TOWNSHIP
REGISTRATION DIVISION I.R.
THE PROVINCE OF GAUTENG

MEASURING 2099 (TWO THOUSAND AND NINETY NINE) SQUARE METRES

HELD BY Deed of Transfer Number T101136/2004

and further cede and transfer the said property in full and free property to the said Transferee; to renounce all right, title and interest which the Transferor heretofore had in and to the said property, to promise to free and warrant the said property and also to clear the same from all encumbrances and hypothecations according to law, to draw, sign and pass the necessary acts and deeds, or other instruments and documents; and generally, for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, as fully and effectually, to all intents and purposes, as the Transferor might or could do if personally present and acting therein; hereby ratifying, allowing and confirming all and whatsoever the said Agent/s shall lawfully do or cause to be done in the premises by virtue of these presents.

Signed at JHB - Johannesburg

on 3 Dec 2014 - 3 December 2014

in the presence of the undersigned witnesses:

AS WITNESSES :

1. _____

NICOLAS GODFREY KOHLER

2. _____

FOR IDENTIFICATION PURPOSES ONLY

412

SARS

Transfer Duty Declaration

TDREP

Reference Details

Transfer Duty Reference Number: TDE010E44F

Details

Details of Seller / Transferor / Time Share Company

Surname / Registered Name	KOHLER	Full Name	NICOLAS GODFREY
ID Number	7002065064085	Date of Birth (CCYYMMDD)	1970-02-06
Company / CC / Trust Reg No.		Marital Status	C.O.C OF PROPERTY
Marital Status if applicable	South Africa	Spouse Initials	

Details of Purchaser / Transferee

Full Name	PRECISE TRADE AND INVEST 02 PROPRIETARY LIMITED	Surname / Registered Name	PRECISE TRADE AND INVEST 02 PROPRIETARY
Company / CC / Trust Reg No.	2013/056374/07	Marital Status if applicable	

Details of the Property

Date of Transaction/Acquisition (CCYYMMDD)	2014-11-27		
Total Fair Value	R 13900000.00	Total Consideration	R 13900000.00

Calculation of Duty and Penalty / Interest

Transfer Duty Payable on Natural Person	R	13900000.00

Property Description

1	PORTION 16 OF ERF 1 SANDHURST TOWNSHIP REGISTRATION DIVISION I.R. THE PROVINCE OF GAUTENG MEASURING 2093 (TWO THOUSAND AND NINETY NINE) SQUARE METRES

Receipt

Receipt Details

Transfer Duty Reference Number	TDE010E44F	Receipt No.	1200237661
Receipt Amount	R 4029000.00		

Declaration by Conveyancer / Attorney

I certify that this is a true copy of the transfer duty declaration / receipt / exemption certificate drawn from the SARS eFiling site, which will be retained by me for 5 years from the date of registration of transfer.

Date (CCYYMMDD): 2014 12 19

For enquiries go to www.sars.gov.za or call 0800 00 SARS (7277)

EOT

SS-OMN-502

2949

SNYMANS

Joburg

412

a world class African city

011 657-4034

City of Johannesburg
Department of Revenue & Customer Relationship Management

PO Box 5000
Johannesburg
2000

www.joburg.org.za

Clearance Certificate

Certificate Number : 5100191189

SCHEDULE

CERTIFICATE IN TERMS OF SECTION 118 OF THE LOCAL GOVERNMENT MUNICIPAL SYSTEM ACT, 2000 (ACT No. 32 OF 2000) (AS PRESCRIBED IN TERMS OF SECTION 120 OF ACT No. 32 OF 2000)

ISSUED BY CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

In terms of section 118 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), it is hereby certified that all amounts that became due to the City of Johannesburg Metropolitan Municipality in connection with the below-mentioned property situated within that municipality for municipal service fees, surcharge on fees, property rates and other municipal taxes, levies and duties during the two years preceding the application for this certificate have been fully paid.

21 Digit Code (or Municipal Reference Number)	T0IR0590000000000010001800
Erf Number	00000001
Portion	00018
Extension	00
Zoning	RESIDENTIAL 1
Registration division / Administrative District	
Suburb	SANDHURST
Town	
Sectional Title Unit number	
Exclusive use area and number as referred to on the registered plan	
Real Right	
Scheme registration number	
Sectional Title Scheme Name	
Registered Owner	
Name and ID/ Registration No. of all purchaser/s	NICOLAS GODFREY KOHLER 7002066084088

This certificate is valid until : 31.03.2015

Given under my hand at Bloemfontein, on 17 December 2014

MUNICIPAL MANAGER
CITY OF JOHANNESBURG MUNICIPALITY

Date Issued : 12.12.2014

Authorised Official : [signature]

FEDCC No: 1569964

SNYMANS
412
011 557-4034

Prepared by me
CONVEYANCER
CLIVE BERRICK SMITH

ERF 1 SANDHURST HOMEOWNERS' ASSOCIATION, NPC

Levy Clearance Certificate

I/We, the undersigned,

ERF 1 SANDHURST HOMEOWNERS' ASSOCIATION, NPC
("the Association")

Herein represented by Talita Holding, duly authorized hereto by a Resolution of the Association

Do hereby confirm :-

1. That the Provision of the Articles of Association of ERF 1 SANDHURST HOMEOWNERS' ASSOCIATION, NPC, have been complied with;

2. That all levies have been paid in respect of :-

PORTION 18 OF ERF 1 SANDHURST TOWNSHIP
REGISTRATION DIVISION J.R.
THE PROVINCE OF GAUTENG

3. That the property may be transferred to:-

PRECISE TRADE AND INVEST 02 PROPRIETARY LIMITED
Registration Number 2013/059374/07

The purchaser has bound itself to the satisfaction of the Association to become member/s of the ERF 1 SANDHURST HOMEOWNERS' ASSOCIATION, NPC, and, in terms thereof, be subject to the Association's rules and regulations until the Transferee/s cease to be the owner/s of the erf.

4. ERF 1 SANDHURST HOMEOWNERS' ASSOCIATION, NPC consent to the transfer.

THIS CLEARANCE CERTIFICATE IS VALID TO 31 MARCH 2015.

Signed at FOURWAYS
On 18 February 2015

ERF 1 SANDHURST HOMEOWNERS' ASSOCIATION, NPC

SNYMANS
412
011 557-4034

CONVEYANCER'S CERTIFICATE

I, the undersigned, **CLIVE DERRICK SMITH**, do hereby certify that:

1. The rates clearance application form was completed correctly.
2. The transferee's registration number is 2013/093374/07, and same was omitted by council on issuing of the clearance certificate.
3. Please pass the rates clearance certificate as is.

SIGNED at FOURWAYS on 05 February 2015

CONVEYANCER
CLIVE DERRICK SMITH

For information purposes only

SS-OMN-505
2952

PROD DEEDS REGISTRATION SYSTEM - PRETORIA DATE : 20150223 TIME : 11:01:40.9 PAGE : 1
PREPARED BY : DR501017 - LOUW ANDRID

TRACK NUMBER : 10012718021

BLACK-BOOKING ENQUIRY ON NAME - KOHLER NICOLAS GODFREY
ID NUMBER - 7002065084088
BIRTH DATE - 19700205
MARITAL STATUS - MARRIED OUT
MAIDEN NAME -
TYPE OF PERSON - PRIVATE PERSON

PERSON NAME AND ID	CONTRACTS/INTERDICTS	NOTED ON SCAN/MICRO REF
KOHLER NICOLAS GODFREY	7002065084088 / VAL267/2014-T142833/2005	20140620,20140814142752

** PLEASE NOTE : THE INFORMATION APPEARING ON THIS PRINTOUT IS FURNISHED FOR PURPOSES OF INFORMATION ONLY.
FOR MORE DETAILED INFORMATION, PLEASE REFER TO THE REGISTERED SOURCE DOCUMENTS.

*** END OF REPORT ***

IKE E: /XABBA /IKE

PRCO DEEDS REGISTRATION SYSTEM - PRETORIA DATE : 20150223 TIME : 11:01:47.6 PAGE : 1
PREPARED BY : DRS01017 - LOUW ANDRID

TRACK NUMBER 10012718021

PROPERTY DETAILS PRINT FOR PORTION 18
ERF NO 1
TOWNSHIP SANDHURST
REG DIV IR

PROVINCE GAUTENG
PREV DESCRIPTION
DIAGRAM DEED NO T16120/2003
EXTENT 2099 SQM
CLEARANCE CITY OF JOHANNESBURG
SG PLAN NUMBER 3318/2002

ORIGIN REASON ORIGIN PROPERTY
CONSOLIDATE FROM SANDHURST , 1 , 17
CONSOLIDATE FROM SANDHURST , 1 , 18 (R/E)

NO INTERDICTS

DOCUMENTS	HOLDER & SHARE	AMOUNT	O/P/A	SCAN/MICRO REF	MMDD
B87263/2004	INVESTEC BANK LTD	R3000000.00		20100812081346	0730
K765/2003S				20030101051240	0217
VA7803/2005	B87263/2004			20060101044522	0915

OWNER DETAILS

FULL NAME & SHARE	PURCH DATE	AMOUNT/REASON	O/P/A	IDENTITY	TITLE DEED	MMDD	MICROFILM REF
KOHLER NICOLAS GODFREY	20031215	R5600000.00		7002065084088	T101136/2004	0730	20040101165920

* O/P/A - O - MULTIPLE OWNER P - MULTIPLE PROPERTY A - MULTIPLE OWNER AND PROPERTY

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*** END OF REPORT ***

FOR INFORMATION ONLY

IKE E: /XABBA /IKE

"FA 22" 2954

Sarah Moerane

From: Janet Kohler <janetkohler@netactive.co.za>
Sent: 12 March 2015 16:53
To: Lucky Montana (PRASA CORP)
Subject: 119 Empire Place - Eskom account

Importance: High

Hi Lucky

I called Eskom today to let them know we have sold no. 119 and to try transfer the electricity account out of Janet s name. However the process seems to need both parties, we need to give Eskom a move out instruction to terminate our account, and then the new owners need to give them a move in instruction to activate the new owner s account. However when we give them the move out instruction, they will cut off the electricity supply until the move in order is given. I obviously don t want to leave you without electricity (the pond and the wine cellar are linked and the wine cellar needs power to pump out water and prevent flooding). Would you please let me know as soon as you are able to do the account transfer with Eskom so we can co-ordinate the instructions to happen on the same day?

I've taken the meter reading today (12/03/2015) at 917644 kWh.

Kind regards
Catherine
(on behalf of Nic and Janet Kohler)

PSM

" FA 222 "

Sarah Moerane

From: Louis Green <louis.green@pamgolding.co.za>
Sent: 19 March 2015 09:46
To: 'Janet Kohler'; 'Nick Kohler'; Lucky Montana {PRASA CORP}
Cc: 'Ingrid Judge'
Subject: [SPAM]Gate repair and Electricity Transfer
Attachments: image001.jpg; image010.jpg; image011.jpg; image012.jpg; image013.jpg

Hi Janet

I chatted with Lucky regarding the repair of the Gate motor, the security cameras and the transfer of the electricity account.

He has confirmed the appointment at 09H30 on Friday 20 March 2015 and has requested that they only attend to the gate motor. He will at his expense reinstate the security video system.

He has also requested that you hold off as far as the transfer of the accounts is concerned. He is ·emely busy at the moment and undertakes to pay all the related bills until the transfer has been done. He has indicated that he should be able to attend to it within the next few weeks. Your indulgence in this ard would be much appreciated.

The automated pool cover will be repaired as soon as the parts arrive and your vendor is able to do the installation.

Could you please advise who the gardening and pool service companies are as he would like to continue with their services.

Many thanks in advance

IMG [86]

is Green | Property Consultant | C.E.A | PPRE L4 Gold Club Agent PAM GOLDING PROPERTIES (PTY) LtD Investment Place, Cnr William Nicol Drive and 10th Rd, Hyde Park Johannesburg, Gauteng
: +27 (11) 380 0165 Fax: +27 (86) 551 2609 Cell: +27 (82) 820 3040

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Sarah Moerane

FA 223

From: Louis Green <louis.green@pamgolding.co.za>
Sent: 23 June 2015 11:21
To: Boitumelo Kgosana; Lucky Montana {PRASA CORP}
Cc: braam@poolcoverssa.co.za; Ingrid Judge
Subject: FW: 119 Empire Place
Attachments: image002.jpg; image003.jpg; image004.jpg; image005.jpg; image018.jpg; image019.jpg; image020.jpg; image021.jpg; image022.jpg; image023.jpg; image024.jpg

Hi Tumi

Please see below the email sent on 21 April 2015. Braam called as he did not receive any response and really needs to sort the cover at 119 Empire Place Sandhurst.

Please make contact with Braam to make the necessary arrangements.

Best regards

IMG [86]

Louis Green | Property Consultant | C.E.A | PPRE L4 Gold Club Agent PAM GOLDING PROPERTIES (PTY) LTD Investment Place, Cnr William Nicol Drive and 10th Rd, Hyde Park Johannesburg, Gauteng
Tel: +27 (11) 380 0165 Fax: +27 (86) 551 2609 Cell: +27 (82) 820 3040

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Click here to view my properties for sale [http://goo.gl/AmAQw]

IMG [0] [http://www.pamgolding.co.za/]

From: Louis Green [mailto:louis.green@pamgolding.co.za]
Sent: 21 April 2015 10:37 AM
To: Tumi Kgosana (bkgosana@prasa.com); Lucky Tsepo Montana (tmontana@prasa.com)
Cc: Ingrid Judge (ingrid.judge@pamgolding.co.za); Lisa Daly (lisa.daly@pamgolding.co.za)
Subject: FW: 119 Empire Place

Hi Lucky

Hope you are well. I have received the email below regarding the repair of the pool cover.

Please would you let Braam us know when would be best for you to allow him access to do the repair.

Braam du Plessis
Pool Cover Specialists SA
Cell: +27 82 331 7645
VoIP:+27 87 150 5312

Best regards

IMG [0]

Louis Green | Property Consultant | C.E.A | PPRE L4
Gold Club Agent
PAM GOLDING PROPERTIES (PTY) LTD
Investment Place, Cnr William Nicol Drive and 10th Rd, Hyde Park Johannesburg, Gauteng
Tel: +27 (11) 380 0165 Fax: +27 (86) 551 2609 Cell: +27 (82) 820 3040

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IMG [0] [http://www.pamgolding.co.za/e-brochures/prestige-collection/...]

From: Janet Kohler [mailto:janetkohler@netactive.co.za [mailto:janetkohler@netactive.co.za]]
Sent: 21 April 2015 10:28 AM
To: louis.green@pamgolding.co.za [mailto:louis.green@pamgolding.co.za]
Subject: FW: 119 Empire Place

Hi Louis

you ask Lucky when he would like to proceed? We have paid Pool Covers SA for the part, and just d to pay the balance when installation is complete.

Kind regards
Catherine

From: braam du plessis [mailto:braam@poolcoverssa.co.za [mailto:braam@poolcoverssa.co.za]]
Sent: 21 April 2015 09:39 AM
To: 'Janet Kohler'
Cc: 'Hazel PCSA'
Subject: RE: 119 Empire Place

Hi Catherin

y news on when we can do the installation.

ards

Braam du Plessis
Pool Cover Specialists SA
Cell: +27 82 331 7645
VoIP:+27 87 150 5312

IMG [0]

From: Janet Kohler [mailto:janetkohler@netactive.co.za [mailto:janetkohler@netactive.co.za]]
Sent: 31 March 2015 09:47 AM
To: 'Braam du Plessis (Pool Cover Specialists)'

Cc: 'Hazel PCSA'
Subject: 119 Empire Place

Hi Braam

This is just to confirm that we have notified the new owner, Lucky, that the pool cover part has arrived and we are awaiting his instructions to carry out the repairs. We have also given the Pam Golding agent, Louis Green, your contact details so they can get in touch with you directly if necessary.

Regards
Catherine

SS-OMN-514

"FA 224"

2961

Louis Green

From: Riaan van der Walt <riaan@louwalt.co.za>
Sent: 10 May 2016 12:58 PM
To: 'Louis Green'
Subject: RE: Electric Pool Cover Keys

No problem

Kind Regards
Vriendelike Groete
Riaan van der Walt

LOUBSER VAN DER WALT INC/ING
Attorneys – Notaries Conveyancers
Prokureurs – Notarisse – Aktevervaardigers

375 Justice Mahomed Street, Brooklyn, Pretoria / Justice Mahomed Straat 375, Brooklyn, Pretoria
P O BOX 1935, Brooklyn Square, 0075 / Posbus 1935, Brooklyn Sirkel, 0075
DOCEX 13, BROOKLYN
Tel: (012) 460-1915/6
Fax/Faks: (012) 460-1919
Fax/Faks: 086-720-8747
Email/Epos: riaan@louwalt.co.za

From: Louis Green [mailto:louis.green@pamgolding.co.za]
Sent: 10 May 2016 12:38 PM
To: Riaan van der Walt
Subject: RE: Electric Pool Cover Keys

Appologies...

Louis Green | Property Consultant | C.E.A | PPRE L4
Gold Club Agent
PAM GOLDING PROPERTIES (PTY) LTD
Investment Place, Cnr William Nicol Drive and 10th Rd, Hyde Park Johannesburg, Gauteng
Tel: +27 (11) 380 0165 Fax: +27 (86) 551 2609 Cell: +27 (82) 820 3040

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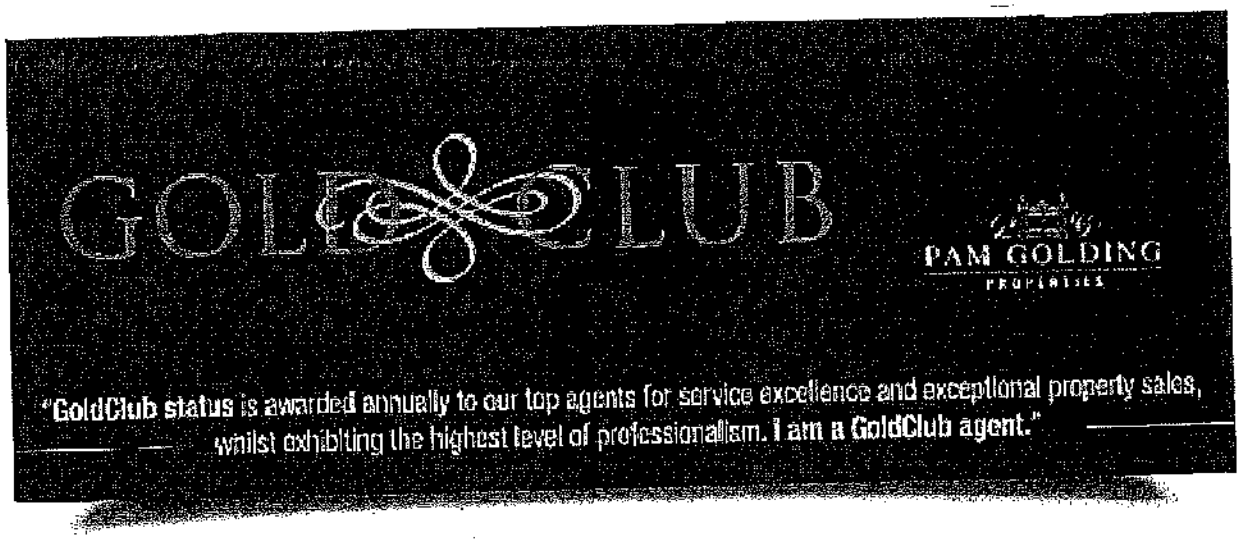

From: Riaan van der Walt [mailto:riaan@louwalt.co.za]
Sent: 10 May 2016 12:26 PM
To: 'Louis Green' <louis.green@pamgolding.co.za>
Cc: 'Lucky Montana' <luckymontana500@gmail.com>
Subject: RE: Electric Pool Cover Keys

Hi Louis

Please explain why you have CC Mnr L Montana in this mail . You are well aware of the fact ; and as already explained to you last year ; before the property was even Bought by my Company ; that Mnr L Montana has nothing to do with Precise or this property . Please refrain from this action in the future .

The Pool cover keys can be handed to Jan from MC Maintenance ; I will arrange with him regarding the keys

Kind Regards
Vriendelike Groete
Riaan van der Walt

LOUBSER VAN DER WALT INC/ING
Attorneys – Notaries Conveyancers
Prokureurs – Notarisse – Aktevervaardigers

375 Justice Mahomed Street, Brooklyn, Pretoria / Justice Mahomed Straat 375, Brooklyn, Pretoria
P O BOX 1935, Brooklyn Square, 0075 / Posbus 1935, Brooklyn Sirkel, 0075
DOCEX 13, BROOKLYN
Tel: (012) 460-1915/6
Fax/Faks: (012) 460-1919
Fax/Faks: 086-720-8747
Email/Epos: riaan@louwalt.co.za

From: Louis Green [mailto:louis.green@pamgolding.co.za]
Sent: 10 May 2016 12:03 PM
To: 'Jan Adriaan van der Walt'
Cc: Lucky Montana
Subject: Electric Pool Cover Keys

Hi Riaan

Hope you are well! I received a call from the Koehler's that they have found an extra 2 sets of keys for the electric pool cover. The keys are in my possession. When would you be able to meet or should I just keep them until you are around the area?

Best regards

Louis Green | Property Consultant | C.E.A | PPRE L4
Gold Club Agent
PAM GOLDING PROPERTIES (PTY) LTD
Investment Place, Cnr William Nicol Drive and 10th Rd, Hyde Park Johannesburg, Gauteng
Tel: +27 (11) 380 0166 **Fax:** +27 (86) 551 2609 **Cell:** +27 (82) 820 3040

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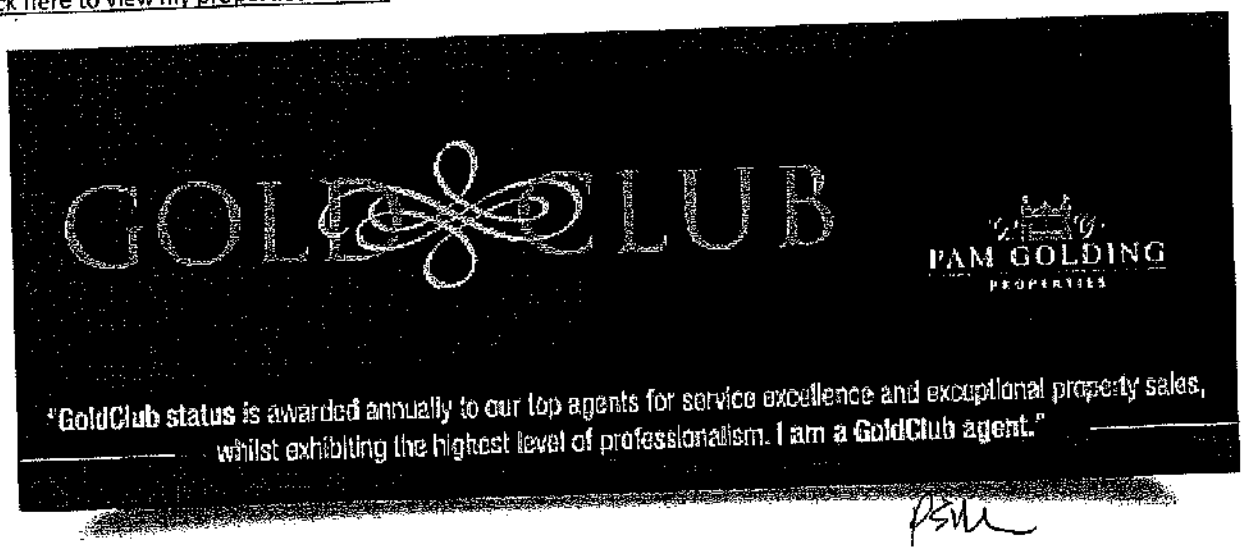

SS-OMN-517

2964

"FA 225"

OFFER TO PURCHASE
Full Title

Pam Golding Properties (Pty) Ltd. Reg. No. 2004/032256/07

To: _____
"the Seller"

of: 12 MONROSE AVENUE, SANDHURST ESTATE

(which address the Seller selects as his/her/its domicilium citandi et executandi for all purposes including notices arising herefrom)

I/We, the undersigned, John Georg Smith representing
"the Purchaser"

of: The Minor Property Trust

(which address the Purchaser selects as his/her/its domicilium citandi et executandi for all purposes including notices arising herefrom)
hereby offer to purchase through the agency of PAM GOLDING PROPERTIES (PGP):

Erf No.: 70 PORTION 9, HORISON

Physical Address 12 MONROSE AVE, SANDHURST ESTATE
"the Property"

on the following terms and conditions:

1. **Voetstoots**
The Seller warrants that as at the date of acceptance of this offer there are no latent defects in the property known to the Seller and that save for this the property is sold voetstoots. The property is also sold subject to all conditions and servitudes mentioned or referred to in its Title Deed and to all such other conditions and servitudes which may exist in regard thereto and if the property has been erroneously described herein the intention of the parties is to describe the property as set out in the Title Deed.

2. **Purchase Price**
The purchase price is R 12,000,000 (TWELVE MILLION _____) payable as follows:

2.1 A deposit of R 2,400,000 (TWO MILLION FOUR HUNDRED THOUSAND) being 20% of the purchase price within 7 (SEVEN) DAYS OF ACCEPTANCE shall be paid ~~upon acceptance~~ to PGP to be held by PGP in an interest bearing trust account for the benefit of the purchaser until registration of transfer. The purchaser shall be entitled to interest on the deposit at a rate equal to the Standard Bank Retail Call Rate for a deposit of the same value;

2.2 The balance of R 9,600,000 (NINE MILLION SIX HUNDRED THOUSAND)

shall be paid on transfer to be secured by bank or other approved guarantees in favour of the Seller/Seller's nominee/s to be delivered to the Seller's conveyancers within 21 days of acceptance of this offer or, if bond finance is required in terms of clause 6, within the same period following the grant of such bond finance.

3. **Occupation**
Provided the Purchaser has paid all costs, signed all necessary bond and transfer documents, delivered such guarantees as may have been called for and is not otherwise in breach of any of the provisions hereof, the right of occupation of the Property shall be given to and taken by the Purchaser at midday on DATE OF TRANSFER. If the date of occupation does not coincide with the date of transfer the party enjoying the right of occupation whilst the Property is registered in the name of the other party shall, in consideration therefore, and for the period of such occupation, pay to the conveyancers a rental of R N/A monthly in advance from date of occupation. No tenancy shall be created by the Purchaser taking occupation prior to transfer and the Purchaser's right of occupation shall terminate on cancellation of the sale whatever the reason therefore. The Purchaser shall not be entitled to make any alterations or additions to the Property prior to transfer.

4. **Benefits and Risk**
All benefits and risk in the property shall pass to the Purchaser on transfer from which date the Purchaser shall be liable inter alia for all rates, taxes and/or levies which pertain to the Property. Prepayments made by either party for any period subsequent to transfer shall be adjusted proportionately. The Seller shall maintain the existing insurance cover on the Property until transfer.

5. **Transfer**
Transfer shall be effected by the Seller's conveyancers within a reasonable time after the Purchaser has complied with the provisions of 2.1 and 2.2, signed all necessary bond and transfer documents and paid all necessary costs of transfer. The Purchaser shall upon demand by the conveyancers make such payments and the Seller and the Purchaser shall sign all transfer documents when so required by the conveyancers. The Seller shall, if the conveyancers so require, pay to the conveyancers such amounts as may be necessary to obtain a rates and/or levy/ies clearance certificate to facilitate transfer.

6. **Bond Finance**
6.1 This sale is subject to the Purchaser (or the Seller or PGP on the Purchaser's behalf) by no later than 07 NOVEMBER 2014
raising a loan on security of a mortgage bond over the Property for R 9,600,000 (NINE MILLION SIX HUNDRED THOUSAND)
on such terms and subject to such conditions as are customarily imposed by mortgage lending financial institutions. The Purchaser warrants that he/she/it qualifies for such loan and knows of no factors which might prevent a financial institution from issuing a loan quotation. This condition shall be deemed to have been fulfilled on the date upon which the mortgage lender issues a written loan quotation. If the loan quotation is not issued by the date referred to above the period for raising the loan shall be extended automatically for a further 30 (thirty) days.

6.2 The provisions of 6.1 are inserted for the benefit of the Purchaser who/which may waive the condition expressly or by conduct.

7. **Fixtures and Fittings**
The Property is sold together with all fixtures and fittings of a permanent nature in or attached to the property including stove, electric light fittings, fitted carpets, TV aerial, satellite dish, automatic pool cleaning equipment and _____
which the Seller warrants are in good working order and condition as at date of signature hereof and which the Seller warrants have been fully paid for.

8. **Electrical Compliance Certificate**
The Seller shall provide the Purchaser, by delivery to the conveyancers, with an Electrical Compliance Certificate issued in terms of Government Gazette No. 31975 of 06.03.09 prior to the date of transfer which shall not be older than 2 years. Insofar as the accredited electrician appointed by the Seller to provide such certificate requires remedial or rectification electrical work to be carried out as a precondition to the issue of such certificate the Seller will procure that such work is carried out and will do so at the Seller's sole cost and expense.

9. **Brokerage**
9.1 The Seller shall pay PGP's brokerage calculated at 5% (FIVE PERCENT) on the purchase price, plus VAT at 14%, which brokerage shall be due and payable on transfer or on cancellation in the circumstances contemplated in 9.2, 9.3 or 9.4.

9.2 On transfer, or on the date of cancellation by mutual consent between the Seller and the Purchaser, PGP may appropriate the deposit to meet its brokerage claim and if such deposit is insufficient and/or is held by the conveyancers, or there is no such deposit, then the conveyancers are irrevocably authorized by the Seller and the Purchaser to appropriate the brokerage from either the deposit and/or any other funds held by the conveyancers and account to PGP.

9.3 If the agreement is cancelled as a consequence of default by the Purchaser, the Purchaser acknowledges that he/she/it shall be liable to PGP for payment of the equivalent of the brokerage by way of liquidated damages without prejudice to the rights of PGP against the Seller in terms of this agreement or otherwise.

9.4 If the agreement is cancelled as a consequence of default by the Seller, the Seller acknowledges that he/she/it shall immediately be liable to PGP for payment of the brokerage contemplated herein. Any legal costs incurred by PGP in enforcing its right to brokerage against the Seller and/or the Purchaser shall be paid by the defendant party on the scale as between attorney and client.

9.5 The provisions of this clause and the selection of a domicilium citandi et executandi are inserted by the Seller and the Purchaser and are intended for the benefit of PGP.

10. **Breach**
10.1 Should the Purchaser breach any of the terms of this agreement and fail to remedy such breach within 7 (seven) days of the date of delivery of written notice given by the Seller to the Purchaser specifying the breach and demanding its rectification then and in such event the Seller shall be entitled, without prejudice to any other rights that the Seller has in law or under the agreement:-

10.1.1 to claim specific performance, in which event it is agreed that the full purchase price shall become immediately due and payable; or

10.1.2 to cancel this agreement and to retain, after payment of brokerage to PGP, the balance of the deposit or any other monies paid on account of the purchase price and/or costs and held by PGP and/or the conveyancers as rouwkoop or penalty or as liquidated damages in respect of the prejudice suffered by the Seller; or

10.1.3 to cancel this agreement and to claim and recover from the Purchaser damages sustained by the Seller as a consequence of the cancellation occasioned by the Purchaser's breach and pending determination of such damages to require the deposit or any balance of the deposit (after payment of brokerage to PGP) and any other amounts paid by the Purchaser to the conveyancers or PGP on account of the purchase price to be retained in trust for ultimate application to satisfy any successful claim brought by the Seller. The provisions of this clause, if applied by the Seller, shall not prejudice the rights of PGP pursuant to clause 9.3.

10.2 Should the Seller choose to enforce rights by way of legal proceedings the legal costs so incurred shall be paid by the Purchaser on the scale as between attorney and client.

PGM

10.3 The Seller and the Purchaser consent to the jurisdiction of the Magistrate's Court having jurisdiction in respect of their persons notwithstanding that the amount in dispute might otherwise exceed such jurisdiction. Such consent shall not preclude either party from instituting proceedings against the other party arising from this agreement or its cancellation in any competent division of the High Court of South Africa.

10.4 The Seller and Purchaser choose the addresses and/or fax number and/or email address selected above as their respective domicilii citandi et executandi for the purpose of delivery of all notices or legal processes arising from this agreement or its cancellation. A written notice shall be sealed in an envelope addressed to the domicilium address of the addressee and shall be deemed to have been received by the addressee 3 (three) days after posting by pre-paid registered post, unless earlier delivery of such written notice can be proved.

10.5 The consent in 10.3 and the selection in 10.4 are extended to the rights contained in clause 9 for the benefit of PGP.

11. Withholding tax obligation * (This clause is only applicable where the purchase price is more than two million rand)
If the purchase price is more than two million rand, then the Seller hereby warrants that she/he/it, *is/is not (*delete whichever is not applicable) a resident of the Republic of South Africa upon a proper interpretation of the terms of the Income Tax Act 58 of 1962 ("the Act"). If the Seller is a non-resident as contemplated in the Act, the Seller and Purchaser hereby record that they are aware of an obligation on the part of the Purchaser to withhold a prescribed portion of the purchase price from the Seller, and pay such withheld portion to the South African Revenue Services ("SARS") in terms of Section 35A of the Act. The parties agree that the Purchaser shall request the conveyancers to fulfill this obligation on the Purchaser's behalf and on registration withhold the prescribed percentage from the balance of the purchase price and pay same over to SARS as stipulated in the Act.

12. Multiple and Representative Purchasers

12.1 Where the purchaser is two or more persons, natural or juristic, their liability shall be joint and several.

12.2 Where the Purchaser is a Company, Close Corporation, Trust or other juristic person the natural person who represents the Purchaser in making this offer shall by his/her signature be bound with the Purchaser as surety for and co-principal debtor with the Purchaser and shall be deemed to have chosen the legal address of the Purchaser as his/her domicilium citandi et executandi for all purposes arising from the acceptance of this Offer.

12.3 If the property is owned by a Company, Close Corporation, Trust or other juristic person the natural person who accepts this Offer shall do so on behalf of such Company, Close Corporation or Trust and warrants that he/she is duly authorized to represent the Seller.

13. Warranties or Representations
The parties hereto acknowledge that this agreement constitutes the entire agreement between them and no other conditions, stipulations, warranties or representations whatsoever have been made by either party or his/her/its agent other than such as may be included herein or subsequently recorded in writing signed by or on behalf of the parties. The Seller shall not benefit by any excess or be liable for any deficiency in the area of the Property nor shall he/she/it be liable for any encroachment on and/or of any adjoining property. The Seller shall not be required to indicate to the Purchaser the position of beacons or boundaries of the Property nor be liable for the cost of locating same. No agreement to cancel, alter or add to this agreement shall be of any force or effect unless such agreement is in writing and signed by the Seller and the Purchaser.

14. General

14.1 The parties to this agreement acknowledge that the meaning and consequences of this document have been explained to them by a representative of PGP.

14.2 The parties hereby grant PGP permission to erect a "Sold" sign on the Property for a period of ninety days after acceptance hereof.

15. Other Terms and /or Conditions

15.1 THE PAYMENT OF THE DEPOSIT WILL BE MADE WITHIN 7 (SEVEN) DAYS OF ACCEPTANCE OF THE OFFER. THIS IS A SUSPENSIVE CONDITION AND FAILURE TO MAKE THE PAYMENT WILL RESULT IN THIS AGREEMENT LAPSING AND BEING OF NO FURTHER FORCE OR EFFECT

16. This offer is irrevocable and expires at 22h00 on 25 October 2014 and shall be deemed to be accepted on signature hereof by the Seller irrespective of when notification thereof is given to the Purchaser.

SIGNED by the PURCHASER

AS WITNESS

AS WITNESS

PURCHASER (or on behalf of the purchaser and duly authorized)

OTHER PARTY/PURCHASER'S SPOUSE where marriage governed by the laws of a foreign country or where married in community of property.

SIGNED by the SELLER at ..... on the ..... day of ..... 20 ..... at ..... h .....

AS WITNESS

AS WITNESS

SELLER (or on behalf of the seller and duly authorized)

OTHER PARTY/SELLER'S SPOUSE where marriage governed by the laws of a foreign country or where married in community of property.

PGP hereby accepts all the benefits conferred upon it in terms of this Agreement

Pam Golding Properties (Pty) Ltd. VAT No. 4350217412

SELLER (S)	PURCHASER (S)
Title and Full Name	The Minor Prop Trust IT 634/2014
Identity / Passport Number	
Date of Birth	
Spouse: Title and Full Name	
Maiden Name (if applicable)	
Identity Number	
Date of Birth	
Date of Marriage	
Married in or out of Community of Property	
Country of Marriage	
Residential Address	53 1st Avenue Boston, Bellville, 7535
Postal Address	PO Box 508, Bellville, 7530
Mobile Number	0824441105
Home Telephone Number	
Business Telephone Number	
Telefax Number	
Email Address	

CONVEYANCERS
Name
Contact Person
Telephone Number
Cell / Telefax Number

Property Bonded to
Account Number
Managing Agents
Telephone Number
Is the Seller VAT registered? YES / NO. If Yes (VAT Number)

PGM

"FA226"

PAM GOLDING PROPERTIES

20 October 2014

Dear Hedda

Herewith the copy of the offer we received from Mr Lucky Montana. The offer is in the name of his Trust, **The Minor Property Trust**.

I have summarised the ofter for you;

Purchase Price:	R 12,000,000 (twelve million)
Deposit:	R2,400,000 (two million four hundred thousand) Payable within 7 days of acceptance – this offer is also subject to the deposit being paid within the prescribed period. Failure to make such payment would result in the agreement lapsing and being of no further force of effect. Effectively, if he does not pay, we can simply continue marketing without having to place him on terms (often a lengthy task).
Balance:	R 9,600,000 payable within 21 days of acceptance.
Occupation:	On date of Transfer
Bond Finance:	The Purchaser requires a bond for R 9,600,000 (nine million six hundred thousand) by 07 November 2014. The date should have been amended to allow a bit more time, but the contract allows for a 30 day extension.

Many thanks

Louis Green

082 820 3040

Pam

Louis Green

"FA227"

From: Serisa Davids <serisa@millionsure.co.za>
Sent: 23 October 2014 03:03 PM
To: 'Louis Green'
Cc: 'Lucky Tsepo Montana'; 'Ingrid Judge'
Subject: RE: Offer to Purchase
Attachments: 20141023155245006.pdf

Importance: High

Good afternoon Louis,

I trust you are well.

Attached please find documents as per our discussion.

For any further information please do not hesitate to contact me.

Kind regards,
Serisa Davids
Personal Assistant to Mr. Johan G Smith

49 Parliament Street, Cape Town, 8001, South Africa
PO Box 2727, Cape Town, 8000, South Africa
Tel +27 21 461 9986
Fax +27 21 461 2838 / 8291
Mobile +27 82 410 7829
Web www.millionsure.co.za
e-mail serisa@millionsure.co.za

From: Louis Green [mailto:louis.green@pamgolding.co.za]
Sent: 23/October/2014 09:42 AM
To: Serisa Davids
Cc: Lucky Tsepo Montana; Ingrid Judge
Subject: Offer to Purchase

Hi Serisa

As per our telecom, herewith the document for signature. Please also include the resolution that enables Johan to sign all documents relating to the purchase and transfer of the property, on his own.

I look forward to receiving the documents as soon as possible.

Many thanks in advance

Louis Green | Property Consultant | C.E.A | PPRE L4
Gold Club Agent
PAM GOLDING PROPERTIES (PTY) LTD
Investment Place, Cnr William Nicol Drive and 10th Rd, Hyde Park Johannesburg, Gauteng
Tel: +27 (11) 380 0165 **Fax:** +27 (86) 551 2609 **Cell:** +27 (82) 820 3040

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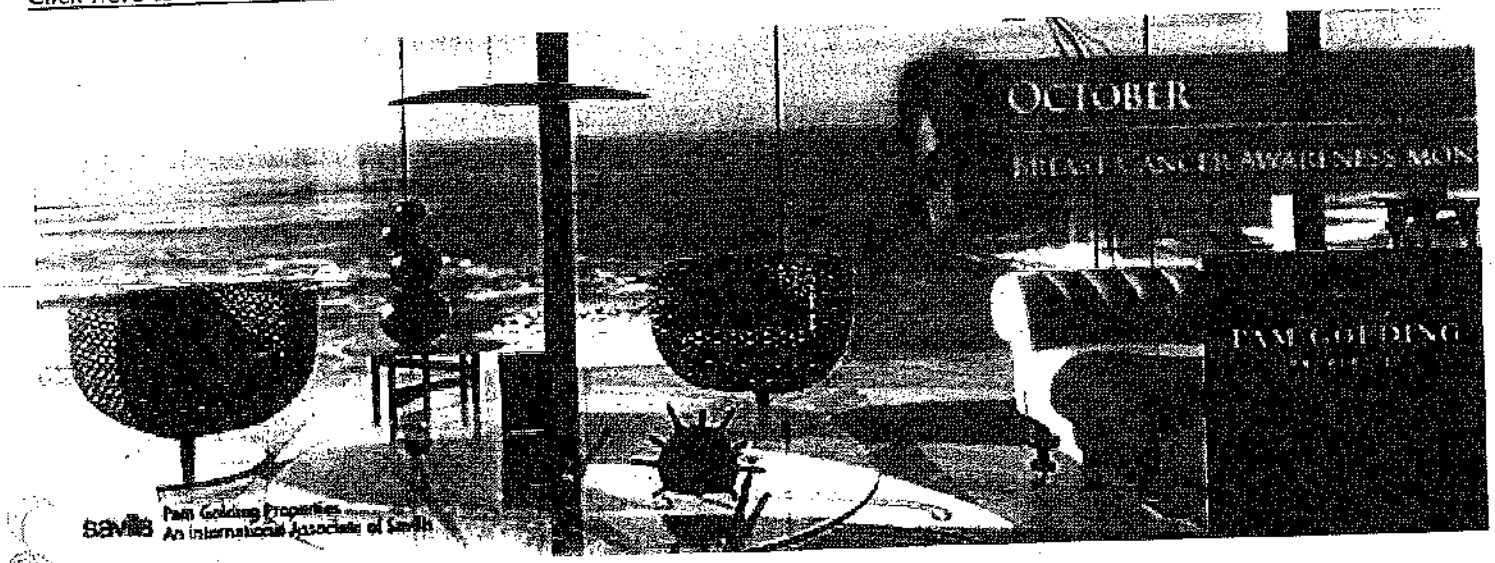

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SS-OMN-524
2971

OFFER TO PURCHASE
Full Title

Pam Golding Properties
An International Association of Sotheby's

PAM GOLDING PROPERTIES

Pam Golding Properties (Pty) Ltd. Reg. No. 2004/032256/07

To: _____
"the Seller"

of: _____

(which address the Seller selects as his/her/its domicilium citandi et executandi for all purposes including notices arising herefrom)

I/We, the undersigned,

THE MINOR PROPERTY TRUST, HEREIN REPRESENTED BY JOHAN GEORGE SMITH
"the Purchaser"

of: _____

(which address the Purchaser selects as his/her/its domicilium citandi et executandi for all purposes including notices arising herefrom)
hereby offer to purchase through the agency of PAM GOLDING PROPERTIES (PGP):

Erf No.: 70 PORTION 0, HURLINGHAM

Physical Address 12 MONTROSE AVE, HURLINGHAM
"the Property"

on the following terms and conditions:

1. **Voetstoots**
The Seller warrants that as at the date of acceptance of this offer there are no latent defects in the property known to the Seller and that save for this the property is sold voetstoots. The property is also sold subject to all conditions and servitudes mentioned or referred to in its Title Deed and to all such other conditions and servitudes which may exist in regard thereto and if the property has been erroneously described herein the intention of the parties is to describe the property as set out in the Title Deed.

2. **Purchase Price**
The purchase price is R 13,500,000 (THIRTEEN MILLION FIVE HUNDRED THOUSAND) payable as follows:

2.1 A deposit of R 2,000,000 (TWO MILLION) being 10% of the purchase price shall be paid ~~upon~~ WITHIN 7 (SEVEN) CALENDAR DAYS OF acceptance to PGP to be held by PGP in an interest bearing trust account for the benefit of the purchaser until registration of transfer. The purchaser shall be entitled to interest on the deposit at a rate equal to the Standard Bank Retail Call Rate for a deposit of the same value;

2.2 The balance of R 11,500,000 (ELEVEN MILLION FIVE HUNDRED THOUSAND) shall be paid on transfer to be secured by bank or other approved guarantees in favour of the Seller/Seller's nominee/s to be delivered to the Seller's conveyancers within 21 ~~days of acceptance of this offer or, if bond finance is required in terms of clause 6 within the same period following the grant of such bond finance.~~ DAYS OF THE DEPOSIT IN 2.1 BEING PAID.

3. **Occupation**
Provided the Purchaser has paid all costs, signed all necessary bond and transfer documents, delivered such guarantees as may have been called for and is not otherwise in breach of any of the provisions hereof, the right of occupation of the Property shall be given to and taken by the Purchaser at midday on DATE OF TRANSFER. If the date of occupation does not coincide with the date of transfer the party enjoying the right of occupation whilst the Property is registered in the name of the other party shall, in consideration therefore, and for the period of such occupation, pay to the conveyancers a rental of R NOT APPLICABLE monthly in advance from date of occupation. No tenancy shall be created by the Purchaser taking occupation prior to transfer and the Purchaser's right of occupation shall terminate on cancellation of the sale whatever the reason therefore. The Purchaser shall not be entitled to make any alterations or additions to the Property prior to transfer.

4. **Benefits and Risk**
All benefits and risk in the property shall pass to the Purchaser on transfer from which date the Purchaser shall be liable inter alia for all rates, taxes and/or levies which pertain to the Property. Prepayments made by either party for any period subsequent to transfer shall be adjusted proportionately. The Seller shall maintain the existing insurance cover on the Property until transfer.

5. **Transfer**
Transfer shall be effected by the Seller's conveyancers within a reasonable time after the Purchaser has complied with the provisions of 2.1 and 2.2, signed all necessary bond and transfer documents and paid all necessary costs of transfer. The Purchaser shall upon demand by the conveyancers make such payments and the Seller and the Purchaser shall sign all transfer documents when so required by the conveyancers. The Seller shall, if the conveyancers so require, pay to the conveyancers such amounts as may be necessary to obtain a rates and/or levyfies clearance certificate to facilitate transfer.

~~6. Bond Finance~~
~~6.1 This sale is subject to the Purchaser (or the Seller or PGP on the Purchaser's behalf) by no later than ..... (.....~~
raising a loan on security of a ~~mortgage~~ bond over the Property for R .....
.....
on such terms and subject to such conditions as are customarily imposed by ~~mortgage~~ lending financial institutions. The Purchaser warrants that he/she/it qualifies for such loan and knows of no factors which might prevent a financial institution from issuing a loan quotation. This condition shall be deemed to have been fulfilled on the date upon which the mortgage lender issues a written loan quotation. If the loan quotation is not issued by the date referred to above the period for raising the loan shall be extended automatically for a further 30 (thirty) days.

~~6.2 The provisions of 6.1 are inserted for the benefit of the Purchaser who/which may waive the condition expressly or by conduct.~~

7. **Fixtures and Fittings**
The Property is sold together with all fixtures and fittings of a permanent nature in or attached to the property including stove, electric light fittings,fitted carpets,
TV aerial, satellite dish, automatic pool cleaning equipment and .....
.....
which the Seller warrants are in good working order and condition as at date of signature hereof and which the Seller warrants have been fully paid for.

8. **Electrical Compliance Certificate**
The Seller shall provide the Purchaser, by delivery to the conveyancers, with an Electrical Compliance Certificate issued in terms of Government Gazette No. 31975 of 06.03.09 prior to the date of transfer which shall not be older than 2 years. Insofar as the accredited electrician appointed by the Seller to provide such certificate requires remedial or rectification electrical work to be carried out as a precondition to the issue of such certificate the Seller will procure that such work is carried out and will do so at the Seller's sole cost and expense.

9. **Brokerage**
9.1 The Seller shall pay PGP's brokerage calculated at 5% (FIVE PERCENT) on the purchase price, plus VAT at 14%, which brokerage shall be due and payable on transfer or on cancellation in the circumstances contemplated in 9.2, 9.3 or 9.4.

9.2 On transfer, or on the date of cancellation by mutual consent between the Seller and the Purchaser, PGP may appropriate the deposit to meet its brokerage claim and if such deposit is insufficient and/or is held by the conveyancers, or there is no such deposit, then the conveyancers are irrevocably authorized by the Seller and the Purchaser to appropriate the brokerage from either the deposit and/or any other funds held by the conveyancers and account to PGP.

9.3 If the agreement is cancelled as a consequence of default by the Purchaser, the Purchaser acknowledges that he/she/it shall be liable to PGP for payment of the equivalent of the brokerage by way of liquidated damages without prejudice to the rights of PGP against the Seller in terms of this agreement or otherwise.

9.4 If the agreement is cancelled as a consequence of default by the Seller, the Seller acknowledges that he/she/it shall immediately be liable to PGP for payment of the brokerage contemplated herein. Any legal costs incurred by PGP in enforcing its right to brokerage against the Seller and/or the Purchaser shall be paid by the defendant party on the scale as between attorney and client.

9.5 The provisions of this clause and the selection of a domicilium citandi et executandi are inserted by the Seller and the Purchaser and are intended for the benefit of PGP.

10. **Breach**
10.1 Should the Purchaser breach any of the terms of this agreement and fail to remedy such breach within 7 (seven) days of the date of delivery of written notice given by the Seller to the Purchaser specifying the breach and demanding its rectification then and in such event the Seller shall be entitled, without prejudice to any other rights that the Seller has in law or under the agreement:-

10.1.1 to claim specific performance, in which event it is agreed that the full purchase price shall become immediately due and payable; or

10.1.2 to cancel this agreement and to retain, after payment of brokerage to PGP, the balance of the deposit or any other monies paid on account of the purchase price and/or costs and held by PGP and/or the conveyancers as rouwkoop or penalty or as liquidated damages in respect of the prejudice suffered by the Seller; or

10.1.3 to cancel this agreement and to claim and recover from the Purchaser damages sustained by the Seller as a consequence of the cancellation occasioned by the Purchaser's breach and pending determination of such damages to require the deposit or any balance of the deposit (after payment of brokerage to PGP) and any other amounts paid by the Purchaser to the conveyancers or PGP on account of the purchase price to be retained in trust for ultimate application to satisfy any successful claim brought by the Seller. The provisions of this clause, if applied by the Seller, shall not prejudice the rights of PGP pursuant to clause 9.3.

10.2 Should the Seller choose to enforce rights by way of legal proceedings the legal costs so incurred shall be paid by the Purchaser on the scale as between attorney and client.

10.3 The Seller and the Purchaser consent to the jurisdiction of the Magistrate's Court having jurisdiction in respect of their persons notwithstanding that the amount in dispute might otherwise exceed such jurisdiction. Such consent shall not preclude either party from instituting proceedings against the other party arising from this agreement or its cancellation in any competent division of the High Court of South Africa.

10.4 The Seller and Purchaser choose the addresses and/or fax number and/or email address selected above as their respective domicilii citandi et executandi for the purpose of delivery of all notices or legal processes arising from this agreement or its cancellation. A written notice shall be sealed in an envelope addressed to the domicilium address of the addressee and shall be deemed to have been received by the addressee 3 (three) days after posting by pre-paid registered post, unless earlier delivery of such written notice can be proved.

10.5 The consent in 10.3 and the selection in 10.4 are extended to the rights contained in clause 9 for the benefit of PGP.

11. Withholding tax obligation * (This clause is only applicable where the purchase price is more than two million rand)
If the purchase price is more than two million rand, then the Seller hereby warrants that she/he/it, *is/is not (*delete whichever is not applicable) a resident of the Republic of South Africa upon a proper interpretation of the terms of the Income Tax Act 58 of 1962 ("the Act"). If the Seller is a non-resident as contemplated in the Act, the Seller and Purchaser hereby record that they are aware of an obligation on the part of the Purchaser to withhold a prescribed portion of the purchase price from the Seller, and pay such withheld portion to the South African Revenue Services ("SARS") in terms of Section 35A of the Act. The parties agree that the Purchaser shall request the conveyancers to fulfill this obligation on the Purchaser's behalf and on registration withhold the prescribed percentage from the balance of the purchase price and pay same over to SARS as stipulated in the Act.

12. Multiple and Representative Purchasers

12.1 Where the purchaser is two or more persons, natural or juristic, their liability shall be joint and several.

12.2 Where the Purchaser is a Company, Close Corporation, Trust or other juristic person the natural person who represents the Purchaser in making this offer shall by his/her signature be bound with the Purchaser as surety for and co-principal debtor with the Purchaser and shall be deemed to have chosen the legal address of the Purchaser as his/her domicilium citandi et executandi for all purposes arising from the acceptance of this Offer.

12.3 If the property is owned by a Company, Close Corporation, Trust or other juristic person the natural person who accepts this Offer shall do so on behalf of such Company, Close Corporation or Trust and warrants that he/she is duly authorized to represent the Seller.

13. Warranties or Representations
The parties hereto acknowledge that this agreement constitutes the entire agreement between them and no other conditions, stipulations, warranties or representations whatsoever have been made by either party or his/her/its agent other than such as may be included herein or subsequently recorded in writing signed by or on behalf of the parties. The Seller shall not benefit by any excess or be liable for any deficiency in the area of the Property nor shall he/she/it be liable for any encroachment on and/or of any adjoining property. The Seller shall not be required to indicate to the Purchaser the position of beacons or boundaries of the Property nor be liable for the cost of locating same. No agreement to cancel, alter or add to this agreement shall be of any force or effect unless such agreement is in writing and signed by the Seller and the Purchaser.

14. General

14.1 The parties to this agreement acknowledge that the meaning and consequences of this document have been explained to them by a representative of PGP.

14.2 The parties hereby grant PGP permission to erect a "Sold" sign on the Property for a period of ninety days after acceptance hereof.

15. Other Terms and /or Conditions

15.1 THIS AGREEMENT IS SUSPENSIVE ON THE PURCHASER PAYING THE DEPOSIT IN 2.1 BEING R2,000,000 (TWO MILLION) WITHIN 7 (SEVEN) [redacted] CALENDAR DAYS OF ACCEPTANCE AND FINAL SIGNATURE HERETO. SHOULD THE DEPOSIT NOT BE PAID, THIS AGREEMENT WILL LAPSE & BE OF NO FURTHER FORCE OR EFFECT.

16. This offer is irrevocable and expires at 22h00 on 30 OCTOBER 2014 and shall be deemed to be accepted on signature hereof by the Seller irrespective of when notification thereof is given to the Purchaser.

SIGNED by the PURCHASER

AS WITNESS

PURCHASER (or on behalf of the purchaser and duly authorized)

AS WITNESS

OTHER PARTY/PURCHASER'S SPOUSE where marriage governed by the laws of a foreign country or where married in community of property.

SIGNED by the SELLER at _____ on the _____ day of _____ 20__ at _____ h _____

AS WITNESS

SELLER (or on behalf of the seller and duly authorized)

AS WITNESS

OTHER PARTY/SELLER'S SPOUSE where marriage governed by the laws of a foreign country or where married in community of property.

PGP hereby accepts all the benefits conferred upon it in terms of this Agreement

Pam Golding Properties (Pty) Ltd. VAT No. 4350217412

SELLER (S)	PURCHASER (S)
Title and Full Name	THE MINDE PERSEY TRUST
Identity / Passport Number	IT 634/2014
Date of Birth	
Spouse: Title and Full Name	JANA GEORGE SMITH
Maiden Name (if applicable)	6510305018082
Identity Number	
Date of Birth	
Date of Marriage	
Married in or out of Community of Property	
Country of Marriage	
Residential Address	49 Parliament Street Cape Town 8001
Postal Address	PO Box 2727 Cape Town, 8000
Mobile Number	0824444105
Home Telephone Number	
Business Telephone Number	
Telefax Number	
Email Address	

CONVEYANCERS
Name
Contact Person
Telephone Number
Cell / Telefax Number

Property Bonded to
Account Number
Managing Agents
Telephone Number
Is the Seller VAT registered? YES / NO. If Yes (VAT Number)

THE MINOR PROPERTY TRUST

IT634/2014

Minutes of a meeting held by the trustees of The Minor Property Trust, IT634/2014 at Bellville on 23 October 2014.

Present: Johan Georg Smith
Pieter Zulch van der Merwe

Resolution:

It is hereby resolved that Johan Georg Smith (ID number 650307 5018 082) is thereby authorized to sign all documentation regarding the purchase of a property.

Herewith the meeting is closed.

Signed at Bellville on this 23 day of October 2014.

JG Smith

PZ van der Merwe

SS-OMN-529

2978

"FA228"

OFFER TO PURCHASE
Full Title

Pam Golding Properties (Pty) Ltd. Reg. No. 2004/032256/07

To: MERLEDA HEDDA GEUSSEZ
"the Seller"

of: 12 MONTROSE ROAD, HYDE PARK

(which address the Seller selects as his/her/its domicilium citandi et executandi for all purposes including notices arising herefrom)

I/We, the undersigned,
TSHEPO LUCKY MONTANA (7004255660 081)
"the Purchaser"

of: 333 MAIN STREET, WATERKLOOF, PRETORIA

(which address the Purchaser selects as his/her/its domicilium citandi et executandi for all purposes including notices arising herefrom)
hereby offer to purchase through the agency of PAM GOLDING PROPERTIES (PGP):

Erf No.: 70 PORTION 2 HYDE PARK

Physical Address 12 MONTROSE ROAD, HYDE PARK
"the Property"

on the following terms and conditions:

1. **Voetstoots**
The Seller warrants that as at the date of acceptance of this offer there are no latent defects in the property known to the Seller and that save for this the property is sold voetstoots. The property is also sold subject to all conditions and servitudes mentioned or referred to in its Title Deed and to all such other conditions and servitudes which may exist in regard thereto and if the property has been erroneously described herein the intention of the parties is to describe the property as set out in the Title Deed.

2. **Purchase Price**
The purchase price is R 13,500,000 (THIRTEEN MILLION FIVE HUNDRED THOUSAND RAND.) payable as follows:

2.1 A deposit of R 2,000,000 (TWO MILLION RAND.) ~~being 10% of the purchase price~~ WITHIN 7 DAYS THEREOF/ACCEPTANCE shall be paid ~~upon acceptance hereof~~ to be held by PGP in an interest bearing trust account for the benefit of the purchaser until registration of transfer. The purchaser shall be entitled to interest on the deposit at a rate equal to the Standard Bank Retail Call Rate for a deposit of the same value;

2.2 The balance of R 11,500,000 (ELEVEN MILLION FIVE HUNDRED THOUSAND) shall be paid on transfer to be secured by bank or other approved guarantees in favour of the Seller/Seller's nominee/s to be delivered to the Seller's conveyancers within 21 days of ~~acceptance of this offer or, if bond finance is required in terms of clause 6, within the same period following the grant of such bond finance.~~ OF THE DEPOSIT IN 2.1 BEING PAID.

3. **Occupation**
Provided the Purchaser has paid all costs, signed all necessary bond and transfer documents, delivered such guarantees as may have been called for and is not otherwise in breach of any of the provisions hereof, the right of occupation of the Property shall be given to and taken by the Purchaser at midday on DATE OF TRANSFER. If the date of occupation does not coincide with the date of transfer the party enjoying the right of occupation whilst the Property is registered in the name of the other party shall, in consideration therefore, and for the period of such occupation, pay to the conveyancers a rental of R * R40,000 (FORTY THOUSAND) monthly in advance from date of occupation. No tenancy shall be created by the Purchaser taking occupation prior to transfer and the Purchaser's right of occupation shall terminate on cancellation of the sale whatever the reason therefore. The Purchaser shall not be entitled to make any alterations or additions to the Property prior to transfer.

4. **Benefits and Risk**
All benefits and risk in the property shall pass to the Purchaser on transfer from which date the Purchaser shall be liable inter alia for all rates, taxes and/or levies which pertain to the Property. Prepayments made by either party for any period subsequent to transfer shall be adjusted proportionately. The Seller shall maintain the existing insurance cover on the Property until transfer.

5. **Transfer**
Transfer shall be effected by the Seller's conveyancers within a reasonable time after the Purchaser has complied with the provisions of 2.1 and 2.2, signed all necessary bond and transfer documents and paid all necessary costs of transfer. The Purchaser shall upon demand by the conveyancers make such payments and the Seller and the Purchaser shall sign all transfer documents when so required by the conveyancers. The Seller shall, if the conveyancers so require, pay to the conveyancers such amounts as may be necessary to obtain a rates and/or levy/ies clearance certificate to facilitate transfer.

6. **Bond Finance**
~~6.1 This sale is subject to the Purchaser (or the Seller or PGP on the Purchaser's behalf) by no later than~~ _____
raising a loan on ~~security of a~~ mortgage bond over the Property for R _____ (_____)
on such terms and subject to such conditions as are customarily imposed by mortgage lending financial institutions. The Purchaser warrants that he/she/it qualifies for such loan and knows of no factors which might prevent a financial institution from issuing a loan quotation. This condition shall be deemed to have been fulfilled on the date upon which the mortgage lender issues a written loan quotation. If the loan quotation is not issued by the date referred to above the period for raising the loan shall be extended automatically for a further 30 (thirty) days.

~~6.2 The provisions of 6.1 are inserted for the benefit of the Purchaser who/which may waive the condition expressly or by conduct.~~

7. **Fixtures and Fittings**
The Property is sold together with all fixtures and fittings of a permanent nature in or attached to the property including stove, electric light fittings, fitted carpets, TV aerial, satellite dish, automatic pool cleaning equipment and _____
which the Seller warrants are in good working order and condition as at date of signature hereof and which the Seller warrants have been fully paid for.

8. **Electrical Compliance Certificate**
The Seller shall provide the Purchaser, by delivery to the conveyancers, with an Electrical Compliance Certificate issued in terms of Government Gazette No. 31975 of 06.03.09 prior to the date of transfer which shall not be older than 2 years. Insofar as the accredited electrician appointed by the Seller to provide such certificate requires remedial or rectification electrical work to be carried out as a precondition to the issue of such certificate the Seller will procure that such work is carried out and will do so at the Seller's sole cost and expense.

9. **Brokerage** IN THE AMOUNT OF R620,000 + VAT
9.1 The Seller shall pay PGP's brokerage ~~calculated at 7.5% on the purchase price~~, plus VAT at 14%, which brokerage shall be due and payable on transfer or on cancellation in the circumstances contemplated in 9.2, 9.3 or 9.4.

9.2 On transfer, or on the date of cancellation by mutual consent between the Seller and the Purchaser, PGP may appropriate the deposit to meet its brokerage claim and if such deposit is insufficient and/or is held by the conveyancers, or there is no such deposit, then the conveyancers are irrevocably authorized by the Seller and the Purchaser to appropriate the brokerage from either the deposit and/or any other funds held by the conveyancers and account to PGP.

9.3 If the agreement is cancelled as a consequence of defauh by the Purchaser, the Purchaser acknowledges that he/she/it shall be liable to PGP for payment of the equivalent of the brokerage by way of liquidated damages without prejudice to the rights of PGP against the Seller in terms of this agreement or otherwise.

9.4 If the agreement is cancelled as a consequence of default by the Seller, the Seller acknowledges that he/she/it shall immediately be liable to PGP for payment of the brokerage contemplated herein. Any legal costs incurred by PGP in enforcing its right to brokerage against the Seller and/or the Purchaser shall be paid by the defendant party on the scale as between attorney and client.

9.5 The provisions of this clause and the selection of a domicilium citandi et executandi are inserted by the Seller and the Purchaser and are intended for the benefit of PGP.

10. **Breach**
10.1 Should the Purchaser breach any of the terms of this agreement and fail to remedy such breach within 7 (seven) days of the date of delivery of written notice given by the Seller to the Purchaser specifying the breach and demanding its rectification then and in such event the Seller shall be entitled, without prejudice to any other rights that the Seller has in law or under the agreement:-

10.1.1 to claim specific performance, in which event it is agreed that the full purchase price shall become immediately due and payable; or

10.1.2 to cancel this agreement and to retain, after payment of brokerage to PGP, the balance of the deposit or any other monies paid on account of the purchase price and/or costs and held by PGP and/or the conveyancers as rouwkoop or penalty or as liquidated damages in respect of the prejudice suffered by the Seller; or

10.1.3 to cancel this agreement and to claim and recover from the Purchaser damages sustained by the Seller as a consequence of the cancellation occasioned by the Purchaser's breach and pending determination of such damages to require the deposit or any balance of the deposit (after payment of brokerage to PGP) and any other amounts paid by the Purchaser to the conveyancers or PGP on account of the purchase price to be retained in trust for ultimate application to satisfy any successful claim brought by the Seller. The provisions of this clause, if applied by the Seller, shall not prejudice the rights of PGP pursuant to clause 9.3.

10.2 Should the Seller choose to enforce rights by way of legal proceedings the legal costs so incurred shall be paid by the Purchaser on the scale as between attorney and client.

10.3 The Seller and the Purchaser consent to the jurisdiction of the Magistrate's Court having jurisdiction in respect of their persons notwithstanding that the amount in dispute might otherwise exceed such jurisdiction. Such consent shall not preclude either party from instituting proceedings against the other party arising from this agreement or its cancellation in any competent division of the High Court of South Africa.

10.4 The Seller and Purchaser choose the addresses and/or fax number and/or email address selected above as their respective domicilii citandi et executandi for the purpose of delivery of all notices or legal processes arising from this agreement or its cancellation. A written notice shall be sealed in an envelope addressed to the domicilium address of the addressee and shall be deemed to have been received by the addressee 3 (three) days after posting by pre-paid registered post, unless earlier delivery of such written notice can be proved.

10.5 The consent in 10.3 and the selection in 10.4 are extended to the rights contained in clause 9 for the benefit of PGP.

11. Withholding tax obligation * (This clause is only applicable where the purchase price is more than two million rand)
If the purchase price is more than two million rand, then the Seller hereby warrants that she/he/it, *~~is/is not~~ **(*delete whichever is not applicable)** a resident of the Republic of South Africa upon a proper interpretation of the terms of the Income Tax Act 58 of 1962 ("the Act"). If the Seller is a non-resident as contemplated in the Act, the Seller and Purchaser hereby record that they are aware of an obligation on the part of the Purchaser to withhold a prescribed portion of the purchase price from the Seller, and pay such withheld portion to the South African Revenue Services ("SARS") in terms of Section 35A of the Act. The parties agree that the Purchaser shall request the conveyancers to fulfill this obligation on the Purchaser's behalf and on registration withhold the prescribed percentage from the balance of the purchase price and pay same over to SARS as stipulated in the Act.

12. Multiple and Representative Purchasers

12.1 Where the purchaser is two or more persons, natural or juristic, their liability shall be joint and several.

12.2 Where the Purchaser is a Company, Close Corporation, Trust or other juristic person the natural person who represents the Purchaser in making this offer shall by his/her signature be bound with the Purchaser as surety for and co-principal debtor with the Purchaser and shall be deemed to have chosen the legal address of the Purchaser as his/her domicilium citandi et executandi for all purposes arising from the acceptance of this Offer.

12.3 If the property is owned by a Company, Close Corporation, Trust or other juristic person the natural person who accepts this Offer shall do so on behalf of such Company, Close Corporation or Trust and warrants that he/she is duly authorized to represent the Seller.

13. Warranties or Representations
The parties hereto acknowledge that this agreement constitutes the entire agreement between them and no other conditions, stipulations, warranties or representations whatsoever have been made by either party or his/her/its agent other than such as may be included herein or subsequently recorded in writing signed by or on behalf of the parties. The Seller shall not benefit by any excess or be liable for any deficiency in the area of the Property nor shall he/she/it be liable for any encroachment on and/or of any adjoining property. The Seller shall not be required to indicate to the Purchaser the position of beacons or boundaries of the Property nor be liable for the cost of locating same. No agreement to cancel, alter or add to this agreement shall be of any force or effect unless such agreement is in writing and signed by the Seller and the Purchaser.

14. General

14.1 The parties to this agreement acknowledge that the meaning and consequences of this document have been explained to them by a representative of PGP.

14.2 The parties hereby grant PGP permission to erect a "Sold" sign on the Property for a period of ninety days after acceptance hereof.

15. Other Terms and /or Conditions

15.1 THE CANDLE CHANDELIER IN THE DINING ROOM WILL BE REMOVED.

15.2 all days referred to in this agreement are calendar days.

SS-OMN-532

16. This offer is irrevocable and expires at 22h00 on 20 MARCH 2015 and shall be deemed to be accepted on signature hereof by the Seller irrespective of when notification thereof is given to the Purchaser.

SIGNED by the PURCHASER

AS WITNESS

AS WITNESS

PURCHASER (or on behalf of the purchaser and duly authorized)

OTHER PARTY/PURCHASER'S SPOUSE where marriage governed by the laws of a foreign country or where married in community of property.

SIGNED by the SELLER at SANDTON on the 3RD day of MARCH 2015 at 15h 00

AS WITNESS

AS WITNESS

SELLER (or on behalf of the seller and duly authorized)

OTHER PARTY/SELLER'S SPOUSE where marriage governed by the laws of a foreign country or where married in community of property.

PGP hereby accepts all the benefits conferred upon it in terms of this Agreement

Pam Golding Properties (Pty) Ltd. VAT No. 4350217412

SELLER(S)		PURCHASER(S)
Merileon Hebbe Geuisser	Title and Full Name	T Shepo Lucky Montana
3610020004084	Identity / Passport Number	7004255760081
02/10/36	Date of Birth	25/04/70
	Spouse: Title and Full Name	
	Maiden Name (if applicable)	
	Identity Number	
	Date of Birth	
	Date of Marriage	
	Married in or out of Community of Property	
	Country of Marriage	
12 Montrose Avenue Hurlingham	Residential Address	333 Main Street Waterkloof Pretoria
	Postal Address	
083 616 0689	Mobile Number	082 771 4698
011 783 1317	Home Telephone Number	
	Business Telephone Number	
	Telefax Number	
he.dave@mweb.co.za	Email Address	t.montana@prasa.com

CONVEYANCERS	
Name	J.B. ATTORNEYS
Contact Person	JANINE BREEDEKAMP
Telephone Number	011 623 8701
Cell / Telefax Number	082 600 8045

JANINE@JBATTORNEYS.CO.ZA

Property Bonded to	
Account Number	
Managing Agents	
Telephone Number	
Is the Seller VAT registered? YES / NO. If Yes (VAT Number)	

Out of the Ordinary®

Investec

Investec Bank Limited

100 Grayston Drive Sandown Sandton 2196
PO Box 785700 Sandton 2146 South Africa
T +27 (0) 11 286 7000 F +27 (0) 11 286 9555
www.investec.co.za

"FA229"

To whom it may concern

Investec hereby confirms that the following payment has been made:

Payment From	PRECISE
Amount	2000000.00
Payment Date from Investec	2015-03-24
Payment Reference	P0018814944
Beneficiary Account Name	J BREDENKAMP TRUST
Beneficiary Bank	STANDARD BANK
Beneficiary Branch Number	007205
Beneficiary Bank Account Number	001648799
Beneficiary Reference or Account Number	12 MONTROSE HURLINGH

Should there be any problems with the payment detailed above please contact:

Jan Adriaan van der Walt

Day Phone 0124601915
Cell 0827781720
E-mail riaan@louwalt.co.za

Investec Specialist Bank, a division of Investec Bank Limited registration number 1969/004763/06. Investec Specialist Bank is committed to the Code of Banking Practice as regulated by the Ombudsman for Banking Services. Copies of the Code and the Ombudsman's details are available on request or visit www.investec.co.za. A registered credit provider registration number NCRCP8.

"FA230"

Loubser van der Walt Inc.

Prokureurs • Notarisse • Aktevervaardigers
Attorneys • Notaries • Conveyancers

1093 Justice Mahomed Street (formerly 375 Charles Street), Brooklyn //
P O Box 1935, Brooklyn Square 0075.
Tel (012) 460-1915/6 // Fax (012) 460-1919
Direct Fax: 086-720-8747 // E-mail: info@louwalt.co.za
DOCEX 13, BROOKLYN // Website: www.attorneys.co.za//louwalt

Our Ref: **R VAN DER WALT/R2091**

Your Ref: **J BREDENKAMP/AMANDA MARE**

Date: **14 APRIL 2015**

J BREDENKAMP INCORPORATED
BY E-MAIL: admin@jbredenkampattorneys.co.za

CC: PAM GOLDING PROPERTIES – MR LOUIS GREEN
BY E-MAIL: louis.green@pamgolding.co.za

URGENT!!!

AND

CC: MR LUCKY MONTANA
BY E-MAIL: tmontana@prasa.com

Dear Sirs / Madam,

RE: OFFER TO PURCHASE: 12 MONTROSE ROAD

We refer to the above matter, and previous correspondence herein. Kindly take note of our reference of R2278 for further correspondence.

We herewith confirm that in terms of the Offer to Purchase, the following is applicable:

1. A deposit of R2 000 000.00 (Two Million Rand) was already paid into the trust account of J Bredenkamp on the 24th of March 2015, in terms of clause 2.1.

2. The balance of R11 500 000.00 (Eleven Million Five Hundred Thousand Rand) must be secured by guarantee within 21 (twenty one) days of the deposit paid. According to our calculations, the guarantee to be rendered, is due today, the 14th of April 2015.

Direkteure/Directors: N J Loubser (B.Proc LLB) J A van der Walt (B.Proc) Dip. Sportslaw (UP) R P van Wyk (LLB) M C Barnard (LLB; CPE)
Assosiate/Associates: D Boshoff (B.IURIS LLB) (Aktevervaardiger/Conveyancer) J Schoeman (LLB)
Konsultante/Consultants: T A Becker B Iuris; LLB; LLM (Contracts & Insolvency Law) (UP) (Aktevervaardiger/Conveyancer) J A Kruger (B.Proc UP) LLM (Tax & Insolvency)(UP) Dip. In Fin. Planning (UOVS)
Reg no. 2002/010392/21

SS-OMN-535

2982

We herewith confirm that we hold instructions from our client, Mr TL Montana, the Purchaser in this transaction, to request the Seller to extend the time period, as stipulated in clause 2.2 of the Agreement, to Monday, the 01st of June 2015.

We herewith confirm that we hold instructions from our client to confirm, in writing, that his delay in rendering a guarantee, is not due to his *mala fides*, but due to unforseen circumstances, pertaining to the sale of one of his properties, of which the profits out of that sale, is earmarked to be utilised for payment of this property, i.e the rendering of the guarantee.

It was conveyed to our offices that such funds will only be available during the last week of May 2015 to be transferred to our offices, whereafter our offices will invest the funds in an interest bearing account with Investec, to enable our offices to render a guarantee as stipulated in your letter of the 30th of March 2015 through Investec.

We kindly request your offices, and your client to consider our client's proposal, and we await your urgent response hereto.

Yours faithfully
LOUBSER VAN DER WALT INC

Direkteure/Directors: N J Loubser (B.Proc LLB) J A van der Walt (B.Proc) Dip. Sportslaw (UP) R P van Wyk (LLB) M C Barnard (LLB; CPE)
Assosiate/Associates: D Boshoff (B.IURIS LLB) (Aktevervaardiger/Conveyancer) J Schoeman (LLB)
Konsultante/Consultants: T A Becker B Iuris; LLB; LLM (Contracts & Insolvency Law) (UP) (Aktevervaardiger/Conveyancer) J A Kruger (B.Proc UP) LLM (Tax & Insolvency)(UP) Dip. In Fin. Planning (UOVS)
Reg no. 2002/010392/21

"FA 231"

Louis Green

2983

From: Admin at JB Attorneys / Amanda <admin@jbattorneys.co.za>
Sent: 15 May 2015 02:58 PM
To: ingrid.judge@pamgolding.co.za; louis.green@pamgolding.co.za
Subject: FW: TRANSFER GEVISSER / MONTANA

From: Admin at JB Attorneys / Amanda [mailto:admin@jbattorneys.co.za]
Sent: 15 May 2015 01:39 PM
To: 'Avril Aronowitz'
Subject: RE: TRANSFER GEVISSER / MONTANA

Dear Avril

We confirm that we received payment of the full purchase price from the purchaser today.

Yours sincerely

Amanda Mare
J BREDENKAMP INC
Attorneys, Notaries, Conveyancers and
Administrators of Deceased Estates
(Reg No.2001/004985/21)
Your Conveyancer and deceased Estate Administrators
Per : Amanda Mare
(Senior Conveyancing and Deceased Estates Assistant)
30 Dundalk Avenue, Parkview, 2193
Private Bag X7, Postnet Suite 51, Parkview, 2122
Docex 668, Johannesburg
Tel : 011 023 8701/2 and/or 011 023 6224
Fax: 086 514 9292 and 086 614 9088
E-mail : admin@jbattorneys.co.za

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i

From: Avril Aronowitz [mailto:avril.aronowitz@pamgolding.co.za]
Sent: 15 May 2015 12:44 PM
To: 'Amanda'
Subject: TRANSFER GEVISSER / MONTANA

Hello Amanda
I see that a new agreement has been entered into for the above sale.
Kindly advise me – as well as Ingrid and the agents – when and if you receive the guarantees which I believe are due today.

May I please ask you to send me a copy of the Seller's I D document – we don't seem to have one.

Thanks and regards Avril

Avril Aronowitz | Senior Conveyancing Administrator | CEA
PAM GOLDING PROPERTIES (PTY) LTD
Investment Place, 2nd Road off William Nicol, Hyde Park
Tel: +27 (11) 380 0000 **Fax:** +27 (11) 380 0114

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2985

"FA232"

AFFIDAVIT

I, the undersigned

CRAIG STAFFORD MURPHY

declare under oath and state -

1 I am an adult male business man with identity number 5712135116080 and I am the sole director of Point Waterfront Realty (Pty) Ltd situated at Shop 5, The Stevedores, 11 Browns Road, Point Waterfront, Durban.

2 The facts herein contained are within my personal knowledge and are, according to my recollections and to the best of my belief, true and correct.

3 During 2011 I put a property owned by my family trust, the Stafford Murphy Family Trust, on the market for an amount of R3,05 million, including the furniture and fittings. The property in question is situated at unit C7-10, The Sails, 14 Timeball Boulevard, Point Waterfront Precinct, Durban ("the unit"). It was my intention that included in the sale of the unit, would also be the sale of

all of the furniture in the unit, which at the time was valued at approximately R 250 000.

4 I was approached by a Mr Luyanda Gantsho during the latter part of 2011. Mr Gantsho expressed an interest in purchasing the unit, as well as the furniture. In total, the value of the transaction was R3 050 000.00.

5 During the course of the negotiation of the terms and conditions of the sale and purchase, I only dealt with Mr Gantsho and understood him to be the purchaser of the unit.

6 Mr Gantsho also visited the unit three or four times. On one of his visits, he expressed great excitement over a Tony Torrence painting, valued at the time at approximately R30 000, which was in the unit. It was not my intention to sell the said painting with the unit, however, Mr Gantsho was insistent that he wanted it to be included in the sale.

7 As I have said above, all negotiations of the terms and conditions of the sale of the unit and the furniture prior to the presentation of a written contract were with Mr Gantsho. During these negotiations, Mr Gantsho further indicated that he required the sale to be a suspensive sale. In other words, the purchase price would be paid over a period of time in tranches to be determined between the parties.

8 It was only at the stage when the agreement was to be reduced to writing that I was informed by Mr Gantsho that the purchaser of the property was not himself, but rather another person. Although Mr Gantsho did not indicate the identity of the purchaser at that stage, he advised me that a Mr Van der Walt would contact me to provide further details.

9 I found this to be very strange, as at no stage had Mr Gantsho indicated that any other party was to be involved in the transaction as purchaser. Mr Gantsho had, until that point, presented himself as the purchaser of the property and had even gone as far as to negotiate the inclusion of the painting in the sale, which, as indicated above, was not initially part of the transaction.

10 I was then contacted by Mr Jan Adriaan Van der Walt ("Mr Van der Walt") who advised me that Grand Tower Trade and Invest 04 (Pty) Ltd ("Grand Tower") would be the purchaser of the unit.

11 Whilst Mr Gantsho had indicated that the sale would be a suspensive sale, the precise terms of the suspensive conditions relating to payment of the purchase price were discussed and agreed with Mr Van der Walt, on behalf of Grand Tower.

12 I confirm that the balance of the terms of the agreement both for the sale of the property as well as the sale of the furniture were discussed and negotiated between myself and Mr Gantsho.

13 Following this, I instructed my attorney to draft the relevant agreements. Copies of the property sale agreement and the furniture sale agreement are annexed hereto marked Annexures "A" and "B" respectively.

14 I signed and forwarded the above agreements to Van der Walt via email. Van der Walt returned the signed agreements a few days later via email. I then forwarded these to my attorneys, who attended to the transfer of the property.

15 The property was transferred to Grand Tower on 20 September 2012. I annex hereto marked Annexure "C", a copy of the deeds office registry search results confirming the transfer.

16 I also recall that at some point before the transfer of the property to Grand Tower, I had removed the painting from the unit. After the transfer had been registered, I received a call from Luyanda enquiring where the painting was as it had formed part of the sale. I ensured that the painting was returned to the unit.

17 I also confirm that although I spoke to Van der Walt telephonically, I cannot recall ever having met him in person. To the best of my knowledge, he did however view the apartment with one of my assistants, namely a Miss Claire Munsammy, as I was not in the office when he came in to view the property.

CRAIG STAFFORD MURPHY

I certify that this affidavit was signed and sworn to before me at Durbanville this the 8th day of August 2016, by the deponent after he declared that he knew and understood the contents of this declaration, that he had no objection to taking the prescribed oath and has taken the prescribed oath which he considered binding on his conscience, having complied with regulations contained in Government Notice R1258 of 21 July 1972, as amended.

2067374-0
CSF

COMMISSIONER OF OATHS
Name:
Address:
Capacity:

SOUTH AFRICAN POLICE
CRIME PREVENTION
2016 -08- 08
POINT
KWAZULU-NATAL

SS-OMN-543
2990



PWR PROPERTIES
PROPERTY SALES & LETTING

Shop G - 05 The Sails on Timebat
14 Timebat Boulevard
Point Waterfront
Durban, 4001
Tel: +27 (31) 868 3445
Fax: +27 (86) 636 5949
www.pwr.co.za

PURCHASE AND SALE AGREEMENT

OF A SECTIONAL TITLE PROPERTY

UNIT	C7-20
BUILDING	THE SAILS on TIMEBALL
PURCHASER	GRAND TOWER (Pty) Ltd Grand and Invest 04
SELLER	STAFFORD MURPHY FAMILY TRUST

AGREEMENT PACK:

THE SCHEDULE

CONDITIONS OF SALE

OTHER DOCUMENTS REQUIRED:

PURCHASER and SELLER (INDIVIDUAL) INFORMATION SCHEDULES
or
INCORPORATION DOCUMENTS IF LEGAL PERSON
and
RESOLUTION AUTHORISING SIGNATURES
and
VAT REGISTRATIONS IF NECESSARY

20 Feb 2012 13:25 HP LASERJET FAX p.1

THE SCHEDULE

Between

A. THE STAFFORD MURPHY FAMILY TRUST
("the SELLER")

Identity/Registration No.	: IT 1812 / 2004
Postal address	: PO BOX 201004, DURBAN NORTH, KZN, 4016
Physical address	: 83 MARINE VIEW AVENUE, DURBAN NORTH, KZN
Telephone No. (Work)	: 031 – 569 3445
Cell No.	: 079 871 3838
e-mail	: craig@pwt.co.za
Fax No.	: 086 638 5949

and

Trade and Invest 04

GRAND TOWER (Pty) Ltd
("the PURCHASER")

Identity/Registration No.	: 2011/131032/07
Postal address	: PO BOX 1935, BROOKLYN SQUARE, 0075
Physical address	: 375 CHARLES STREET, BROOKLYN, PRETORIA
Telephone No. (Work)	: 012 460 191675
Cell No.	: 082 778 1720
Telephone No. (Home)	: n/a
Fax No.	: 012 460 1919
e-mail	: riaan@louwalt.co.za

B. The PROPERTY:

UNIT / Flat No.	:	C7-10
Section No.	:	710
In the Scheme	:	THE SAILS ON TIMEBALL
Situated at	:	14 TIMEBALL BLVD, POINT WATERFRONT PRECINCT, DURBAN, KZN

In Extent approximately:

Unit	:	88,17 sqm

and

Exclusive Use Areas : 141,73 sqm

and

Parkings (two bays) : 25 sqm

Together with an undivided share in the common property

C. PURCHASE PRICE : TWO MILLION EIGHT HUNDRED THOUSAND RAND

(R 2,800,000) payable as follows

D1. The Purchaser shall pay an initial amount of Three Hundred and Fifty Thousand (R350,000) directly to the CONVEYANCERS WITHIN 7 DAYS of the SIGNATURE DATE;

D2. The Purchaser shall pay a further sum of R1 200 000.00 (One Million Two Hundred Thousand Rand) in four (4) equal instalments of Three Hundred Thousand Rand (R300,000), each of which shall be paid to the CONVEYANCERS on or before the 30th April, 2012, the 30th May, 2012, the 30th June, 2012 and the 30th July, 2012 respectively;

D3. The final amount of One Million Two Hundred and Fifty Thousand Rands (R 1,250,000) shall be paid by the Purchaser to the CONVEYANCERS on or before the 21st August, 2012, alternatively shall be secured by way of a guarantee or guarantees in a form acceptable to the Seller, such Guarantee/s to be delivered to the Conveyancer's on or before the 21st August, 2012.

All payments to the Conveyancers shall be made by way of a direct payment into the Conveyancer's Trust Account at the Standard Bank of South Africa Limited, ABC Branch Code 040126, Account Number 050520991.

D. LOAN / BOND AMOUNT : n/a Rands

(R n/a)

E. DATE LOAN / BOND REQUIRED : n/a

F. OCCUPATION DATE : ON TRANSFER

G. OCCUPATIONAL RENTAL : n/a

(R n/a)

H. BODY CORPORATE LEVY : Two Thousand Two Hundred & Seventy Three Rands (R2,273)

I. SALES AGENCY : PWR Properties

J. SALES CONSULTANT : Craig Murphy

20 Feb 2012 13:25 HP LASERJET FAX P.3

K. CONVEYANCER : Thorpe & Hands

Telephone No. : 031 305 3641

Telefax No. : 086 636 1638

Email Address : wilna@thorpeandhands.co.za

Contact : Wilna Van Rooyen

Cellphone : n/a

L. OFFER TO PURCHASE:

In the event of this CONTRACT being signed by the PURCHASER before the SELLER, this CONTRACT shall until signature hereof by the SELLER, constitute an offer by the PURCHASER to purchase the PROPERTY from the SELLER subject to the terms and conditions of the CONTRACT, provided the SELLER shall have 14 days from date of signature by the PURCHASER to accept such offer, which shall not be extinguished by rejection or counter offer or otherwise until 17h00 on the final day of the aforesaid period.

M. CONDITIONS OF SALE:

The CONDITIONS OF SALE annexed to this SCHEDULE, initialled by the SELLER and PURCHASER for identification purposes.

THUS DONE AND SIGNED BY THE SELLER at Durban on 16th February 2012

AS WITNESSES:

1. .....

.....

SELLER (As Trustee – duly authorised)

THUS DONE AND SIGNED BY THE PURCHASER at [illegible] on 20th February 2012

AS WITNESSES:

1 .....

.....

For & on behalf of the PURCHASER
(duly authorised)

GUARANTOR

This portion to be signed by spouse / legal guardian / member / director/ trustee in the event of the PURCHASER being a person married in community of property / minor / close corporation / company / trust as the case may be.

S.A. Van Der Walt

[Full names]

of

Unit 16 375 Brooklyn Pretoria 0827781720

[Full address and telephone number]

hereby consents to the conclusion of this AGREEMENT and guarantees and binds himself as surety for and co-principal debtor in solidum with the PURCHASER to the SELLER for the due and punctual fulfilment and discharge of all the conditions and obligations undertaken by the PURCHASER to the SELLER pursuant to this AGREEMENT, under renunciation of the benefits of excussion and division with the meaning and effect of which benefits and the renunciation thereof he acknowledges himself to be acquainted. No variation or amendment or novation of this AGREEMENT shall prejudice the suretyship obligations hereby undertaken by the aforesaid guarantor, the object being that he shall remain liable at all times as surety and co-principal debtor, even if this AGREEMENT is varied or amended or novated and even if the aforesaid PURCHASER is granted an indulgence by the SELLER.

SIGNED by the GUARANTOR at Durban on this 20 day of February 2012

AS WITNESSES:

GUARANTOR

THUS DONE, SIGNED & ACCEPTED BY THE SALES AGENCY at Durban on 16/02/2012

AS WITNESS:

ESTATE AGENCY - PRINCIPAL

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CONDITIONS OF SALE

1. RECITAL

The SELLER as the registered owner of the PROPERTY wishes to sell the same to the PURCHASER, who is willing to acquire the PROPERTY on the terms and conditions contained in the CONTRACT.

2. DEFINITIONS

For the purpose of the AGREEMENT, unless the context indicates to the contrary:

2.1 "ACT" means the Sectional Titles Act No. 95 of 1986, as amended and any Regulations made in regard thereto;

2.2 "ARCHITECTURAL CONTROLS" means the architectural controls applicable to the POINT PRECINCT and the PROPERTY, which controls are provided for in the DEVELOPMENT MANUAL;

2.3 "ASSOCIATION" means the Durban Point Waterfront Management Association (an Association incorporated under Section 21 of the Companies Act of 1973), Registration No. 1998/001781/08;

2.4 "BANK" means any Bank or recognised Financial Institution registered in the Republic of South Africa;

2.5 "BODY CORPORATE" means the Body Corporate of the SCHEME;

2.6 "BUILDING" or "BUILDINGS" means the buildings that have been erected by the ORIGINAL SELLER'S contractor;

2.7 "COMMON PROPERTY" means the land included in the SCHEME as well as all parts of the BUILDING as are not included in any of the SECTIONS;

2.8 "CONTRACT" means the SCHEDULE and the CONDITIONS OF SALE;

2.9 "CONDITIONS OF SALE" means these CONDITIONS OF SALE;

2.10 "DESIGN REVIEW COMMITTEE" means the design review committee of the ASSOCIATION;

2.11 "DEVELOPER" means Durban Point Development Company (Proprietary) Limited, Registration No. 2001/020065/07;

2.12 "DEVELOPMENT MANUAL" means the Durban Point Development Manual which deals with various architectural controls, layout issues, building requirements and restructures and similar matters;

2.13 "DIRECTORS" means the directors of the ASSOCIATION;

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2.14 "EFFECTIVE DATE" shall mean the date of signature hereof by the second party signing, save that in the event the agreement is subject to a suspensive condition, shall mean the date that the suspensive condition is fulfilled or waived;

2.15 "EXCLUSIVE USE AREA" means the exclusive use area/s relating to the basement parking bays, balconies, patio/gardens and roof gardens specified in clause 12, that may have been acquired by the PURCHASER;

2.16 "LOCAL AUTHORITY" means the eThekwini Municipality;

2.17 "OCCUPATION DATE" for the purposes of this CONTRACT means the date on which the PURCHASER occupies the PROPERTY;

2.18 "ORIGINAL PURCHASER" for the purposes of this CONTRACT means the purchaser that signed the ORIGINAL SALE AGREEMENT;

2.19 "ORIGINAL SALE AGREEMENT" for the purposes of this CONTRACT means the agreement signed between the ORIGINAL SELLER and the ORIGINAL PURCHASER for the initial purchase of the PROPERTY from the developer;

2.20 "ORIGINAL SELLER" means the original development company, Usebe Point (Proprietary) Limited, Registration No 2003/01240/07;

2.21 "PARTICIPATION QUOTA" means the percentage of the floor area of the SECTION in relation to the area of all sections in such SCHEME;

2.22 "PARTIES" means the SELLER and the PURCHASER;

2.23 "PARTY" shall mean either the SELLER or the PURCHASER;

2.24 "POINT PRECINCT" means all the land which is acquired by the DEVELOPER for the purposes of the "Point Development Project" as more fully described and provided for in the Point Development Framework Plan as presented to the eThekwini Municipality, it being recorded that the PROPERTY is situate within the POINT PRECINCT;

2.25 "PREMISES" means the UNIT together with the EXCLUSIVE USE AREA(S), if applicable, as referred to in item B and clause and 12;

2.26 "PROPERTY" means the immovable property referred to in item B of the SCHEDULE;

2.27 "PURCHASER" means the party described in item A;

2.28 "SALES AGENCY" means Point Waterfront Realty (Proprietary) Limited t/a PWR Properties, Registration No 1998/02365/07;

2.29 "RULES" means the Statutory Management and Conduct Rules as defined in Section 35(2)(a) and (b) of the ACT or any amended Rules adopted by the BODY CORPORATE;

2.30 "SALE" means the sale of the PROPERTY by the SELLER to the PURCHASER as contemplated in this CONTRACT.

2.31 "SCHEDULE" means the SCHEDULE to which these CONDITIONS OF SALE are annexed;

2.32 "SCHEME" means the Sectional Title Development which relates to the PROPERTY;

2.33 "SECTION" means that portion of the PROPERTY defined as such in the ACT;

2.34 "SECTIONAL PLANS" means the Sectional Plan of the SCHEME which relates specifically to the SECTION;

2.35 "SELLER" means the person described in item B;

2.36 "SIGNATURE DATE" means the last date of signature of this CONTRACT by the PARTIES;

2.37 "TRANSFER DATE" means the date upon which registration of transfer of the PROPERTY is to be effected into the name of the PURCHASER;

2.38 "VAT" means the Value Added Tax Act, 1991;

2.39 Words importing the masculine gender include the feminine and neuter gender, and vice versa;

2.40 Unless the context clearly indicates a contrary intention, the singular shall include the plural and vice versa;

2.41 The headings to the various clauses are intended only for reference purposes and shall not be taken into account in interpreting the CONDITIONS OF SALE.

3. **SALE AND PURCHASE**

The SELLER sells the PROPERTY to the PURCHASER for the PURCHASE PRICE on the terms and conditions contained in the CONTRACT.

4. **PURCHASE PRICE**

4.1 The PURCHASE PRICE is the amount set out in item C of the SCHEDULE.

4.2 The SELLER confirms that he is not a VAT vendor for the purpose of the SALE.

5. **PAYMENT OF PURCHASE PRICE AND PURCHASERS LOAN**

5.1 The PURCHASE PRICE of the PREMISES shall be the amount reflected in clause C and shall be paid by the PURCHASER as follows:

5.1.1 Each of the payments due in terms of clause D shall be paid in cash to the CONVEYANCERS by no later than the respective dates referred to in that clause, save that in the event that the final payment is secured by way of a Guarantee/s such Guarantee/s shall be delivered

to the CONVEYANCERS by the date specified in clause D and shall be in a form acceptable to the Seller and shall be expressed as being payable on registration of Transfer;

5.2 Notwithstanding anything to the contrary herein contained, in the event of the rate at which VAT is chargeable being amended after the EFFECTIVE DATE in circumstances in which the amended rate will apply to this transaction, then the VAT at 14% included in the PURCHASE PRICE shall be adjusted accordingly, the intention being that the SELLER shall receive and retain the same amount after payment of VAT regardless of the rate at which VAT is payable.

5.3 R250,000 of each of the payments referred to in item D2 of the Schedule, shall be invested in the Conveyancers BDE Corporate Saver account, interest thereon to be for the benefit of the PURCHASER and the signature of this AGREEMENT by the PURCHASER constitutes written consent in terms of Section 78(2A) of the Attorneys Act authorising the CONVEYANCERS to invest the monies in accordance with this clause. The interest shall accrue for the benefit of the PURCHASER until the TRANSFER DATE whereupon the CONVEYANCERS shall release the capital to the SELLER, and all interest, less their usual commission, to the PURCHASER. The Purchaser acknowledges that the Conveyancers shall not be able to deposit the funds in the Corporate Saver account until he has provided the conveyance with FICA documents and such consents as the Conveyancers may require to open a Corporate Saver account in the Purchaser's name.

5.4 The first payment of Three Hundred and Fifty Thousand Rand referred to in item D1 of the Schedule and R50,000 from each of the four R300,000 payment amounts referred to in item D2 of the Schedule, shall be paid to the SELLER immediately the respective payments have been made to the CONVEYANCERS and the funds have cleared in their Trust bank account, and the Purchaser hereby authorises the Conveyancer to make such payments to the Seller.

6. **PLACE OF PAYMENT**

6.1 All payments in respect of the purchase price and transfer costs shall be paid by the PURCHASER, free of bank exchange or commission, without deduction or demand, at the offices of the CONVEYANCERS.

6.2 All payments in respect of OCCUPATIONAL RENTAL shall be paid by the PURCHASER, free of bank exchange or commission, without deduction or demand, to the SELLER at the

6.3 offices of the CONVEYANCERS or such other address as the SELLER may from time to time by written notice appoint.

7. **OCCUPATION**

Subject to clause 34 of the Conditions Of Sale, final occupation of the PROPERTY shall be given by the SELLER to the PURCHASER on the OCCUPATION DATE.

8. OCCUPATIONAL RENTAL

8.1 Where the PURCHASER receives occupation of the PROPERTY prior to the TRANSFER DATE, he shall be liable for payment of the OCCUPATIONAL RENTAL in the amount stated in item G of the SCHEDULE.

8.2 OCCUPATIONAL RENTAL is payable monthly in advance on the 1st day of each and every month and shall be paid from the OCCUPATION DATE to the TRANSFER DATE, both days inclusive.

8.3 In the event of the TRANSFER DATE taking place during the course of a month, the PURCHASER shall be entitled to a pro-rata refund of any OCCUPATIONAL RENTAL paid to the SELLER for the period after the TRANSFER DATE until the end of such month.

9. RISK AND EXPENSES

9.1 The benefit of and risk in and to the PROPERTY shall pass to the PURCHASER on the TRANSFER DATE.

9.2 Until the TRANSFER DATE, the PURCHASER waives all claims against the SELLER for any loss or damage to property or any injury to person which the PURCHASER may sustain in or about the PROPERTY and indemnifies the SELLER against any such claim that may be made against the SELLER by any member of the PURCHASER'S family, invitees, employees or agents for any loss or damage to property or injury to such person suffered in or about the property, howsoever such loss or damage to property or injury to person may be caused.

9.3 The PURCHASER shall be liable for payment of all electricity and water consumed in or about the PROPERTY from the earlier of the OCCUPATIONAL DATE or the TRANSFER DATE.

10. VOETSTOOTS

10.1 The PROPERTY is sold:

10.1.1 VOETSTOOTS absolutely as it stands and without any warranty, express or implied, the SELLER not being responsible for any defects, whether latent or patent;

10.1.2 subject to all conditions and servitudes noted against the SECTIONAL PLANS.

10.2 The PURCHASER acknowledges and confirms that having fully inspected the PROPERTY that he/she is fully:

10.2.1 satisfied and understands precisely as to what constitutes the PROPERTY;

10.2.2 acquainted with the nature, conditions, extent, location and boundaries comprising the PROPERTY.

10.2.3 The sale of the PROPERTY includes all fixtures and fittings of a permanent nature, which the SELLER warrants are paid for and all keys to external doors, light fittings and security gates.

10.2.4 The SELLER warrants that the following items shall be in full working order at handover on the date of transfer, or alternatively, on the date of occupation, whichever applies:

10.2.4.1 All internal lights
10.2.4.2 All fixed kitchen appliances
10.2.4.3 All airconditioning units
10.2.4.4 The two bathroom extractor fans
10.2.4.5 The swimming pool motor

11. **PURCHASER'S ACKNOWLEDGEMENTS AND UNDERTAKINGS**

11.1 The PURCHASER:

11.1.1 acknowledges that he is aware of the intended future development of the POINT PRECINCT by the DEVELOPER and that such development is intended to involve the establishment of high quality business and commercial premises and residential dwellings on various portions of the POINT PRECINCT and so designed as to facilitate the establishment of the POINT PRECINCT as an upmarket, attractive and aspirational development;

11.1.2 undertakes that he will, at all times, co-operate with the DEVELOPER and ORIGINAL SELLER in an endeavour to facilitate the success of the said development and undertakes that he shall not unreasonably interfere with any such proposed development nor unreasonably lodge any objection with any competent authority in respect of any such development;

11.1.3 agrees that he will not object to any application made by or on behalf of the DEVELOPER, its nominee or agent for special usage consent, licences for shopping, commercial or filling station rights, rezoning, removal of conditions of title under the Removal of Restrictive Conditions Act or by way of any application to Court or to any local or other competent authority in respect of any property within the POINT PRECINCT;

11.1.4 specifically acknowledges that owners of land surrounding the PROPERTY will be erecting buildings and other structures on surrounding land which may block or otherwise interfere with the views from the PROPERTY and the PURCHASER agrees he shall have no right to object to the construction of any building or other structure on land in the POINT PRECINCT on the basis that such building or other structure blocks or otherwise interferes with the views from the PROPERTY, nor will he have any claim for any alleged diminution in the value of the PROPERTY arising out of any interference with the views from the PROPERTY by reason of the construction of any such building or structure;

11.1.5 acknowledges that no buildings or alterations or extensions to existing buildings or any other structures may be erected on the PROPERTY other than in accordance with plans approved by the ASSOCIATION acting through the DESIGN REVIEW COMMITTEE and the PURCHASER agrees that he will have no claim whatsoever, arising out of whatever cause, against the ASSOCIATION, any members of the DESIGN REVIEW COMMITTEE or the DEVELOPER, the ORIGINAL SELLER or the SELLER for any loss suffered by reason of the DESIGN REVIEW COMMITTEE refusing to approve or delay the approval of any plans submitted by the PURCHASER save where the PURCHASER can prove male fides on the part of the DESIGN REVIEW COMMITTEE or where the decision was not made in accordance with the ASSOCIATION'S Articles of Association as read with the DEVELOPMENT MANUAL and the ARCHITECTURAL CONTROLS;

11.1.6 acknowledges that he is aware that the various sections in the SCHEME will be used for office, commercial, residential, retail, restaurant purposes, and for parking purposes;

11.1.7 acknowledges that the ASSOCIATION is entitled to prescribe the type of retail operations that may be conducted from the retail sections and that there are certain usages which the ASSOCIATION has specifically disallowed

12. **EXCLUSIVE USE AREAS**

12.1 All the basement parking bays shall be designated as EXCLUSIVE USE AREAS. Subject to availability, the PURCHASER may be entitled to purchase additional parking bays, in addition to any that may have been allocated to the PURCHASER in terms of this AGREEMENT.

12.2 In addition, the balconies, patio/garden areas and roof gardens will also be allocated as EXCLUSIVE USE AREAS.

12.3 The EXCLUSIVE USE AREAS referred to in this clause 12.1, shall be allocated in terms of the amended management rules.

13. **LEVIES TO BODY CORPORATE AND ASSOCIATION**

13.1 From the TRANSFER DATE, the PURCHASER shall be responsible to pay two monthly levies, one to the BODY CORPORATE in respect of those items referred to in section 37(1) of the ACT, and the second to the ASSOCIATION in accordance with the Articles of Association of the ASSOCIATION

13.2 The following shall apply in respect of the levy to the BODY CORPORATE:

13.2.1 the estimated monthly levy payable by the PURCHASER in terms hereof shall be payable monthly in advance from the TRANSFER DATE to the BODY CORPORATE;

13.2.2 the amount to be levied against the PURCHASER is to be calculated in accordance with the participation quota of the SECTION and the figure stated in item H of the

schedule, made in good faith by the SELLER and the SELLER shall not be responsible for any inaccuracy in this estimation;

13.2.3 notice of any increase in the amount of the levy payable by the PURCHASER in terms hereof may be given in writing by the BODY CORPORATE.

13.3 The levy payable to the ASSOCIATION shall not be calculated in accordance with the participation quota of the SECTION, but in accordance with the provisions of the Articles of Association of the ASSOCIATION.

13.4 The participation quota of all SECTIONS including those to be used for non-residential purposes shall be calculated on the area comprising the living/working area only and the balconies, patio/gardens, roof gardens and parking bays will be designated on the SECTIONAL PLAN as exclusive use areas. The PURCHASER acknowledge that the levies on a rate per square metre basis for the areas comprising the parking bays, balconies, patio/gardens and roof gardens shall be 10% of the rate per square metre applicable to the SECTION.

13.5 For the purposes of calculating the participation quota of the SECTION and other sections in the SCHEME, these shall be calculated on a similar basis, being the ratio that the area of a respective section bears to the total area of all sections.

13.6 The PURCHASER shall with effect from the TRANSFER DATE be liable for the payment of all services to the PREMISES which may not be included in the levy to the BODY CORPORATE, including electricity, water, telephone service and any deposits payable in connection with the supply of any such services.

14. MEMBERSHIP OF THE DURBAN POINT WATERFRONT MANAGEMENT ASSOCIATION

By virtue of the purchase of the PREMISES by the PURCHASER, the PURCHASER shall, through the BODY CORPORATE be obliged to become a member of the ASSOCIATION within the meaning of and subject to the conditions set out in the ASSOCIATION'S Memorandum and Articles of Association and undertakes that he and all persons deriving use of the PROPERTY or any part thereof, through him from the TRANSFER DATE, will duly comply with all the obligations imposed upon members under the ASSOCIATION'S Memorandum and Articles of Association.

15. MUNICIPAL SERVICES

The PURCHASER acknowledges that should the local authority or any other service provider not have the means, or be unwilling, or agree to delegate the obligation to the ASSOCIATION, to maintain or provide municipal services within the POINT PRECINCT, the ASSOCIATION may, if the ASSOCIATION in its sole discretion deems it appropriate, take over the responsibility for providing and maintaining such services and/or enhanced services.

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16. **PHASED DEVELOPMENT**

16.1 As it is anticipated that there will be a lengthy construction period for the entire SCHEME, the ORIGINAL SELLER shall be entitled to stagger the construction in various phases, which will allow the ORIGINAL SELLER to complete and transfer the units in the BUILDING in phases.

16.2 The ORIGINAL SELLER shall in terms of section 25 of the ACT be entitled to develop the SCHEME initially in various phases. While it is anticipated that the various phases will follow the first phase in a short period, the ORIGINAL SELLER reserves to itself the right to complete the second and further phases within a period of 10 years from the date the REGISTER is opened.

16.3 The effect of the phasing of the SCHEME in two, or three phases will be to enable purchasers whose units are in a particular phase, to obtain transfer of their unit purchased once the sectional plan in respect of that phase has been registered.

16.4 The ORIGINAL SELLER or its successors-in-title shall notwithstanding the transfer of various units in the SCHEME to purchasers, be entitled to erect, in addition to the buildings to be incorporated into the first sectional plan, a vertical and/or horizontal extension to the existing buildings and other improvements to be erected in the further phases and to divide the buildings into sections and common property and to confer the rights of exclusive use over parts of such common property to an owner or owners.

16.5 The ORIGINAL SELLER or its successors-in-title shall be entitled to procure the registration of a plan or plans in respect of the relevant extensions comprising such subsequent phases in terms of section 25 of the ACT, to the exclusion of any other owner or mortgagee in the SCHEME.

17. **PROPERTY SUBJECT TO VARIOUS SERVITUDES**

The PROPERTY will be subject to various servitudes, which shall include:

SECURITY SERVICES

17.1 The ASSOCIATION shall in accordance with the provisions of its Articles of Association, and any direction given by members in general meeting from time to time, provide security services within the POINT PRECINCT. The PURCHASER agrees that no liability shall rest upon the ORIGINAL SELLER, the SELLER or the ASSOCIATION for any failure or inefficiency of any of the security services in the POINT PRECINCT, irrespective of the cause thereof, or for any consequential damage the PURCHASER may suffer by reason of such failure or insufficiency.

ARCADE AND GENERAL SERVICES SERVITUDE

17.2 The PROPERTY shall be subject to an arcade and general services servitude.

COMMUNICATION AND SECURITY SERVITUDE

17.3 The PROPERTY is sold subject to a communication and security servitude in favour of the ASSOCIATION which shall grant the ASSOCIATION, *inter alia*, all such rights as the ASSOCIATION may require in order to install and maintain an electronic surveillance security and data communications system in the POINT PRECINCT (including the PROPERTY). The aforesaid servitude shall also grant the ASSOCIATION the right to lay cables generally, to transmit data through such cables and the right to enter upon the PROPERTY to maintain same.

TELECOMMUNICATIONS ROOM SERVITUDE

17.4 The PROPERTY shall be subject to a telecommunications room servitude in favour of the ASSOCIATION, entitling the ASSOCIATION, *inter alia*, to erect, maintain and service a telecommunications room on the PROPERTY.

17.5 Although the position of the aforesaid telecommunications room and its design shall be decided by the DESIGN REVIEW COMMITTEE in consultation with the ORIGINAL SELLER, the final decision in this regard shall be in the sole discretion of the DESIGN REVIEW COMMITTEE.

17.6 The aforesaid servitude shall grant the ASSOCIATION and any service provider(s) or other parties, nominated by the ASSOCIATION, all such rights as may be required in order to erect, maintain and

operate the telecommunications room. These rights shall include, but shall in no way be limited to, the right to have 24 hour vehicular and pedestrian access to the telecommunications room and the rights to lay and maintain all electric and other cables across the PROPERTY to the telecommunications room that may be required in order to properly operate the aforesaid telecommunications room.

18. **RETAIL OWNERS' ASSOCIATION**

18.1 The success of the component of the BUILDING designated for retail purposes ("the RETAIL COMPONENT") will depend inter alia on the proper control and tenant mix in the RETAIL COMPONENT which mix shall be regulated through a Retail Owners' Association ("Retail Association")

18.2 The purchasers of retail units will be required to become members of the Retail Association which will be a body established to represent the common interests of owners of units in the RETAIL COMPONENT in the SCHEME.

18.3 The Retail Association shall have a set of rules ("the Retail Rules") which will govern various aspects relating to the RETAIL COMPONENT, including but not limited to decisions regarding the tenant mix in such component, the aesthetics and layout of the units.

18.4 The Retail Association shall always employ the services of a recognised retail property management specialist ("the Retail Manager") as an advisor on the tenant mix in the

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RETAIL COMPONENT who will also be responsible for handling the leasing of units in the RETAIL COMPONENT and will attend to the management of such component. The purchasers of retail units shall always be obliged to use the services of the Retail Manager for the purposes of letting his UNIT and be responsible for payment to the Retail Manager of its usual fees for securing tenants for the UNIT. The SALES AGENCY shall also be a member of the Retail Association and shall, together with the Retail Manager, be entitled to make rules applicable to the RETAIL COMPONENT.

18.5 The PURCHASER acknowledges that the ORIGINAL SELLER, in conjunction with its professionals involved in the SCHEME, the SALES AGENCY, and the Retail Manager, shall, once the design review process of the BUILDING has progressed, include in the Retail Rules matters relating to the theme of the RETAIL COMPONENT, which rules will inter alia deal with the overall theme, aesthetics, finishes and floor layouts of the units, and rules relating to signage, including the style, design, size and position of such signage. The owners of retail units shall be obliged to ensure that he and/or his tenant complies in all respects with the Retail Rules, including aspects referred to in this clause 18.5.

18.6 The purchasers of retail units will purchase their units on the understanding that the specified retail space usage of the unit shall only be used for a specific usage as identified in the sales agreements or such other usage as may be agreed by the ORIGINAL SELLER, in conjunction with the SALES AGENCY and Retail Manager.

18.7 The purchasers of retail units shall at all times be obliged to comply with all the obligations imposed them under the Retail Rules.

18.8 The purchasers of retail units shall not be entitled to dispose of or otherwise transfer ownership of the PREMISES unless it is a suspensive condition of such sale or other transfer that the transferee, in a manner acceptable to the Retail Association, agrees to become a member and is admitted as a member of the Retail Association.

19. **ALIENATION PRIOR TO TRANSFER DATE**

19.1 Prior to the TRANSFER DATE, the PURCHASER shall not in any manner be entitled to alienate the PROPERTY except with prior written consent of the SELLER first being obtained, which consent shall not be unreasonably withheld, provided always that no such consent shall be required for alienation by testamentary disposition

19.2 The PURCHASER shall not be entitled to sell, assign or make over any of his rights under this CONTRACT without the prior written consent of the SELLER, provided if such consent is given by the SELLER, the PURCHASER shall in no way be released from any obligation under this CONTRACT, it being agreed that where such consent is duly given, the PURCHASER by his signature to this CONTRACT, binds himself as surety and co-principal debtor for all the obligations of the assignee with effect from the date that the SELLER provides his consent.

20. **GENERAL OBLIGATIONS**

In the event that the PURCHASER acquires occupation of the PROPERTY prior to the TRANSFER DATE:

20.1 The PURCHASER shall not make any structural alterations or additions to the PROPERTY without the prior written consent of the SELLER and the BODY CORPORATE.

20.2 The PURCHASER shall keep the PROPERTY in good repair and permit the SELLER or its agents at all reasonable times to enter and inspect the same, provided where the PURCHASER fails to comply, the SELLER shall be entitled at the PURCHASER'S cost, to expend such amounts as may be necessary for repairing and maintaining the PROPERTY and to recover such costs and expenses from the PURCHASER upon demand, which aforesaid action shall be in addition to any other remedy available to the SELLER.

21. **ENTOMOLOGIST REPORT**

21.1 Notwithstanding any other provisions hereof, the SELLER shall within 30 (THIRTY) days of the SIGNATURE DATE, which aforesaid date shall be prior to the TRANSFER DATE, provide the PURCHASER with a report issued by a Government approved Entomologist to the effect that in respect of such parts of the timber in the PROPERTY which are easily and thoroughly capable of inspection and examination, that there is no evidence of destroying insects (excluding Ambrosia and Ernobius Mills which are considered harmless).

21.2 In the event that there is evidence of infestation or damage, the SELLER shall at his own expense within 7 (SEVEN) days after receipt of such report and recommendation contract with such Entomologist or any other qualified person for the treatment to the PROPERTY in terms of such recommendation and to effect any repairs to the affected timber as may be deemed necessary in the aforesaid report.

22. **ELECTRICAL INSTALLATION COMPLIANCE CERTIFICATE**

22.1 The SELLER shall procure a Certificate of Compliance dated no earlier than the SIGNATURE DATE issued by an accredited person in respect of all electrical installations in the PROPERTY in accordance with the latest requirements of SABS 0142-1 and the Electrical Installation Regulations imposed under the provisions of the Machinery and Occupational Safety Act No. 6 of 1983.

22.2 The Certificate of Compliance shall be furnished by the SELLER to the CONVEYANCERS prior to the earlier of the OCCUPATION DATE or the TRANSFER DATE.

22.3 The SELLER shall be obliged at his own expense to pay for whatever remedial work, repairs or replacement of installations as might be deemed necessary or required in order to obtain the issue of the Certificate of Compliance.

23. **COMMISSION**

23.1 The SELLER shall pay the SALES AGENCY a sales commission of 8% (eight percent) plus VAT calculated on the total purchase price. The SELLER irrevocably authorises the payment of the sales commission by the transferring attorney directly to the SALES AGENCY on registration of transfer of the unit.

24. **TRANSFER OF OWNERSHIP**

24.1 The PURCHASER shall within 7 (SEVEN) days upon request by the CONVEYANCERS, furnish the CONVEYANCERS with all the necessary information and documentation they may require in order to prepare the transfer documents.

24.2 The costs of registration of transfer of the PROPERTY and of any mortgage bond (if applicable), shall be paid by the PURCHASER, and such costs shall include transfer duty and the costs of the issuing of the BODY CORPORATE'S levy clearance certificate.

24.3 The PURCHASER undertakes to sign the transfer documents and pay the transfer costs immediately upon request by the CONVEYANCERS.

24.4 The PURCHASER acknowledges that transfer of the PROPERTY may only be registered once the full purchase price has been paid and/or secured to the satisfaction of the SELLER and the CONVEYANCERS and the transfer costs referred to in Clause 24.2 have been paid.

24.5 The SELLER shall in no way be liable to the PURCHASER for any delay in effecting registration of transfer of the PROPERTY into the PURCHASER'S name, irrespective of the reason for the cause of such delay.

24.6 The PARTIES undertake to utilise their best endeavours in order to place the CONVEYANCERS in a position to effect registration of transfer of the PROPERTY into the PURCHASER'S name either on or as close as possible to the TRANSFER DATE.

24.7 The PURCHASER waives the right to attach any condition to any payment to be made in connection with this CONTRACT.

25. **DOMICILIUM**

25.1 The PARTIES choose as their respective domicilia citandi et executandi, the addresses and telefax numbers as stated in items A and B of the SCHEDULE, provided that the PURCHASER'S domicilium as from the OCCUPATION DATE or TRANSFER DATE (whichever occurs first), will be deemed to be the PROPERTY.

25.2 Either PARTY shall be entitled to change his domicilium address or telefax number on giving written notice thereof to the other PARTY, which shall be delivered by hand or sent by telefax to the other PARTY'S stated domicilium or telefax number.

26. **BREACH OF CONTRACT**

26.1 Should a PARTY default and be in breach any of the terms and conditions of this CONTRACT and remain in such breach after having been given 7 (SEVEN) days written notice by the aggrieved PARTY to remedy such breach, then the aggrieved PARTY shall be entitled to:

26.1.1 claim immediate performance by the defaulting PARTY of all his obligations in terms of this CONTRACT; or

26.1.2 where the defaulting PARTY is the PURCHASER, the SELLER may declare the full balance of the purchase price to be at once due and payable; or

26.1.3 cancel the sale without prejudice to the SELLER's right to claim damages.

26.2 Should the SELLER cancel the Sale because of a breach or breaches by the PURCHASER, the SELLER shall be entitled to retain the amounts paid to the SELLER in accordance with the provisions of Items D1 and D2 of The Schedule and clauses 5.3 and 5.4 of the Conditions Of Sale, as ROUWKOOP, alternatively as agreed liquidated damages to be suffered by the SELLER as a result of the PURCHASER'S breach of the CONTRACT.

26.3 Should the PURCHASER dispute the SELLER'S right to cancel this CONTRACT, then pending the determination of that dispute, the PURCHASER shall still be obliged on due date to make payment of all amounts due by him and the SELLER shall be entitled to accept those payments without prejudice to the SELLER'S claim for cancellation of this CONTRACT or of any other rights he may have hereunder.

26.4 Should the SELLER instruct an Attorney to take any action against the PURCHASER arising from any breach of the PURCHASER'S obligations in terms of this CONTRACT, the PURCHASER shall be liable for and pay all such Attorney's fees, including collection charges, as between Attorney and client.

26.5 The PURCHASER acknowledges that no indulgence of any description or extension of time for making payments, performance of any obligations or forbearance to sue which may be granted by the SELLER to the PURCHASER, shall be deemed at any time to be a waiver of the SELLER'S rights hereunder.

27. NOTICE

Any notice which is given by either PARTY to the other at the domicilium address or telefax number stated in this CONTRACT shall be deemed to have been duly given:

27.1 if hand delivered; on the day on which hand delivery takes place, either by handing such notice to the PARTY or by placing/affixing the same to a prominent place at the PARTY'S domicilium;

27.2 where sent by telephone facsimile to the PARTY'S stated telefax number; on the day on which the telephone facsimile was actually sent, which date shall be established by reference to the aforesaid facsimile machine's activity report used to send such facsimile.

28. MORA

28.1 In the event of the PURCHASER failing to comply with any obligation imposed on him in terms of this CONTRACT, the SELLER shall in addition to his rights contained in Clause 26.6, be entitled to claim from the PURCHASER in lieu of OCCUPATIONAL RENTAL, interest on the full purchase price at the rate of 14% (FOURTEEN PER CENT) per annum calculated from the date upon which the obligation in question fell due for performance up to the date upon

which it is actually performed, which period shall be determined solely by the CONVEYANCERS.

28.2 Such interest shall be payable by the PURCHASER to the SELLER on demand.

28.3 For the purposes of Clause 28.1, the PURCHASER shall be deemed to be responsible for any delay in the registration of transfer which is caused by failure on the part of the BANK or any Conveyancer nominated by the BANK to procure the issue of guarantees as contemplated in Clause 5 or to lodge documents in the Office of the Registrar of Deeds when called upon to do so by the CONVEYANCERS.

29. **JURISDICTION**

29.1 The PARTIES consent to the jurisdiction of any Magistrate's Court having jurisdiction under Section 28 of the Magistrate's Court Act No 32 of 1944 (as amended), notwithstanding that such proceedings are otherwise beyond its jurisdiction.

29.2 This Clause 29 shall be deemed to constitute the required written consent conferring jurisdiction upon the said Court pursuant to Section 45 of the Magistrate's Court Act.

29.3 Notwithstanding the provisions of Clause 29.1, the SELLER shall have the right at his sole discretion to institute proceedings in any other competent Court which might have jurisdiction.

30. **MARRIED IN COMMUNITY OF PROPERTY**

In the event of the PURCHASER being married in community of property and requiring a loan as contemplated in Clause D, the PURCHASER undertakes immediately when called upon by the BANK in order to obtain approval of the loan referred to in Clause D and in respect of any mortgage bond required to be registered, to have the spouse sign all documents required by the BANK to give effect thereto including any Deed of Suretyship.

31. **STATEMENT OF AMOUNTS**

A statement signed by or on behalf of the SELLER or his Agent showing the amount due and payable by the PURCHASER shall be sufficient and satisfactory proof for the purpose of obtaining provisional sentence or summary judgment under this CONTRACT or for any other purpose.

32. **CONFLICT**

In the event of there being any conflict between the contents of this CONTRACT and the ACT, the latter shall prevail, provided the PURCHASER shall have no claim against the SELLER arising out of any such conflict.

33. **WHOLE CONTRACT**

33.1 This CONTRACT constitutes the entire CONTRACT between the SELLER and the PURCHASER and no variation or addition shall be of any force or effect unless reduced to writing and signed by both PARTIES.

33.2 No PARTY shall be bound by any representation, express or implied term or warranty (whether contained in any sales brochure, advertisement or other written document) not referred to herein.

34. **SPECIAL CONDITIONS**

34.1 The Purchaser, or a representative thereof, may occupy the property once (1) a month, without paying any occupational rental, of which dates the Seller must be notified in a minimum of seven (7) days prior to any requested reservation.

34.2 Should the apartment already have been booked and let out by the letting agency PW Accommodation, then the purchaser, or his representative, will have to choose an alternative date.

34.3 Furthermore, this monthly occupation will be limited to one of the following each month:

34.3.1 1 weekend occupation (arrive Friday after 2 pm and depart Monday by 10am) or alternatively;

34.3.2 1 midweek occupation (arrive Monday and depart Friday by 10am) per month;

34.3.3 with no occupation being made available over any long weekend or during any school school holiday period.

34.4 Should the Purchaser or his representative book in for a midweek occupation and the Friday departure date arrives and there is still no one booked into the apartment for that specific weekend, then the seller would be willing to allow the purchaser, or his appointed represented, to extend their stay and depart at a mutually agreed upon later date. The Seller shall at his total discretion, be entitled to make the final decision regarding any such extension

SS-OMN-564

3011



PWR PROPERTIES
PROPERTY SALES & LETTING

Shop G - 05 The Sails on Timeball
14 Timeball Boulevard
Point Waterfront
Durban, 4001
Tel: +27 (31) 368 0445
Fax: +27 (86) 636 5949
www.pwr.co.za

AGREEMENT OF PURCHASE AND SALE

OF FURNITURE AND FITTINGS

PRIVATE SALE

Point Waterfront Realty (Pty) Ltd t/a PWR Properties
Director & Principal: CS Murphy

PSM

20 Feb 2012 12:32 HP LASERJET FAX p.1

THE SCHEDULE

Between

A. THE STAFFORD MURPHY FAMILY TRUST
("the SELLER")

Identity/Registration No. : IT 1812 / 2004
Postal address : PO BOX 201004, DURBAN NORTH, KZN, 4016
Physical address : 83 MARINE VIEW AVENUE, DURBAN NORTH, KZN
Telephone No. (Work) : 031 – 368 3445
Cell No. : 078 871 3838
e-mail : craig@owr.co.za
Fax No. : 086 636 6649

and

GRAND TOWER (Pty) Ltd
("the PURCHASER")

Identity/Registration No. : 2011/131022/07
Postal address : PO BOX 1935, BROOKLYN SQUARE, 0075
Physical address : 376 CHARLES STREET, BROOKLYN, PRETORIA
Telephone No. (Work) : 012 460 1915/6
Cell No. : 082 778 1720
Telephone No. (Home) : n/a
Fax No. : 012 460 1919
e-mail : riaan@louwalt.co.za

B. THE PROPERTY:

UNIT / Flat No. : C7-10
Section No. : 710
In the Scheme : THE SAILS ON TIMEBALL
Situated at : 14 TIMEBALL BLVD, POINT WATERFRONT PRECINCT, DURBAN, KZN

C. The GOODS: : As per attached "Furniture & Fittings Annexure"

D. PURCHASE PRICE : Two Hundred & Fifty Thousand Rands
(R 250,000)

E. DEPOSIT: A deposit of R _____ n/a _____ payable to the CONVEYANCERS within fourteen (14) days of the SIGNATURE DATE;

F. THE CONVEYANCERS : Thorpe & Hands

Telephone No. : 031 305 3641

Telefax No. : 086 636 1638

Email Address : wilna@thorpeandhandsinc.co.za

Contact : Wilna Van Rooyen

Cellphone : n/a

G. OFFER TO PURCHASE;

In the event of this CONTRACT being signed by the PURCHASER before the SELLER, this CONTRACT shall until signature hereof by the SELLER, constitute an offer by the PURCHASER to purchase the GOODS from the SELLER subject to the terms and conditions of the CONTRACT, provided the SELLER shall have 2 days from date of signature by the PURCHASER to accept such offer, which shall not be extinguished by rejection or counter offer or otherwise until 17h00 on the final day of the aforesaid period.

H. CONDITIONS OF SALE:

The CONDITIONS OF SALE annexed to this SCHEDULE, initialled by the SELLER and PURCHASER for identification purposes.

THUS DONE AND SIGNED BY THE SELLER at Durban on 16th February 20 12

AS WITNESSES:

1. _____

_____
SELLER (As Trustee - Duly Authorised)

THUS DONE AND SIGNED BY THE PURCHASER at Durban on 20th February 20 12

AS WITNESSES:

1 _____

_____
For and on behalf of the PURCHASER (Duly authorised)

20 Feb 2012 12:32 HP LASERJET FAX

CONDITIONS OF SALE

Sale of property whereas

THE STAFFORD MURPHY FAMILY TRUST
(hereafter referred to as "The Seller")

and

GRANO TOWER (Pty) Ltd
(hereinafter referred to as "The Purchaser")

are entering into a separate agreement for the purchase and sale of the immovable property known as C7-10 The Sails on Timeball, 14 Timeball Boulevard, Point Waterfront, Durban (THE CONTRACT).

The seller has also agreed to sell the movable property, (referred to the GOODS) which are listed in the attached "Furniture and Fittings Annexure" to the purchaser for the sum of R250,000 (Two Hundred & Fifty Thousand Rands Rand) on the following terms and conditions:

1. The purchase price shall be paid in cash to the seller on or before the 21st August 2012, by way of a cash payment to attorneys Thorpe & Hands (name of attorneys). The said payment shall be held in trust and paid over to the seller on the effective dates.

2. The effective date shall be the date of transfer of THE PROPERTY from the seller to the purchaser from which date ownership in and to the GOODS hereby sold, shall be transferred to the purchaser.

3. This agreement is linked to the sale of THE PROPERTY and the parties agree that in the event that the purchase price of R 250,000 for the GOODS is not paid, prior to the 21st August, 2012, such failure shall be deemed to be a material breach of THE CONTRACT relating to the sale of THE PROPERTY, entitling the seller to either cancel THE CONTRACT relating to the sale of THE PROPERTY or to delay transfer until such a time as the purchase price of the GOODS has been paid to the attorneys.

4. The GOODS are sold VOETSTOETS. The purchaser confirms that he has inspected the GOODS and has satisfied himself as to their condition.

5. In the event that the transfer of THE PROPERTY does not proceed, this agreement shall fall away and the status quo ante shall be restored between the parties.

FURNITURE & FITTINGS ANNEXURE
UNIT C 710 - THE SAILS

QTY	MAIN BEDROOM
1	Sensation Pocket Spring Queen mattress and base
1	Headboard
2	Bedside tables
2	Bedside lamps
1	Single Stool
1	Mirror
1	Picture
1	Ceiling Mounted Sony TV
1	LG Inverter Airconditioner
	Curtains

QTY	MAIN BATHROOM
1	Picture
2	Mirrors

QTY	2ND BATHROOM
1	Lizzard
1	Mirror

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QTY	KITCHEN APPLIANCES
1	Bosch Fridge/Freezer
1	Cordless kettle
1	Toaster
1	Bosch Gourmet Microwave
1	Bosch Washing Machine / Tumble dryer Combo
1	Bosch Hob & Hood Stove
1	Dishwasher

	CROCKERY
	Dinner plates
	Side plates
	Cereal bowls
	Coffee mugs

	CUTLERY
	Forks
	Tablespoons

	Teaspoons
	Knives
	GLASSWARE
	Tall glasses
	Medium Glasses
	Wine glasses
	UTENSILS
	Bread knife
	Vegetable knives
	Carving knife and fork
	Serving spoons
	MISCELLANEOUS
	Carving board
	Ice trays
	Dustbin

	LIVING AREA
1	Kariba baby couches set - brown leather (1 x 2 seater & 1 x 3 seater)
2	Side table
1	Wall Mounted TV
1	Amplifier
1	PVR
1	Entertainment unit/TV Stand
1	Coffee table
1	Tony Torrence Painting
1	Set Gemsbok Horns
1	Ornamental Vase and Sticks
1	Standard Lamp
1	Carpets
2	Pictures
1	Wood & Leather Curved armchair
	Cushions & Curtains
QTY	PATIO & ROOF GARDEN
1	Outdoor Table and Chairs (5 piece) - Patio
1	Picture - Patio

3019

1	Brown Outdoor Table - roof
1	Brown Double Outdoor Chair - roof
1	Brown Single Outdoor Chairs - roof
2	Gas Braai – roof (Cairns Beachcomber)
QTY	BEDROOM 2
2	Sensation Pocket Spring Single mattresses & bases
2	Single headboards
1	Bedside table
1	Bedside lamp
1	Single mattress protector
1	King size converter
1	Server
2	Pictures
1	LG Inverter Airconditioner
1	Mirror
1	Curved Wood Chair
	Curtains
	EXTRAS
1	Wood Double Curved Seat below Telephone Mirror
1	Elephant Table – telephone table

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1	Wall Shelf
1	Icemaker
2	Pictures - Passage
	Ornaments
	Scatter Cushions

Property Enquiry Result

Property enquiry results in the Deeds Registry at "PIETERMARITZBURG"

Property detail:

Deeds registry	PIETERMARITZBURG
Property type	SECTIONAL TITLE UNIT
Scheme name	SS THE SAILS
Scheme number	119
Unit number	710
Province	KWAZULU NATAL
Registration division/Administrative district	FU
Local authority	ETHEKWINI
Situated At	DURBAN ; 12524 ; 37
Previous description	-
Diagram deed number	119/2008
Extent	87.0000 SQM
LPI Code	-

Title Deeds detail:

Document	Registration date	Purchase date	Amount	Image Scanned reference	Document copy?
ST28925/2012	20120920	20120220	R2800000.00	20120928 15:35:50	Yes

Owners detail:

Document	Full name	Identity Number	Share	Person Enquiry?
ST28925/2012	GRAND TOWER TRADE AND INVEST 04 PROPRIETARY LIMITED	201113102207	-	Yes

Endorsements / Encumbrances:

Endorsement / Encumbrance	Holder	Amount	Image Scanned reference	Document copy?
K811/2008S	-	-	20080424 12:33:08	Yes
K812/2008S	-	-	20080424 12:33:54	Yes

3022

History:

Document	Holder	Amount	Image Scanned reference	Document copy?
B20341/2005	-	-	20090318 15:49:05	Yes
I-5000/2007LG	-	-	20071210 18:48:11	Yes
SB2997/2009	-	-	20120928 15:38:30	Yes
ST10488/2008	USEBE POINT PTY LTD	CRST	20090224 08:48:38	Yes
ST4569/2009	STAFFORD MURPHY FAMILY TRUST-TRUSTEES	R1970000.00	20120928 15:36:16	Yes

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Requested by A0044039 with user reference 7550044039 on: Tuesday, 28 June 116 09:40

DeedsWeb Version 4.0.1

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SS-OMN-576

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"FA233"

Van Wyk

Geoktrooieerde Rekenmeesters (S.A.) • Chartered Accountants (S.A.)

Posbus / PO Box 35156 Menlo Park 0102 Tel: +27 12 347 1115 Fax: +27 12 347 9445 e-mail: admin@vanwykauditors.com

Ref: 55/16
6 July 2016
Practice Number: 955833

To whom it may concern,

RE: GRAND TOWER TRADE AND INVEST 04 (PTY) LTD (2011/131022/07)

We hereby confirm that we are appointed as auditors for the abovementioned company.

We also confirm the following of the abovementioned company:

Director-

Jan Adriaan van der Walt	7305185010085	

Shareholder-

Jan Adriaan van der Walt	7305185010085	100%

Attached please find the register of directors and members share accounts hereto.

Please do not hesitate to contact the writer should you have any queries.

Kind Regards,

ADE AND INVEST 04
d Officers
en Beamptes

an	Addresses Adresse	Nationality (If not South African) Nasionaliteit (indien nie Suid-Afrikaans)	Identity No. or Date of Birth. Reg. No if a Company Identiteits Nr. of Geboorte Datum Reg. Nr. indien 'n Maatskappy	Occupation Beroep	Resident In Republic (yes/no) Woonagtig In Republiek (ja/nee)	Date of Appointment Datum van Aanstelling	Date of Change Datum van Verandering	Nature of Change Aard van Verandering
	R: B: The Ridge Office Building 462 GrysbokStreet Waterkloof Ridge Pretoria Gauteng RSA 0181 P: PO Box 35156 Menlo Park Pretoria Gauteng 0102		6507265066082	BUSINESSMAN/AUDITOR	Yes	2011-11-09	20/02/2012	RESIGNATION
ER	R: 375 JUSTICE MAHOMED STREET BROOKLYN PRETORIA RSA 0181 B: 375 JUSTICE MAHOMED STREET BROOKLYN PRETORIA GAUTENG RSA 0181 P: PO BOX 1935 BROOKLYN PRETORI GAUTENG RSA 0181		7305185010085	ATTORNEY	Yes	2012-02-20		

*** End of Report ***

SS-OMN-577

SS-OMN-578

3025

GRAND TOWER TRADE AND INVEST 04
Register of Members Share Accounts
Lederegister Aandelerekeninge

S = Subdivided / Consolidated

Name / Naam: JUSTUS VAN WYK
Identity No / Reg No / Identiteitsnr / Reg Nr: 6507265066082
Address / Adres:
Share Class / Klas Aandeel: Ordinary (NPV)

Shares Acquired/Aandele Verkry					Shares Transferred/Aandele Oorgedra					
Date / Datum	Transfer No. / Oordrag Nr.	Old certificate number / Ou sertifikaat nommer	New certificate number / Nuwe sertifikaat nommer	No. of Shares / Getal Aandele	Date / Datum	Transfer No. / Oordrag Nr.	Old Certificate number / Ou Sertifikaat Nr.	New certificate number / Nuwe sertifikaat Nr.	No. of Shares / Getal Aandele	Balance / Balans
09/11/2011	SUB1		1	100						100
					09/11/2011	T1	1	2	100	0

*** End of Report ***

SS-OMN-579

3026

GRAND TOWER TRADE AND INVEST 04
Register of Members Share Accounts
Lederegister Aandelerekeninge

S = Subdivided / Consolidated

Name / Naam: JAN AORIAAN VAN DER WALT
Identity No / Reg No / Identiteitsnr / Reg Nr: 7305185010085
Address / Adres: 375 JUSTICE MAHOMED STREET BROOKLYN PRETORIA GAUTENG RSA 0181
Share Class / Klas Aandeel: Ordinary (NPV)

Shares Acquired/Aandele Verkry					Shares Transferred/Aandele Oorgedra					
Date / Datum	Transfer No. / Oordrag Nr.	Old certificate number / Ou sertifikaat nommer	New certificate number / Nuwe sertifikaat nommer	No. of Shares / Getal Aandele	Date / Datum	Transfer No. / Oordrag Nr.	Old Certificate number / Ou Sertifikaat Nr.	New certificate number / Nuwe sertifikaat Nr.	No. of Shares / Getal Aandele	Balance / Balans
09/11/2011	T1	1	2	100						100

"FA 234" 3027

Sarah Moerane

2814

From: Luyanda Gantsho
Sent: 24 June 2012 19:39
To: marumofes@gmail.com
Subject: Re: Luxury Holiday Accommodation & Corporate Letting | Point Waterfront Accommodation

I did send the business card. Will send it again as numbers.

Kind regards

LG

from my iPhone

On 24 Jun 2012, at 15:26, "Festus" <marumofes@gmail.com> wrote:

> Thanx broer, will enjoy ourselves. Contact details for the person in charge? Bless u
>
> -----Original Message-----
>
> From: Luyanda Gantsho
>
> To: Marumofes@gmail.com
>
> Subject: Luxury Holiday Accommodation & Corporate Letting | Point Waterfront Accommodation
>
> ent: Jun 23, 2012 20:53
>
> >
>
> Visit the following link for information on your accommodation. My Apartment is c7-10
>
> >
>
> http://www.pwaccommodation.co.za/
>
> >
>
> Enjoy every moment if any questions or need anything just call me.
>
> >
>
> Kind regards

> LG

>

> Sent from my iPhone

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>

>

v FO Marumo

> Senior Minister

> Cosmo City Methodist

> 0812422291

> marumofes@gmail.com

"FA 235"

3029

PRASA & L GANTSHO
12.08.16

MEETING HELD BETWEEN:

MR LUYANDA GANTSHO - PRASA
MR PHILIP THORNE - BASILEUS CONSILIUM PROFESSIONAL SERVICES
MR BERNARD HOTZ - WERKSMANS
MS SARAH MOERANE - WERKSMANS

---

12 August 2016

MR HOTZ: ... and I said to you: I hope to see you soon.

MR GANTSHO: Okay. I have my family here at the hair salon.

MR HOTZ: We won't be long.

MR GANTSHO: Okay.

MS MOERANE: They're going to take a long time.

MR GANTSHO: I'm supposed to pick them up at 16h30.

MR HOTZ: Well, it all depends. Let me ask you this.

MR GANTSHO: That's fine.

MR HOTZ: Can you please do me a favour, I want you to read that first.

MR GANTSHO: Yes, what is this?

MR HOTZ: This is an affidavit. Just have a read of it, and then we can talk about what is in there.

MR GANTSHO: I'm going to be reading long documents.

MR HOTZ: No, it's not too long.

MR GANTSHO: In fact, I need to concentrate on it.

[READING FROM 0:00:52.7 - 0:06:33.0]

MR GANTSHO: Okay.

MR HOTZ: Those are the agreements. There is this one, too.

[READING FROM 0:07:05.0 - 0:10:29.0]

MR GANTSHO: Yes, sir.

MR HOTZ: Okay, So, Luyanda, the first thing I'm going to say as an attorney, because I'm duty bound to say this to you, is that you have a choice to make. The choice is either going to be you're going to say to me: Bernard - as I said the first time, you're going to get those people who are going to cooperate, and you get those people who aren't going to cooperate. The investigation is a detailed, in-depth investigation. I know, for instance, we've got the documents to show that REVEREND MARUMA stayed at your apartment. We know that. Now, the choice is as follows. There have to be proper procedures followed. That's in a labour sphere, that's not for me. You are entitled to legal representation, if you want. You're entitled to that, because there have to

be processes that are going to be followed from a labour perspective. That's not for me to deal with, that's for PRASA to deal with. Where I'm dealing is as follows. As you know, there is presently a civil court application, and there are also criminal investigations and charges being investigated by THE HAWKS. This case is one of them. SIYANGENA is one of them. We cannot, I cannot, the investigators cannot say to you: You can be indemnified from prosecution if you cooperate, even if you say: We call a State witness. The law says you can only be granted indemnity as a State witness if the prosecution introduces you as a State witness, and if, at the end of the case, the Judge finds that your testimony has been truthful in all respects will the Judge then grant you or refuse you indemnity from prosecution. So I cannot sit here and say: Luyanda, if you cooperate with this investigation and with the criminal investigation nothing is going to happen to you. I can't. It's unethical for me to say so. But I give you a choice. The choice is you're either going to tell the situation, or

you're not. If you're not, we know where we stand. If you are, then we're going to have to sit down and we're going to have to delve into it. Because MR VAN DER WALT, I'm sure, has already told you that we've been to DURBAN, because he's been very anxious, phoning CHARLENE MURPHY. MR VAN DER WALT is going to get a very nasty surprise because we've got all of the evidence to show that everything that he said on affidavit to the Court is a lie. We've got all the evidence to show that he bought these properties, not for himself, not as an investment for himself, but in fact as gratification for, amongst others, MR MONTANA and yourself. It is what it is. That's the evidence; that's the evidence that is going to be put before Court.

As I said, on the labour side of it your employer is going to be given these affidavits and they're going to be given advice. They've got to deal with the labour side, that's not me. But I say to you - and I said this in my interview with you, I said this: the one commonality is MR FERREIRA, who came from SIEMENS. MR FERREIRA, who came from SIEMENS,

who had to leave SIEMENS because of corruption, he is now the head of SIYANGENA. And then MR MONTANA, I don't know, decides to create a property portfolio just coincidentally with the attorney, MR VAN DER WALT. That's what I said to you during our last interview.

MR GANTSHO: Mmm.

MR HOTZ: Okay. This timing, 2011. We know exactly what was happening in 2011, and what happened. So I throw it out to you, and I say to you I can't deal with the labour side of it. That is going to take its course. From the investigation side you need to tell me, do you want to cooperate or don't you want to cooperate?

MR GANTSHO: As I said before, I cooperated. I've been cooperating ever since. I will cooperate, as I have been.

MR HOTZ: But do you dispute what is put in those affidavits?

MR GANTSHO: No, I don't.

MR HOTZ: Was the intention there for you to be rewarded? Is this a form of gratification that you were given, and that MR VAN DER WALT

was utilised as the person to ensure that you got your gratification?

MR GANTSHO: I wouldn't put it that way. You see, when I went - let me just tell you how it came up so that I knew about the apartment.

MR HOTZ: Let me just ask you this question. Are you talking now freely and voluntarily? We are recording it.

MR GANTSHO: Sure.

MR HOTZ: You can get a copy of the transcript. I've advised you that you're entitled to a lawyer, so you need to confirm that you're talking freely and voluntarily, you're under no duress whatsoever?

MR GANTSHO: No.

MR HOTZ: Okay.

MR GANTSHO: I'm talking freely and voluntarily.

MR HOTZ: Okay.

MR GANTSHO: You see, when I first saw the apartments we were busy with our 2010 projects at the time. At some point we would be maybe missing our flights coming back because of the duration of the meetings, and all that, so we would have to book on our own. In one instance, I think when I first saw it, one of the colleagues in

DURBAN said - when we didn't have a place to stay, myself and my other colleague - we said we were going be trying to look for B&Bs. They said: No, there are places here at the waterfront where people can stay. I said: How much does it cost? They said: No, it's pay - not pay as you go - self-catering. You can just sleep there and in the morning you go. Honestly, we went in there, we saw the apartment first and we slept there. Then I think about a month or three months later down the line - three to four months down the line something happened again, because we used to go to these meetings monthly, and we used to sleep in different apartments. I think they are all in these - what are they called, on top of the buildings?

MR HOTZ: The penthouse.

MR GANTSHO: Penthouses, yes. Then they have these jacuzzis and all those things. So we slept there. At one point I went there with the family, and we looked at the place. We slept in one of the areas. It was not booked by myself, but one of the colleagues from DURBAN, because he said to me they've got an

arrangement or whatever, a stake in there. After that - you know, you first get not interested, but curious about how do they go. Then I got curious and I went to the bottom where there is the sales office. I went in there and said: Which one of these apartments is selling? They said: Most of those up there, because they used to be owned by the owners, or they were owned by the owners or the people who developed it. Then MR MURPHY said he is selling in that C10, I think it is. We went in there, we looked at it, and said: How does it go? He said: No, it's either you buy it with the whole furniture or you buy it as an empty thing. Then as we had our meetings in DURBAN we started staying in these apartments. Then also at some point if we would come in there on a Thursday on Friday we would sleep over on Saturday and then we would invite some of the guys that we were with at the meetings, because some of them were flying from JOHANNESBURG. Then we left with their flights as well. So we said: It's fine, we've got a place in there. I think one of the guys who once went there is this MR - I

don't know his surname. He's ALVIN. He's from SIYANGENA. In one instance I think it was MR METELERKAMP - CHRIS. As I said, we would go in there and then go. They once they said to us: No, you don't have to stay in here, we've got a place in BALLITO as well. We said: No, no, no, we don't want to be staying in a place that is owned by the contractor, it will be seen as whatever. He said: Okay, no that's fine, you can stay in there.

So we really got interested in this particular apartment. Then I approached MR MURPHY so say that I would like to buy this. As I said, you know, we would go in there with the colleagues. Then this ALVIN guy said he is also interested; their company is also interested in getting an apartment as they were doing it BALLITO for them. I said: Okay, no, that's fine. He said: You look very much interested in this. So I said: Yes, I am, but I think it's too steep for me to be acquiring it. He said: Okay, but do you like the flat? I said: Yes, I do. You know, anyone would like to have a flat, but I

don't think my bond would be - because I am also paying up a bond wherever I am. Then he said: Okay, no, that's fine. Then the next day I went in there - I think it was CHRIS again. Then I got a call from this guy ...

MR HOTZ: CHRIS who?

MR GANTSHO: CHRIS METELERKAMP.

MR HOTZ: Where is he from?

MR GANTSHO: He is from SIYANGENA. Then we used to talk with him because he was the project manager for that. Then I approached this guy, MURPHY - CRAIG. At the time I said: Craig, I'm very interested in this apartment. He said: Okay, that's fine, so how do you - then we when through the whole nitty-gritty of what comes in, and all this, and all this. The next thing I said ALVIN, saying that: You can get the flat, and then when you are ready - because MURPHY was saying he was selling the flat, and then he was not going to hold it for anyone. He said: Okay, we can buy the flat, and then we will get it to be acquired by the company. He said: No, it's fine then. As you said: We will keep the flat for you. I said: But how do I do that, because I have to

pay for it? He said: No, because these flats are in rental it won't be a problem for us, as the organisation or as a company, to acquire the flat, and then maybe at some point when you are ready for it then you can talk. I said: Okay, then that's fine. But now I said: What if by that time all the things that are in here will not be here - these things that I discussed in their entirety with CRAIG. Then after that he said he was going to sell the flat as it is. I must be honest with you, I was very much interested in that flat. Then ALVIN said: No, we'll buy the flat. CHRIS said - as I said, when we go there, this is the flat that we would like to use.

MR HOTZ: Yes.

MR GANTSHO: Do you understand?

MR HOTZ: Yes.

MR GANTSHO: Then he said: Okay, no that's fine. He said: Okay, the flat - he has spoken to CRAIG, he has spoken to the lady who is in that flat, that they are in the process of acquiring. I said: Well, that's fine.

MS MOERANE: As SIYANGENA?

MR GANTSHO: They said as SIYANGENA, because I didn't know that there was any other person in there. Because they said there is a flat that they have in BALLITO; there is an apartment or a house; there is an apartment that they can add to their portfolio with this one now. I said: No, that's fine. That's when I started engaging and getting - whenever I was there I would talk to ALVIN. ALVIN would be in DURBAN for the meetings usually. Then you would say: It's fine, we'll be sitting in our newly-acquired flat. He said: No, that's okay, when will you be going there? Because we usually went there on a Wednesday or a Thursday, and then they would be coming because our meetings were staggered between the contractors. He said they would be there on a Thursday or a Friday. I said: No, we'll be there. He said: Can you please do us a favour, we're going to book that flat, can you call and pick up the key? I said: No, that's fine, we can go and pick up the key for yourselves. Then I went and picked up the key and we gave the keys to them. I think it happened - he mentioned three times there, if

I'm not mistaken. I think it happened more than that, because he mentioned three or four times, if I'm not mistaken, where I would be in DURBAN at the time, because we used to book our accommodation at the GARDEN COURT. So they would contact us, because as I said there was a pool of contractors we had there. That's how I got it, in that fashion. It was never the intention - I don't know the company. That is the truth. I don't know the company, I've never met RIAAN as a person. I hear now that they said RIANN would be interacting with them, but ALVIN is the person that I knew, is the person who would tell me about the availability of (indistinct).

MR HOTZ: But in this affidavit MR MURPHY says that you told him that you wouldn't be the purchaser, and that he would be receiving a call from MR VAN DER WALT.

MR GANTSHO: No.

MR HOTZ: He says that on oath.

MR GANTSHO: No, I saw that.

MR HOTZ: And he mentioned to us specifically that after MR VAN DER WALT got wind of the fact that we were going to go down to DURBAN, because when

I made the appointment to see MRS MURPHY, she didn't know what it was about. So she phoned MR VAN DER WALT, who is the owner, to say to MR VAN DER WALT: Mr Van der Walt, investigators are coming to see us, what is this about? And MR VAN DER WALT said to her: No, they're looking for something, they're not going to find it. Okay? Those are her words. So in fact they then phoned - MR MURPHY - MR VAN DER WALT, and MR VAN DER WALT was emphatic over the telephone to MR MURPHY: Don't you remember it wasn't Luyanda that you dealt with, it was Alvin, it was Alvin, it was Alvin? And MR MURPHY said to us - we were all there, and MR MURPHY said to us:

> "They mentioned the name Alvin. I've never met Alvin, the person I dealt with was Luyanda. And it was Luyanda who told me at the last minute, when it was time for the agreements to be signed, he said at the last minute: By the way, I'm not the purchaser, you're going to be getting a call from Mr Van der Walt. Then Mr Van der Walt phoned me. I had never heard of Mr Van der Walt, I thought it was quite

weird, and why was Mr Van der Walt phoning me?"

So let's accept one thing, because I've been doing this for a long time, you've been caught. You've been caught. Okay. I'm not buying your story.

MR GANTSHO: Mmm.

MR HOTZ: So I'm not going to try and force you to do anything, that's not how I operate. I can tell you right now that the evidence that we got - and why would you write the following email to REVEREND FO MARUMA:

"Visit the following link for information on your accommodation. My apartment **(my apartment)** is C7-10. Thanks, Bru, will enjoy ourselves. Contact details for the person in charge. Bless you."

Okay? I don't buy it.

MR GANTSHO: Sure.

MR HOTZ: At the end of the day it's not for me to say you're right or wrong, it's not, it's for the Court. I'm going to present a case to the Court, and you're either going to succeed in your defence or you're not going to succeed in

your defence. It's as simple as that. We can see exactly what MR VAN DER WALT has been up to with the properties. And the version that has been put on oath, you can accept that we've got documentary evidence to show that it's absolute nonsense. I've got it and it's going to go in this affidavit. There it is. So MR VAN DER WALT will have to deal with it. He's going to be charged with perjury, amongst other things. Let him deal with it. MR MONTANA is going to have to deal with the lies as well, and you're going to have to deal with the lies.

MR GANTSHO: Okay.

MR HOTZ: So what I'm saying to you, I suggest you think about it, because already what you've said, without really realising it, is that what SIYANGENA did is they gave you a gratification by buying this property, by saying: I'll tell you what, we're going to buy the property, you will have the use of this property, and when you're ready to buy it in the never-never, we'll sell it to you. Okay?

MR GANTSHO: Mmm.

MR HOTZ: That's corruption.

MR THORNE: Was it going to be at the same price, the purchase price?

MR GANTSHO: When?

MR THORNE: When they then on sell it to you?

MR GANTSHO: Well, as I said, if I could afford it. That was the whole thing. So maybe it was going to be at the going rate, when I could afford it or not. I don't know.

MR THORNE: But you would obviously have first refusal?

MR GANTSHO: Yes.

MR HOTZ: That, to me, illustrates a major problem, because you're in a conflict position. It is your supplier. You are the "project manager". You made certain statements. You made certain statements in your interview.

> "At the time we didn't know that Siyangena is the only one that is supplying this equipment. They knew or they maybe knew, but at PRASA we didn't know that they were the only ones. When we got the specs that we will be wanting these equipment at any time, they were the sole suppliers of Dallmeyer."

We went through all of that. We know exactly how SIYANGENA came into the picture, we know

exactly how MR FERREIRA left SIEMENS, and we know it doesn't make commercial sense for a company like SIEMENS to give up their exclusive rights to their equipment, such as DALLMEYER and OTEC BABYLON to a company that just starts - a brand-new company that just starts. Don't worry, you can have the exclusive rights to that equipment, and lo and behold it's that equipment that gets installed. We know all of that. That's in the papers. What I'm saying to you is that in terms of the Prevention and Combating of Corrupt Activities Act you have received a gratification. You have received a gratification. A gratification can either mean I give you money, I give you the ability to go and stay in a penthouse, where I say: Don't worry, Luyanda. You're the one who insisted on that TONY TORRENS painting.

MR GANTSHO: Yes?

MR HOTZ: The seller didn't want to sell you that one. That was his favourite, so he was naughty, he took it down, and when you went in there you saw it wasn't there, and you phoned him and you shouted at him, and you said: Where is my

painting? Okay? I've been down this path many, many times. The choice is yours to make. You are the one who has to live with the consequences, not me. You're the one who has to live with the consequences. All I'm saying to you is just as SIYANGENA are trying to pull the wool over the Court's eyes - and it's not going to work for them - so too is it not going to work here. And you mentioned something very important, because you mentioned somebody who has also been in the news lately, and who is the subject matter of the criminal investigations. You mentioned a very interesting entity, SIYAYA, MR MABUNDA. It's in here. So I've said enough. I need you to go home and think. You're going to have to deal with the repercussions that happen as a result of this. There is no other way of putting this, this is a gratification. You failed to disclose it, and we gave you the opportunity in the last interview. In the last interview I sensed that there was something you wanted to tell us. I sensed that you were feeling very uneasy about what was going on. I extended the branch to you.

I know that when I left you started opening up a little bit, but something stopped you. I understand that this is an exceptionally difficult investigation, trust me, because you never know who your friend or your foe is, you never know who is going to exert what pressure, be it political, be it financial, be it threatening or intimidatory. I understand all of that, but I can only focus on what I am doing. The evidence is there. I'm not reaching any conclusions other than evidence. I would not have been in the position to have this meeting with you had I not satisfied myself. I went personally to meet with these individuals, and I'm telling you that's the evidence. You've got to deal with it.

We would like you to cooperate; we would. And let me say this to you. What we can do, as a complainant - we cannot guarantee this, and it's important that you understand it - all we can say to the State is that you are prepared to cooperate. As I explained to you no indemnities from prosecution can be given to you in advance. The only way it can be given - it's called a Section 204 witness.

You can only get that indemnity if at the end of the trial the Judge says: Mr Gantsho, I find your evidence to be truthful, I grant you the indemnity from prosecution. Nobody can give you anything in advance. We'd like you to cooperate. You need to make the decision. You need to make the decision, I'm not making it for you. I have to advise you of your legal rights. You know what your legal rights are, but this isn't going to end here. The evidence is coming like more and more and more. We know about ELIC(?), we know about your trip to WISCONSIN in 2015, we know about the brochure that you prepared for ELIC and you got the PRASA in there, and all that. We know about all that. In 2012 you prepared a brochure.

MR THORNE: Your strat document.

MR HOTZ: Your strat document. We've got all of that. We've got everything.

MR THORNE: It was a couple of years ago.

MR HOTZ: We've got over 1.3 billion documents, and what the problem is is that people don't realise they put something in writing, and five years later they say something different. We've got

what you said five years before. That's the evidence. That's all we can do as lawyers, is work on the evidence. But you need to make a decision.

MR GANTSHO: Okay.

MR THORNE: While we're on that point tell us about the TONY TORRENS painting. You acknowledged it now when BERNARD brought it up, that it was taken out, and then put back. What happened there?

MR GANTSHO: No, the thing is, as I said, he said he was going to sell everything included in the house. So that picture was there, just like that one as it is now. Then after he said he was going to include everything in the purchase price, as it were, he mentioned that that painting was about R60 000 or so, and now he was taking it off.

MR THORNE: It was his favourite.

MR GANTSHO: Yes, but why did he put it in as part of his deal then? That was the thing. That's where I said ...

MR THORNE: So what happened?

MR GANTSHO: I don't know.

MR THORNE: No, you had a discussion with him.

MR GANTSHO: Yes, he put it back.

MR HOTZ: You told him: It was included in the sale.

MR GANTSHO: That's what I said.

MR HOTZ: Yes, it's listed on the inventory. You told him.

MS MOERANE: Can I ask a quick question. Were you involved in the negotiation of the sale, because the affidavit from CRAIG MURPHY says that he negotiated the terms of the sale with you?

MR GANTSHO: No. Quite honestly I never said - what he said was all the apartments, that one and the others, were going at that rate. There were no negotiations as such, because I said: Well, it's quite steep for me to buy it.

MS MOERANE: But what I'm saying is did you ever have any discussions with him, or rather let me put it this way. He says that he had discussions with you.

MR HOTZ: He says expressly:

> "As I've said above, all negotiations of the terms and conditions of the sale of the unit and the furniture, prior to the presentation of a written contract, were with Mr Gantsho. During these negotiations Mr Gantsho further indicated

that he required the sale to be a suspensive sales, in other words the purchase price would be paid over a period of time, in tranches to be determined between the parties. It was only at the stage when the agreement was to be reduced to writing that I was informed by Mr Gantsho that the purchaser of the property was not himself, but rather another person. Although Mr Gantsho did not indicate the identity of the purchaser at that stage, he advised me that a Mr Van der Walt would contact me to provide further details."

That's what he said on oath, and this is the affidavit that is going to be put before the Court.

MS MOERANE: So my question is around that. Did you negotiate with him that: This is what is going to happen, we are going to buy this property, and then only at the end somebody else came in to sign the agreement?

MR GANTSHO: No. No, I never got into this. All he said is this is what is going to be selling, and this is the inclusive thing that is going to

be there. That's why I'm saying it's suspensive, or whatever it is. All I said is: I cannot afford it at this price. It's then I said - who was it, ALVIN? If it's not ALVIN, it was CHRIS ...

MR THORNE: ... METELERKAMP from SIYANGENA?

MR GANTSHO: Yes.

MS MOERANE: Both ALVIN and CHRIS are from SIYANGENA.

MR GANTSHO: Yes. With other guys - as I said, we used to go there with other contractors when we were occupying the flats, prior to this thinking of: This is a good flat, or not.

MR HOTZ: Can I ask you this question. I'm not buying it, and we'll bring it to an end. PRASA, your employer - if you go for a meeting to DURBAN for work, your employer pays for your accommodation.

MR GANTSHO: That's correct.

MR HOTZ: I don't buy it. I don't buy it.

MR GANTSHO: Let me explain how it happens. That one happens. You go there, you book your flights down and the accommodation. Then when you overstay your stay there, we used to phone PRASA to say: Our meeting has taken long, the meeting has done this. Then they would say:

It's fine, what you can do then is either go back to the hotel, and we will remake the booking, or you will look for other accommodation. Because in the morning when we check out, for instance if we're going to check out on a Friday, then we will check out and everything and we'll go. So you cannot go back there. If we have to go back there, it will be a new booking which will have to be redone by PRASA.

MR HOTZ: But the problem is these bookings here. With these bookings here, the way it works, as you read MRS MURPHY's affidavit, ordinarily if somebody wanted to book a unit they would phone the managing agent, the managing agent would do the booking, and you would be liable to pay the rental to the managing agent. The managing agent would deduct the administration cost and submit the rental to the owner of the unit.

MR GANTSHO: Yes.

MR HOTZ: The owner would say: Mr Gantsho is coming over that period.

MR GANTSHO: Correct.

MR HOTZ: All you would do is go and collect the keys,

they would deduct an administration fee, and no rental would be paid, because the owner says: My person is staying there over that period.

MR GANTSHO: Yes.

MR HOTZ: So in effect PRASA, unbeknown to them, is also receiving a gratification, because their employee is staying on work-related matters at premises owned by the service provider, and is not paying rental for their employee's stay there.

MS MOERANE: While we're on that, and whether or not it's work related, a lot of the stays - in fact I think all three of them - were over weekends.

MR GANTSHO: Mmm.

MS MOERANE: So were those personal or were they work related?

MR GANTSHO: No, no. Those ones? As I said, if it was a weekend, on a Friday or a Saturday.

MS MOERANE: No, most of them are on a Friday.

MR GANTSHO: On a Friday?

MS MOERANE: There is one that is on a Saturday, I think.

MR GANTSHO: What I was saying to you, we would stay there. It was before the sale, and all that, before the bookings. Just before that, before we

even had an interest, if you can say an interest, or being curious about getting into the flats, how we knew about the flats - these ones, yes, these ones happened after, because we would be there on business and then these guys would be coming in on their own. Do you understand what I'm saying? So they would be coming into DURBAN while we were already in DURBAN.

MS MOERANE: Oh, so when they said you were picking up the keys, you were picking up the keys so that you could give them to these guys to stay there?

MR GANTSHO: That's what ALVIN and them used to say, yes.

MR THORNE: For ALVIN to stay?

MR GANTSHO: Sorry?

MR THORNE: For who to stay?

MR GANTSHO: No, not for me to stay.

MR THORNE: Who?

MR GANTSHO: For them, because I would pick up the keys.

MR THORNE: Who is "them"?

MR GANTSHO: ALVIN and whoever.

MR HOTZ: But why were you now their scivvy? With the greatest of respect, you are the client. You are the person to whom they should be bowing down and doing everything in their power to

make sure that you are treated like a king, and respected, because at the end of the day you are the person who is going to sign off on invoices that they are going to get paid on. How dare a client treat you as a scivvy, and say: Go and collect the keys for me, Luyanda, and bring them me. It doesn't work that way.

MR GANTSHO: No.

MR HOTZ: I'm not buying it.

MR GANTSHO: I understand. I understand where you're coming from on that one. It was not a matter of just going there as a messenger, for me to be picking up the keys. His family are in DURBAN with the guys. And then they say: I'll be coming. You know what, we used to have - I don't know what to say - a nice time after the meeting.

MR HOTZ: I've got you, I've got you. Luyanda, let me say this to you. I don't want you to say more now because I think you're compromising yourself. I can tell you I'm not buying it. I need you to give thought over the weekend to: are you going to cooperate, or are you not. The labour side you're going to have to deal with. Our recommendations are there. On

the other side you have to make a decision. I can't do more than that. I'm not going to convince you that your version which you're telling me is wrong, I'm just telling you I don't believe it.

MR GANTSHO: Sure.

MR HOTZ: You need to convince me, you need to bring evidence, and you need to either say: I want to cooperate on this, or not. You know what PRASA is seeking to do with SIYANGENA. You know MR FERREIRA, you told us the stories of MR FERREIRA. You know. You know he's a very powerful individual who exerts influence in a number of circles, and I understand all of that. MR VAN DER WALT is going to have to deal with his problems. He'll deal with that. Grown men mustn't cry. But I'm going to call the meeting to a close. You need to give serious thought to it, and I think what I would suggest you do is PHILIP will give you his contact number. I think you need to let PHILIP know on Monday morning which way you want to go.

MR GANTSHO: Can I just get the dates there?

MR HOTZ: 1 to 3 February 2013.

MR GANTSHO: The 1st to the 3rd?

MR HOTZ: Yes, February 2013. 20 to 22 September 2014.

MR GANTSHO: 20 to ...?

MR HOTZ: 20 to 22 September 2014, and 3 to 6 October 2014. I know there are more, but ...

MR THORNE: Can I ask one more question? Who did you contact, and how was contact made in terms of setting up the owner bookings? In other words, when you needed the accommodation, because now you had overstayed, and you wanted to have accommodation, and what have you, who would you make contact with to arrange for the accommodation to be available?

MR GANTSHO: No, as I said, these ones were not for me to stay there on these weekends. The only one that I made the accommodation for was for REVEREND MARUMA. What I did, yes, I told him his number ...

MR THORNE: Who did you phone?

MR GANTSHO: I phoned CHARLENE.

MR THORNE: You phoned CHARLENE?

MR GANTSHO: Yes, I phoned CHARLENE. No, it was before that. Yes, it was CHARLENE at the booking offices, and then they said they would come back to me.

MR THORNE: For the Reverend?

MR GANTSHO: Yes.

MR HOTZ: So you said to her: I want the Reverend to stay in my unit?

MR GANTSHO: Well, I said you know, the way that we - because I had that interest in it, I referred to in that way, yes.

MR HOTZ: It's not me. I'm reading your language.

MR GANTSHO: Yes.

MR HOTZ: You said:

"My unit is ..."

MR GANTSHO: To him.

MR HOTZ: To the Reverend.

MR GANTSHO: Yes, because I already made the arrangements on the other side.

MR HOTZ: Correct:

"My unit is ..."

MS MOERANE: Sorry, we keep saying we are going to close this meeting and there are more questions. Just one last question. Remind me again, when were you on suspension?

MR GANTSHO: In 2014/2015.

MS MOERANE: So when did it start?

MR GANTSHO: It started in April.

MS MOERANE: Of 2014?

guys?

MR GANTSHO: Yes.

MS MOERANE: So while you were on suspension you were still in contact with the SIYANGENA guys, to the point where they knew where you were?

MR GANTSHO: Yes, I was in contact with - not to know where I was. Because I think at the time I was in DURBAN with - I was going to meet MICHAEL, or so. But yes, the guys contacted me on that.

MR HOTZ: MICHAEL who?

MR GANTSHO: MICHAEL BALOYI.

MR HOTZ: Who is MICHAEL BALOYI?

MR GANTSHO: It's a guy I used to work with.

MR HOTZ: You've read in the newspapers and you've heard interviews where MR MONTANA has said he has his own property portfolio. And you've read where it says that these properties are owned by MR VAN DER WALT's company, called PRECISE TRADE.

MR GANTSHO: Yes, I've heard that.

MR HOTZ: And MR VAN DER WALT says that MR MONTANA has absolutely no interest in those properties whatsoever. He says that. We've got the evidence to show the contrary, just as we've got the evidence to show that MR VAN DER WALT

once again is involved in this matter, buying property for a PRASA employee who is in a position of control for the SIYANGENA contracts. Just think of that picture, think about it, and either you're going to come back and say: I want to talk, I want to cooperate, or not. The consequences are yours.

Anything else? No?

MS MOERANE: No.

MR HOTZ: Thank you.

MR THORNE: What were you asked to do in the (?) ESTATE? They are buying a property on your behalf and holding it for you.

MR GANTSHO: No, they are not buying property on my behalf. There was never a promise or talk - as I said, that property was going to be bought and be kept up until then.

MR THORNE: For you.

MR GANTSHO: There was no direct incentive to say: You do this, we'll do this.

MS MOERANE: But why would SIYANGENA buy a property because you had expressed an interest in it?

MR HOTZ: It doesn't make sense. I'm sorry, it doesn't make sense to me.

MR GANTSHO: I understand. I understand.

MR HOTZ: And the more questions I ask, the more it just doesn't even make sense. I'm sorry. MR VAN DER WALT must be the wealthiest attorney I've ever come across, because for him to pay cash like he pays cash for properties in SANDHURST, HURLINGHAM, DURBAN and all over the place - PLETTENBERG BAY, you name it. We've got all of them. We've got all of them. The choice remains yours.

I'm not asking any more questions, because you're not going to give anymore answers today. I can see it. As I said, I'm not putting you under any duress whatsoever. You need to think about it, and you need to take your own legal advice. There are going to be consequences both ways, and you need to deal with it.

Thank you very much.

MR GANTSHO: Okay.

MR THORNE: Do you have my number?

MR HOTZ: Can you give LUYANDA your number. Luyanda, please feel free to phone.

THE MEETING ADJOURNS

TRANSCRIBER's CERTIFICATE

This serves to confirm that the aforegoing is a true and correct transcript of the meeting recorded on 12 August 2016 by electronic means in the matter between:

PRASA

and

MR LUYANDA GANTSHO

(Pages 1 - 36)

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REPLYING AFFIDAVIT TO THE AFFIDAVIT FILED BY

MR TSHEPO LUCKY MONTANA

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I, the undersigned,

ONICA MARTHA NGOYE

do hereby make oath and state:

1. I am an adult female. I am currently employed as Group Executive: Legal, Risk and Compliance by PRASA at 1040 Burnett Street, Hatfield, Pretoria.

2. Unless the context clearly shows the contrary is intended, the facts herein contained are within my own personal knowledge and are to the best of my belief both true and correct.

3. I depose to this affidavit in response to the affidavit filed by Mr Tshepo Lucky Montana ("Mr. Montana") in so far as it relates to me. At the time of deposing to this affidavit, I had not received any of the annexures to the affidavit of Mr.

Montana. I therefore reserve the right to supplement this response should it be necessary after being furnished with the annexures to the affidavit of Mr. Montana.

4. Before responding seriatim to Mr. Montana's affidavit, I make the following general comments:

4.1. It is now a matter of public record that PRASA was one of the State Owned Enterprises that was bedeviled by rampant corruption, maladministration and fraud over many years. In the process the state has lost billions of Rands. In my view corruption at PRASA did not stop on 15 July 2015 when the Board released Mr. Montana from serving the remainder of his notice period. One of the reasons that corruption continued unabated even after Mr. Montana left PRASA is because those that were responsible for corruption during the tenure of Mr. Montana were not investigated by the Directorate for Priority Crime and Investigation ("DPCI"). Therefore the culture of impunity in relation to PRASA-related corruption and fraud still persists to this day and still fans corruption, fraud and maladministration at PRASA. Those of us who are fighting corruption, fraud and maladministration are still hunted down with a view to force us out of PRASA.

4.2. The following publicly available information point to the rampant corruption at PRASA:

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4.2.1. The report of the Public Protector entitled Derailed and issued on 24 August 2015 ("the Derailed Report");

4.2.2. The report issued by Werksmans Attorneys after they were commissioned by the Board to investigate close to 200 transactions – from this investigation, PRASA launched criminal complaints in relation to the Siyangena and the Swifambo transactions and submitted 42 reports in terms of section 34 of the Prevention and Combatting of Criminal Activities Act, 2004, Act No. 12 of 2004 ("the PRECCA Act"). The Board that was led by Mr. Popo Molefe took the unprecedented step of launching an application to compel the DPCI and the National Prosecuting Authority ("the NPA") to properly investigate the matters brought before them. Subsequent Boards did not persue this application and, as a result, the criminal complaints submitted by PRASA have still not been properly investigated.

4.2.3. The reports issued by the Auditor-General South Africa ("the AG"), particularly those issued after the Derailed Report and after the Werksmans investigation report. Although Mr. Montana made application for the review of the Derailed Report, all indications are that he has now abandoned it. In any event, the review application

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was stillborn as all the recommendations have been implemented and a number of PRASA employees were dismissed and/or disciplined as a result of the implementation of the Derailed Report. Even if Mr. Montana had a cogent case for review (in my view he had a hopeless case), an order in his favour will be impossible to implement at this stage;

4.2.4. The reports that were issued by about 12 independent law firms, auditing firms and forensic investigation firms commissioned by National Treasury in line with the remedial steps taken by the Public Protector. These reports found irregularities in an overwhelming majority of the cases investigated by these firms and, in some instances, recommended that the Board of PRASA should submit reports in terms of section 34 of the PRECCA Act.

4.3. Instead of following the money, the approach of the DPCI was to re-investigate the irregularities that have been recorded in the Swifambo and Siyangena civil cases by interviewing various people who were in the various bid committees. In fact, the DPCI delayed inexplicably for more than a year to receive a report on the cash flow analysis relating to the Swifambo transaction. I believe that if this cash flow analysis can be shared with the Commission it will reveal to the Commission the reasons why the DPCI took so long to receive the information and why the investigation into

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the Swifambo transaction is not moving. I have testified on the information relating to transactions that are suspected to be gratification paid to Mr. Montana by persons and entities linked to Siyangena, the Commission's investigators have also investigated these purchases and did not take long to find more evidence that is consistent with PRASA's suspicion that these property purchases were gratification to Mr. Montana. It beggars belief that the DPCI with all its statutory powers of investigation have not found similar evidence more than 4 years after these matters were brought to its attention.

5. I respond to the affidavit of Mr. Montana below.

6. **AD RELATIONSHIP BETWEEN MR. MONTANA AND MR. MABUNDA**

6.1. In paragraph 4 and paragraph 28.12, Mr. Montana confirms that he (Montana) worked for the Department of Public Enterprises ("the DPE") and the Department of Transport ("the DoT"). The evidence placed by PRASA's witnesses before the Commission is to the effect that the relationship between Mr. Montana and Mr. Makhensa Mabunda appears to have its genesis when Mr. Montana and Mr. Mabunda were Deputy Directors General at the DPE and that a company that was led by, amongst others, Mr. Mabunda was awarded a contract that was managed by Mr. Montana at the DoT. Mr. Montana does not deny these

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allegations.

6.2. The only mention of Mr. Mabunda is only in 3 of the 449 pages of the affidavit of Mr. Montana and is in relation to an alleged unlawful surveillance on Mr. Mabunda by a person named Dion Pienaar. This is very strange as the evidence presented before the Commission by Mr. Molefe and I is that Mr. Mabunda's companies named Siyaya ("the Siyaya Companies") benefitted a lot of money from PRASA. This was stated in the context of the above history shared by Mr. Mabunda and Mr. Montana.

6.3. Mr. Montana has failed to take the Commission into his confidence to explain how someone that he appears to share a rich history with ends up being awarded contracts worth billions at PRASA. In the exposition that relates to Siyaya and the secret settlement of their claims, PRASA's witnesses also state that some of the Siyaya Companies were voluntarily liquidated shortly after 15 July 2015. It appears that the Siyaya Companies thrived when Mr. Montana led PRASA and were liquidated (voluntarily) shortly after Mr. Montana left PRASA.

7. AD PARAGRAPH 11

The allegation that I am corrupt and am involved in wrongdoing is a lie.

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8. **AD PARAGRAPH 23**

As stated above, at the time of deposing to this affidavit, the annexures to Montana's affidavit had not been received by me.

9. **AD PARAGRAPH 26**

Most of the allegations that I make are supported by documentary evidence, I do not recall coming across Mr. Montana challenging the authenticity of the documents that my evidence relies on. The documents that I rely on are the basis of my evidence.

10. **AD PARAGRAPH 28.8**

10.1. I can confirm that, in my honestly held personal view from my interactions with Mr. Montana, I believe that he is a person who lacks intergrity.

10.2. The investigation into the Siyangena transaction has uncovered allegations of what appears to be corruption against Mr. Montana. These allegations have been shared with the DPCI. Unfortunately, over the last more than 4 years, not much has been done by the DPCI to

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investigate these allegations. The investigation by the Commission has also found more information that is consistent with these allegations. This information relates to the source of funds for some of the dubious property transactions and the absolutely bizarre thing that after the publication of these allegations these very expensive properties have been reduced to construction sites where there is no activity; only broken walls and scaffolding.

10.3. I can therefore state that there is definitely serious allegations of corruption against Mr. Montana. These serious allegations are supported by documents and independent witnesses. Had these been investigated, there would be proof of whether Mr. Montana is corrupt or not.

11. AD PARAGRAPHS 35 to 37

11.1. I can confirm that billions of state monies were lost through corruption at PRASA and that, to date, the DPCI has failed to uncover the identities of those that are involved in the corruption.

11.2. In relation to the Swifambo transaction, the investigation that was conducted by Werksmans Attorneys and the Gauteng High Court (Johannesburg) found, amongst others, that:

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11.2.1. the tender that was awarded to Swifambo was rigged to favour Swifambo; and

11.2.2. the scores awarded to the Swifambo by the Bid Evaluation Committee were falsified by the person that was supposed to consolidate them to ensure that Swifambo is the only party that passed the technical hurdle of the tender. To this end, the Commission will note that in paragraph 1036 of Mr. Montana's affidavit he states that the threshold for the technical evaluation *"was set at 70%"* and in paragraph 1037 he states that Mafori Finance obtained exactly 70%. In paragraph 1038 Mr. Montana states that *"[o]nly Swifambo Rail Leasing met the 70% criterion to move to the price and BBBEE evaluation"*.

11.3. On appeal, the Supreme Court of Appeal ("the SCA") found unanimously that the Swifambo transaction was tainted by corruption. The SCA found that:

"[41] There is undoubtedly a public interest in entertaining the application for review. At least R2 billion of taxpayers' money has been spent in pursuit of ***a fraudulent and corrupt tender*** ...

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*[42] In this matter, both PRASA and Swifambo were not innocent. **The award of the tender to Swifambo was corrupt** ..."*

11.4. Notwithstanding these findings by the investigators, which were confirmed by the courts, the DPCI has not been able to find the perpetrators of the tender rigging, manipulation of scores and corruption.

11.5. In the Siyangena transaction, PRASA's investigators and later the Commission's investigators found evidence of what appears like gratification to Mr. Montana. For example, the investigations of the Commission found that the R2,5 million that funded the payment of the bond towards the Parkwood property by Mr. van der Merwe was paid after a payment was made by TMM Holdings to Mr. van der Merwe's law firm. At paragraph 2153, Mr Montana states that TMM Holdings is *"the majority shareholder of Siyangena Technologies"*.

11.6. Over and above the evidence provided to the DPCI in relation to the Siyangena and the Swifambo transactions, the former Board of PRASA submitted 42 reports to the DPCI in terms of section 34 of PRECCA.

11.7. Therefore, there is no doubt in my mind that billions of Rand were lost by the State to corruption at PRASA. The only thing missing at this point

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is finding those that are responsible for the corruption. Some of the billions lost through corruption were lost during the tenure of Mr. Montana. Only a proper investigation can show whether Mr. Montana is implicated in corruption or not. This is why it is crucially important for the DPCI to conduct a proper investigation of, amongst others, these matters.

12. **AD PARAGRAPH 57**

The allegation that I am facing any allegations or investigations of corruption and fraud is another lie. Mr. Montana reported me to the DPCI alleging corruption and fraud against me in relation to SA Fence and Gate (Pty) Limited ("SAFG"). Because I had nothing to hide, I submitted a statement to the DPCI in relation to this transaction attached hereto marked MN1 and, from what I was informed by the investigating officer, no merit was found by the DPCI in this complaint. In my view, Mr. Montana's report to the DPCI was a desperate attempt to tarnish my name. Only a handful of Mr. Montana's die-hard fanatics will believe this unadulterated lie.

13. **AD PARAGRAPHS 966 to 969**

13.1. In the founding affidavit that I deposed to in the review application of the Siyangena awards, I spend some time asking the court to admit my

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evidence to the extent that it is hearsay. It is bizzare that Mr. Montana states that his affidavit *"exposed the fact that* [my] *affidavit constitute*[d] *hearsay"* evidence. There was nothing to 'expose' in this regard.

13.2. To the extent that this evidence was hearsay, the court admitted same and, based on it, reviewed and set aside the awards to Siyangena. This is even after the court took the unprecedented step of inviting the persons that I had named in my affidavit including Mr. Montana. As an example of the veracity of the evidence I submitted to court, where I indicated that the Board was misled by Mr. Montana in relation to Phase 1 of the ISAMS project, Mr. Tumi Mohube who was the then Company Secretary confirmed that the Board was misled by Mr. Montana.

14. AD PARAGRAPHS 970, 1622 and 1623

14.1. The allegation that I was incompetent and underperformed as a Chief Executive Officer ("CEO") of Intersite Asset Management (Pty) Limited ("Intersite") is another lie. It is also another lie that Mr. Montana conveyed this to me from the Board of Intersite. It is curious that in 449 pages, Mr. Montana fails to give examples of my alleged incompetence and underperformance. This is simply because, these are no more than a figment of his imagination.

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14.2. During my tenure at Intersite, Intersite had clean audits and paid bonuses to its employees. Intersite is the only entity in the PRASA Group to have successive clean audits, to have a proper performance management system and to pay its employees (including I as CEO) performance bonuses. The performance bonuses were approved by the Board of Intersite.

14.3. In any event, the portfolio that I was asked to run at PRASA was bigger than the work that I did at Intersite and had a much larger influence in the PRASA group than what Intersite had.

14.4. During December 2014 and January 2015, (three months after I was, according to Mr. Montana, removed for incompetence and underperformance by a Board that was chaired by Mr. Montana) Mr. Montana went on leave and asked me to act as Group CEO of PRASA. I attached hereto annexure MN2. There is no way that Mr. Montana could have asked me to act as Group CEO of PRASA if I was transferred for incompetence and underperformance at Intersite, a mere three months before he asked me to act in his stead. Mr. Montana was the Chairperson of the Board of Intersite when the transfer happened.

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15. **AD PARAGRAPH 971**

This evidence is supported by Ms. Mosholi who filed a confirmatory affidavit in the Siyangena review application as annexure FA36 to my affidavit in that application. That Mr. Montana still asks for evidence of this almost three years after it was provided is an indication that, either he did not read the Siyangena review application or is taking a chance in his affidavit before the Commission. Either way, it shows that Mr. Montana lacks intergrity, as I stated above.

16. **AD PARAGRAPH 972**

There is no way that I could have changed my evidence on the Siyangena matter as I was literally reading out of the papers filed in the Siyangena review application. I must state that this is but one of the aspects where things are called facts by Mr. Montana from being plucked out of thin air. The affidavit of Mr. Montana has many similar things.

17. **AD PARAGRAPHS 974 to 986 and 995 to 1026**

I persist with the allegations that I made in the Siyangena review application in this regard. These allegations are supported by documents found on this project by the Werksmans Attorneys

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18. **AD PARAGRAPH 1144**

The allegation that Fani Dingiswayo is my lackey is another lie. I don't work with lackeys and don't require anyone to work in a survile manner before me. The Fani Dingiswayo that I know and have worked with over the past six years is not a lackey of any person. The general consensus about Fani Dingiswayo, which I share, is that Fani Dingiswayo is a consummate professional who knows what is in the interests of PRASA and serves that with all his might and his heart.

19. **AD PARAGRAPHS 1413 to 1416, 1423 and 1424**

19.1. The request that was placed before me in relation to the SAFG transaction was for me to support the condonation of irregularities that were committed by the project team. I was informed that about R33 million of the R58 million had been spent and R24 million of the R58 million had been committed at the time that the request was brought to me. I was also informed that the person responsible for the irregularities had been disciplined and dismissed.

19.2. I supported the above request and it was taken to the Board and the Board approved it.

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19.3. The allegation that I *"approved and paid* circa *R36 million of the R58 million before any work had commenced"* is another lie. It is also a lie that I omitted to include this transaction in my report back to Mr. Montana when he came back from leave. According to my recollection, I only disturbed Mr. Montana's leave with only two: this transactions and my refusal to approve a payment to Swifambo.

19.4. Whilst I was considering this request I was placed under pressure by the then CEO of PRASA Technical, Mr. Saki Zamxaka, to approve this request. He informed me that he was under pressure from Mr. Montana to finalise this approval. I deemed it necessary to phone Mr. Montana to indicate the information that I had sought from Mr. Zamxaka and he understood my rationale for insisting on such information before supporting the condonation request. The information I sought was duly provided and I indicated my support of the condonation request.

19.5. I have neither a corrupt relationship and/or a conflict of interest in relation to SAFG. Group Legal Services, which I lead is currently involved in litigation between PRASA and SAFG. I was one of the witnesses who gave evidence on behalf of PRASA in this litigation.

19.6. In relation to the disciplinary hearing, the person that had the authority

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to discipline me at the time, Mr. Nkosinathi Khena ("Mr. Khena") decided not to proceed with the disciplinary hearing as he, understably so, found no merit in it. Mr. Khena informed me that he met with a Mr. Sello Maluleke[1] and Ms. Nonhlanhla Kondowe to discuss the charges against me. Mr. Khena informed me that he was shocked to find out that these two employees who were running this matter did not have any information relating to the charges against me, including the charge relating to SA Fence and Gate. They also could not say who would be the witnesses in these disciplinary hearing.

19.7. If there was any merit to the charges, any disciplinary hearing would have had to include Mr. Zamxaka[2], Mr. Josephat Phungula[3] and I. To show that I was the sole target of these baseless charges, in his countless publications of this transaction and how irregular it is claimed to be, Mr. Montana says nothing and has never said anything about these two gentlemen that also reported to him and participated in this transaction that he calls irregular, fraudulent and corrupt.

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[1] A senior manager in the Employee Relations of PRASA who was dismissed for participating in a unlawful march against the Board of PRASA

[2] The then end-user (Chief Executive Officer of PRASA Tech) who initiated the request for the condonation. The other PRASA employee with a questionable doctorate.

[3] The then Group Chief Procurement Officer who assisted the end-user to make the request to me

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20. **AD PARAGRAPHS 1624, 1626 and 1627**

I stand by my testimony on my dismissal by Mr. Montana on 20 May 2015 as well as I what I have stated above about the SAFG transaction.

21. **AD PARAGRAPH 1628**

21.1. I was not involved in the appointment of Werksmans Attorneys. They were appointed by the Board of PRASA whilst I was suspended by Mr. Montana. Mr. Montana sees no contradiction in quoting an e-mail from me to this effect and confirming it, on the one hand, and insisting that I was involved in the appointment of Werksmans, on the other.

21.2. The fees of the Werksmans investigation were paid out of the cost centre of the Group CEO as normally happens with projects that are led by the Board and/or the Group CEO.

22. **AD PARAGRAPHS 1664 and 1667**

The allegation that I was involved in "behind-the-scenes efforts" to bring Werksmans into PRASA in 2014 is another lie. I spent 8 months of 2014 as a CEO of Intersite. Werksmans was doing work for PRASA from 2011.

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Conclusion

23. Mr. Montana has decided to share with the Commission allegations against me that are without basis. He has made these allegations whenever time and opportunity permitted. Where these allegations were made formally, they were found to be without a basis and without witnesses. The only reason that I believe Mr. Montana feels the need to repeat these discredited allegations over and over again is because I have made allegations that implicate him in wrongdoing. I have made these allegations because of the position that I hold in PRASA and the values of honesty and integrity that I hold dear.

24. By law, Mr. Montana and all those responsible for the billions of losses that the State suffered at PRASA, are innocent until proven guilty by a court of law. However, those that are presumed innocent know whether they are innocent or not. In instances where the wheels of justice have turned as slowly as they have in the criminal complaints brought by PRASA, the persons legally presumed to be innocent have been found to be the ones responsible for lethargic movement of the wheels of justice. This, they have found to be the only effective way to avoid being held accountable for their criminal conduct.

25. One can only hope that the Commission can assist the wheels of justice to move faster so that there is accountability for the billions lost by the State at PRASA

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and the suffering caused to the commuters of PRASA.

Onica Martha Ngoye

I certify that this affidavit was signed and sworn before me at Germiston on this the 03rd day of December 2020, by the deponent after the deponent declared that she knew and understood the contents of this declaration, that the deponent had no objection to taking the prescrined oath and has taken the prescribed oath which the deponent considered binding on her conscience, having complied with regulations contained in Government Notice R1258 of 21 July 1972, as amended.

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COMMISSIONER OF OATHS

Name: **Philladelphia Kedibone Mothupi**

Address: Commissioner of Oaths
Practising Attorney R.S.A.
12th Floor, The Forum
Sandton Square
No2 Maude street,Sandton

Designation:

MH 1

STATEMENT

I, the undersigned,

ONICA MARTHA NGOYE

state in English as follows:

1. I am an adult female with ID number **6912190445080.** I am currently the **Group Executive: Legal, Risk and Compliance** at the Passenger Rail Agency of South Africa ("PRASA") that has its head office at PRASA House, 1040 Burnett Street, Hatfield, Pretoria, Telephone number 012 748 7192 and my cell phone number is 082 336 6812.

2. The information contained in this statement unless otherwise stated, falls within my personal knowledge and is both true and correct.

3. I have included names of persons that I refer to in this statement and their roles at the material times. To the extent that I have telephone numbers of these persons, I have included them. I have, however, not confirmed if these numbers are still in use and, if so, whether the persons stated herein are still using such numbers.

STATEMENT

4. PRASA is established in terms of section 22 of the Legal Succession to the South African Transport Services Act, Act No. 8 of 1989, as amended ("the Legal Succession Act"). PRASA is a national government business enterprise as defined in the Public Finance Management Act, Act No. 1 of 1999, as amended ("the PFMA") and listed as such in Schedule 3B of the PFMA. In terms of the Legal Succession Act and the PFMA, PRASA's accounting authority is the Board of Control that is appointed from time to time by the Minister of Transport ("the Board"). The Board is currently chaired by Dr Popo Molefe

5. On 29 November 2012, the then Board of PRASA considered and approved the submission for the Provision and Installation of a Security Fence in PRASA depots nationally and was satisfied that the tender process followed was consistent with PRASA's Supply Chain Management Policy, a copy of which policy is attached hereto as **ANNEXURE "MN1"** ("the SCM Policy"). The submission that was approved by the Board recommended the appointment of SA Fence & Gate Investment Holdings (Pty) Ltd ("Fence & Gate") to provide and install fencing for PRASA's depots, namely, Braamfontein depots of Metrorail and S-Meyl), Wolmerton depot, Springfield, at Durban Station, Salt River, Paarden Island and Culemborg to a tendered amount of R209 874 559,79 including VAT. The Board mandated the then Group

Chief Executive Officer ("GCEO") of PRASA Mr Tshepo Lucky Montana ID 7004255660081 ("Mr Montana") to enter into negotiations and contract with Fence & Gate.

6. On 25 February 2013, Mr Montana signed the contract between PRASA and Fence & Gate. In terms of this contract the duration was for a period of 2 years 3 months, commencing on 07 December 2012 till 31 March 2014. A copy of the contract is attached hereto marked **Annexure "MN2"**.

7. With effect from 1 December 2014 to 25 January 2015, Mr Montana appointed me to act in his stead as the Group CEO of PRASA whilst he went on his annual leave. A copy of my appointment letter is attached hereto marked **Annexure "MN3"**.

8. On 18 December 2014, I received a submission from the Group Chief Procurement Officer ("the GCPO") requesting *approval to condone the appointment of SA Fence and Gates for the supply, storage and installation of lights on the National Fencing and Security Project to the total value of R58 153 296.72*. A copy of this submission is attached hereto marked **Annexure "MN4"**. This project was managed by a division of PRASA called PRASA Tech. The then CEO of PRASA Tech, Mr

Saki Zamxaka, called me to establish whether I had received the submission and to advise me that that submission was very urgent. After reading this submission I spoke to the then GCPO, Mr Josephat Phungula as well as Mr Saki Zamxaka, to indicate the reasons why I intended not to approve the submission. They understood the reasons and indicated that they would correct the submission.

9. On the same day, I formally rejected that submission on the basis that amongst other issues, the submission was insufficient, as it did not provide sufficient detail about the approved scope and whether there was money available for this purpose. A copy of the rejected submission is attached hereto and marked **"MN4"**. The manuscript comment at the end of the submission is inserted by me.

10. After formally rejecting this submission, I received an unsolicited call from Mr Montana who asked how I was managing matters. I indicated to him that everything was going well. During this call, Mr Montana mentioned the above submission. I informed him how I had treated it and my reasons for rejecting it. He indicated his support of my reasons and commended me for the approach that I took on the matter.

STATEMENT

11. On 16 January 2015, I received a revised submission from the GCPO, advising me that PRASA Tech had a budget that was enough to finance this extension. A copy of this revised submission is attached hereto and marked **"MN5"**. This submission also stated that:

> *"The Implemented project scope did not include the procurement and installation of lights. The exclusion of the lights affects the visibility and quality of images that are transferred to the control room"*
>
> *"In November 2013, [t]he Depot Modernisation Program Executive Manager* [Mr Palello Lebaka ("Mr Lebaka")] *authorised SA Fence and Gate to purchase and install the lights at the yards at an estimated cost of R58 153 296.72 (Incl. Vat) without following the correct SCM management processes. To date R33 833 032.00 for the lights has been procured and paid for and the remaining R24 320 264,72 has been committed. Disciplinary measures have been taken against the responsible individual."*
>
> *"The lights are necessary to ensure the effective functioning of the deployed security"*
>
> If the submission is not approved "[t]*he full benefits of the national [f]encing project will not be materialised"*

STATEMENT

"During the CTPC meeting it was resolved that the submission be supported and elevated to GCEO for approval."

[emphasis added]

12. The only difference between the rejected submission and the revised submission is that the revised submission provides assurance that this extension of scope that is said to be required, has been partly paid for and partly committed and will be adequately funded. I approved the revised submission on 20 January 2015 as per annexure **"MN6"** hereto.

13. In order to complete the context of the submission, it is necessary to state two functions of the committee referred to as the Corporate Tender and Procurement Committee or the CTPC in the submission. The CTPC is one of the committees established by the SCM Policy. The functions of the CTPC that are relevant herein are the following:

13.1. *"Consider the procedure followed by the CFSC's, DTPC's, RTPC's and all other involvement with the procurement and disposal of goods and services, taking due cognizance as far as procedure, substance and value for money is concerned"* – Clause 9.4.1 of the SCM Policy

13.2. *"Condone or reject a submission for non-compliance with the SCM Policy or reserve a decision pending further information or clarification of a specific matter"* – Clause 9.4.10 of the SCM Policy.

[emphasis added]

14. The import of clause 9.4.1 of the SCM is to show among others that the duty of the CTPC is to consider whether PRASA receives value for money when it purchases goods and/or services. Clause 9.4.10 means that the Accounting Authority of PRASA, the Board, has delegated the power to consider a request for the condonation of a non-compliance with the SCM Policy to the CTPC. In this instant, the CTPC *"supported"* the condonation of the non-compliance. Although that condonation should have been dispositive of the condonation request in terms of the SCM Policy, I am aware that a practice had developed in PRASA where condonation requests were also approved by the Group CEO. In my view, this approval by the Group CEO is of no legal force or effect because the Group CEO, is neither empowered nor mandated by the Board to consider requests for condonation.

15. Mr Montana returned to the office from leave at the end of January. Shortly after his return, I had a meeting with him where I handed over to him a file containing all the matters I had dealt with during his

absence and took him through the decisions that I made during my the period I acted in his stead.

16. Mr Montana thanked me for acting in his stead and even commended me on how well I had done the work and the comprehensive report that I gave to him.

17. On 20 May 2015, Mr Montana summarily terminated my contract of employment with PRASA. A copy of this letter of summary dismissal is annexed hereto marked **"MN7"**. Mr Montana's reasons for my summary dismissal are stated in his letter dated 20 May 2015, a copy of which is attached hereto and marked **Annexure "MN8"**. It is important to state that I do not agree with the contents of the letter. My recollection of the events that led to my summary dismissal is contained in a submission to the Board dealt with below. I however believe that the contents of Mr Montana's letter are instructive to the extent that they show that, as at the 20th May 2015, Mr Montana did not see my agreement with the CTPC (4 months before) as criminal conduct.

18. On 25 May 2015, I addressed a letter to the Chairman of the Board of PRASA stating the circumstances around my summary dismissal. In that letter, I request the Board to act in the interests of PRASA and to have

this unlawful decision of Mr Montana reversed. A copy of this letter is attached hereto marked **"MN9"**. I also referred the matter to the CCMA for resolution.

19. On 29 May 2015, I received a letter from Mr Montana withdrawing the letter of summary dismissal and requesting that I make submissions why he should not suspend me. A copy of this letter is attached hereto marked **"MN10"**.

20. I returned to work on 1 June 2015 and made my submissions accordingly. A copy of the submissions why I should not be suspended are attached hereto marked **Annexure "MN11"**. A further letter was sent to the Chairperson of the Human Capital Management Committee of the Board. This letter is annexed hereto and marked **"MN12"**.

21. On 4 June 2015, I received a notification of my suspension from Mr Montana. I attach a copy of that notification hereto marked as **Annexure "MN13"**.

22. On 15 July 2015 the Board of Control relieved Mr Montana of his duties and released him from serving his notice period at PRASA. This was

after Mr Montana, in February 2015, had tendered his resignation with effect from the end of November 2015.

23. On 21 July 2015, I received via e-mail from Mr Sello Maluleke, a Senior Manager: Employee Relations at PRASA, a notice of a disciplinary hearing to be held on 29 July 2015. Attached to the e-mail was a document stipulating charges against me, which charges I was required to respond to.

24. One of the charges against me, which I was seeing for the first time related to authorising an irregular extension of the value of the contract to Fence & Gate (+/-R50 Million). As is clear from the submission that I approved, annexure "MN5" hereto, I supported a condonation that had been approved by the CTPC. The submission indicated that the R58 million that it related to had been partly paid and partly committed after having been irregularly extended by another PRASA employee who had been disciplined for the irregular extension (Mr Lebaka). Had I been involved in the irregular extension of that contract, I would have been disciplined with Mr Lebaka. Alternatively, the disciplinary action against Mr Lebaka in this regard would have been seen as an unfair labour practice or selective discipline.

STATEMENT

25. I pause to state some of the salient points of the disciplinary hearing of Mr Lebaka. I annex hereto marked **"MN14"** the arbitration award of Mr Lebaka. From the award, the following is key to mention:

25.1. The hearing started on 17 November 2014 and the award was made on the 30th April 2015 (3 months before I received charges from Mr Maluleke);

25.2. Charge 7 relates to the "Incurring of unauthorised expenses in March 2013";

25.3. Paragraph 11 of the award records the irregular extension of the contract as per the testimony of Mr Kady Muteba. This testimony is confirmed by Mr Xolisa Kupiso (paragraphs 13 to 15), Mr Asif Rehman (paragraph 18 and 19) and Saki Zamxaka (paragraph 30).

25.4. In paragraph 34 the arbitrator records the following relating to the evidence of Mr Lebaka:

"The witness states that his actions in the Fencing project were in PRASA's best interest. He inherited a problematic project and after site visits realised that urgent changes needed to be made that would escalate the price. Lighting was essential. Without them the night cameras would be ineffective. He decided not to implement the 209 million as this would have cost PRASA more money in the

long run. The employee made an executive decision. The solution was less than that of the second best bidder and would have met all of PRASA's security needs. The alternative solution was support[ed] *by the CEO and the employee expected that this would be approved at Tender stage. The employee argued that he was not guilty of misconduct and requested that he be reinstated."*

25.5. Paragraph 65 records that the arbitrator found Mr Lebaka guilty of, among others, charge 7 (Incurring unauthorised expenses).

25.6. None of the witnesses of PRASA and Mr Lebaka mention my name or my involvement in the irregular extension of this contract.

26. Of the above witnesses, Messrs Zamxaka, Muteba and Kupiso are no longer in the employ of PRASA, Mr Rehman is still in the employ of PRASA. The contact details I have of these witnesses are the following:

26.1. Saki Zamxaka – currently the CEO of the Gauteng Growth and Development Agency ("the GDDA"), an agency of the Gauteng Provincial Government. According to its website, the GDDA's physical address is 124 Main Street, Marshalltown, Johannesburg, the telephone number is 011 085 2321. The cell number that I have for Mr Zamxaka is 082 771 6767.

STATEMENT

26.2. Asif Rehman is still in the employ of PRASA, his cell phone number 074 155 4786

27. Whilst I was preparing for the Disciplinary hearing, I was called to a meeting by the then Acting GCEO of PRASA, Mr Nathi Khena, this meeting was held on the 24th July 2015.

28. In that meeting, Mr Khena advised me that he had been requested by the Board to deal with all the suspensions of employees by Mr Montana made before his departure and investigate whether there was any merit to the suspensions. In my case he advised that he had requested all the evidence of the charges against me from various employees within PRASA, these included the then Acting Group Executive: Human Capital Management, Ms Nonhlanhla Kondowe (083 267 3329), the then CEO of PRASA Rail, Mr Mosenngwa Mofi, the then CEO of PRASA Tech (Mr Saki Zamxaka) and the then Specialist Legal Advisor to the GCEO, Ms Marlini Naidoo. None of the above mentioned people could provide him with any information that related to my wrongdoing. After considering the matter before him and with no evidence of any conduct warranting disciplinary action against me, Mr Khena decided that I must return to work and lifted the suspension. A copy of the letter lifting my suspension is attached hereto marked **Annexure "MN15"**. I returned to work, and nothing further was raised about any of the charges.

STATEMENT

29. Through media reports of around September 2015, I learnt that Mr Montana had lodged a criminal case against amongst others, me, at the Hillbrow Police Station. I am not aware of what charges he has levelled against me in this regard. I have never been approached by any law enforcement authorities to make representations, nor have I been advised of any charges levelled against me. Even without knowing the specific allegations against me, I deny I have at any stage acted in a manner that would give rise to criminal charges.

30. In so far as the civil court application by Fence & Gate is concerned, wherein an order was made for PRASA to pay Fence & Gate monies owed, I attached hereto a summary of the process as explained by the attorneys representing PRASA on the matter. If there is any further information required around the handling of this matter by PRASA and/or its attorneys, they (PRASA's attorneys) may be contacted in this regard. This memorandum from PRASA's attorneys is attached hereto marked **Annexure "MN16"**.

31. In the event that more information is required around any processes and policies regarding the contract between Fence & Gate and PRASA, I am of the view that the best person who can assist in this regard is the Group

STATEMENT

Executive responsible for Internal Audit, Mr Rasheeque Zaman (083 337 0999). Mr Zaman has not been implicated in any violation of processes in this regard and would, by virtue of his position and the fact that he is not implicated herein be objective.

32. Information relating to the performance of Fence & Gate under the contract may be obtained from Mr David Kekana (083 308 8936), the acting CEO of PRASA Tech or Mr Pieter Swart (083 708 1015) the current project manager of the Project.

I know and understand the contents of this affidavit.

I have no objection to taking the prescribed oath.

I consider the oath binding on my conscience.

SIGNATURE OF DEPONENT

STATEMENT

CERTIFICATE BY COMMISSIONER OF OATHS

I certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit. This affidavit was sworn to before me and the deponent's signature was placed thereon in my presence at Hadfield on 06/12/2016 at 13h15.

Capt. Masilela

COMMISSIONER OF OATHS

SS7-OMN-655

MM 2

Office of TL Montana
Group Chief Executive Officer

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PASSENGER RAIL AGENCY
OF SOUTH AFRICA

PRASA HOUSE
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Hatfield
Pretoria

Private Bag X101
Braamfontein, 2017
T: +27 12 748 7010

Mrs. Martha Ngoye
Group Executive: Legal, Risk and Compliance
3rd Floor, PRASA House
1040 Burnett Street
Hatfield, Pretoria

Dear Martha

RE: APPOINTMENT AS ACTING GROUP CHIEF EXECUTIVE OFFICER

Please be advised that I will be on official Annual Leave from the 01 December 2014 to 25 January 2015. You are hereby appointed the Acting Group Chief Executive Officer (CEO) of PRASA from the 01 December 2014 to 25 January 2015.

As Acting Group CEO, you will be required to act as per the Delegated Authority vested in the Group CEO by the PRASA Board. To this end, when considering decisions of strategic significance to the company, you will be expected to consult with the Group CEO.

Accordingly, upon my return, I will request a detailed report on all issues you would have handled in relation to the business as the Acting Group CEO.

I trust you find the above in order.

Kind regards

TSHEPO LUCKY MONTANA
GROUP CHIEF EXECUTIVE OFFICER
DATE: 28/11/2014

Cc: Dr. Popo Molefe
Chairman of the Board of Control

Mr. Lindikaya Zide
Company Secretary

Directors: Dr P Molefe (Chairman), TL Montana (Group CEO), S Buthelezi, C Cele, X George, NS Kheswa, ZP Manase, C Manyungwana, MJ Maltala, L McMillan, N Mxenge, WS Steenkamp

Company Secretary: L. Zide

FOR STATE CAPTURE COMMISSION PURPOSES ONLY

AFFIDAVIT

I, the undersigned,

ONICA MARTHA NGOYE

do hereby make oath and state:

1. I am an adult female an admitted attorney currently unemployed and residing at 199 Pritchard Street, Olivedale, Randburg, Johannesburg.

2. Unless the context clearly shows the contrary is intended, the facts herein contained are within my own personal knowledge and are to the best of my belief both true and correct.

3. I depose to this affidavit on the invitation of the Commission. I was advised by the Legal Team involved in the PRASA workstream that one of the areas that is being investigated by the Commission is the appointment of Werksmans Attorneys to conduct a forensic investigation in PRASA and in 2015. I advised the Legal Team of the Commission that, on the request of the current Board of Control of ("the

Board") PRASA, we had prepared a report on this matter for the current Board of PRASA. The Legal Team requested a copy of this report.

4. The report that was prepared for the Board, dated 21 September 2020, is annexed hereto as annexure **"1"** together with the annexures thereto. I confirm that this report is, to the best of my knowledge, true and correct, and I confirm the correctness of the annexures to the Report. The report was written by Mr. Mfanimpela (Fani) Moses Dingiswayo ("Mr. Dingiswayo") and I. A confirmatory affidavit of Mr. Dingiswayo is annexed hereto marked annexure **"2"**.

Onica Martha Ngoye

I certify that this affidavit was signed and sworn before me at Hab: Sandton on this the 9th day of February 2021, by the deponent after the deponent declared that she knew and understood the contents of this declaration, that the deponent had no objection to taking the prescribed oath and has taken the prescribed oath which the deponent considered binding on her conscience, having complied with regulations contained in Government Notice R1258 of 21 July 1972, as amended.

COMMISSIONER OF OATHS

Philladelphia Kedibone Mothupi
Commissioner of Oaths
Practising Attorney R.S.A.
12th Floor, The Forum
Sandton Square
No2 Maude street,Sandton

Annexure "1"

ANNEXURE 1

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Be moved

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

Memorandum to the Board of Control

To:	**THE CHAIRPERSON OF THE BOARD OF CONTROL** Mr. Leonard Ramatlakane c/o the Company Secretary
From:	**GROUP EXECUTIVE: LEGAL, RISK AND COMPLIANCE** Martha Ngoye and **GENERAL MANAGER: GROUP LEGAL SERVICES** Fani Dingiswayo
Date:	21 December 2020
Subject:	**APPOINTMENT OF WERKSMANS – FORENSIC INVESTIGATIONS**

Dear Sir,

1. PURPOSE

The purpose of this memorandum is to provide the Board of Control information on the process that, we understand, was undertaken by the Board of Control of PRASA that was led by Mr. Popo Molefe ("the 2014 Board") to appoint Werksmans Attorneys ("Werksmans") to conduct the forensic investigations within PRASA. This memorandum will also indicate the current status of work performed by Werksmans.

2. OTHER INVESTIGATIONS OF THIS APPOINTMENT

2.1. The appointment of Werksmans to conduct forensic was a subject of a finding by the Auditor-General South Africa ("the AG"). The response to the possible finding was responded to by the former Company Secretary of PRASA who informed the AG that:

"Company Secretariat acknowledges the validity of this finding, and in that note it is important to ensure that all SCM requirements operate within the parameters of SCM legislative framework. The procurement regarding the Werksmans was a Closed/Negotiated/Nominated procedure and this was

managed by Company Secretariat office due to the criticality of the function as the Board of Control required services of investigators due to the Public Protector's report.

According to Treasury Regulations there are number of procurement procedures that can be applied when emergency or urgent procurement is imminent. The Board of Control agreed that this matter be dealt with in closed/negotiated/nominated procedures as threats were not known where they emanated from"

[emphasis added]

2.2. Since the proposed finding of the AG was accepted, the AG found that the appointment of Werksmans contravened section 217 of the Constitution.

2.3. This appointment is also a subject of an investigation by the Special Investigations Unit ("the SIU"). We are not aware of the progress of this investigation by the SIU. We have however interacted with the officials of the SIU who are investigating this appointment and provided them with the information that is in our possession in this regard. As far as we know, this investigation is covered by the secondment agreement (and not the proclamation) entered into between PRASA and the SIU, PRASA is therefore entitled to the report of this investigation.

3. THE APPOINTMENT OF WERKSMANS ATTORNEYS

3.1. By letter of engagement dated 6 August 2015, signed on behalf of PRASA by Mr. Nathi Khena (then acting Group CEO of PRASA) ("Mr. Khena"), Werksmans was appointed by the to investigate irregular and fruitless and wasteful expenditure that was identified by the AG in its management letter for the 2014/15 financial year. This letter of engagement of 6 August 2015 was a culmination of discussions that took place between the 2014 Board and a consortium that was initially led by Ngubane & Company ("Ngubane") and later led by Werksmans. This background was provided to us by Messrs Khena and Lindikaya Zide ("Mr Zide") after our suspensions were lifted by Mr. Khena. We

were advised by Messrs Khena and Zide that the decision to appoint the consortium led by Ngubane to conduct the forensic investigation by the Board was based on Regulation 16 of the Regulations promulgated by National Treasury in terms of the Public Finance Management Act, 1999 ("the PFMA").

3.2. When the Board took the decision to conduct the Forensic Investigations the writers were serving their suspensions by the then Group Chief Executive Officer of PRASA ("Group CEO"), Mr. Lucky Montana.

4. INVOLVEMENT OF THE LEGAL DEPARTMENT IN THE RELATIONSHIP BETWEEN PRASA AND WERKSMANS ATTORNEYS

4.1. We had initial meetings with representatives of Ngubane and our role was to discuss the engagement letter with them. These meetings were led by Mr Nathi Khena and we were providing support to him.

4.2. A subsequent meeting was arranged with Ngubane and this meeting included members of their subcontractors, being, among others, Werksmans, Basileus Consolium Professional Services ("BCPS"), Howarth Forensics and Facts Consulting. At that meeting we were advised that a decision had been taken by the Board that Werksmans will lead the team of investigators and not Ngubane. The explanations for this decision were that:

4.2.1. Werksmans as a law firm can afford PRASA with attorney-and-client privilege in the work done by the consortium; and

4.2.2. Regulation 16 was not applicable to this appointment; and

4.2.3. Werksmans was one of the law firms on the PRASA panel.

4.3. According to this meeting, a new letter of engagement had to be signed with Werksmans.

4.4. Once the Werksmans draft letter of engagement was ready, we were requested to vet it and proposed some changes to it and once those changes were made, the letter was prepared for signature by the then Acting Group CEO, Mr. Khena.

4.5. It is important to state that during the discussions on the letter of engagement we asked for the method of billing of the team to be negotiated and Ms. Zodwa Manase ("Ms. Manase"), the then Chairperson of the Audit and Risk Committee of the Board stated that billing was not to be subjected to negotiation. She categorically said that *'if you want quality work you don't negotiate fees'*.

4.6. When the first Werksmans' invoice was presented, there was still discussion around which cost centre would take care of the costs of the forensic investigations. In order to expedite the payment, the then Acting Group CEO, Mr. Khena instructed that that invoice should be paid from the cost centre of legal fees and that the payments made would be refunded to that cost centre at a later stage. This was done and the refunds were made. Later payments of the fees that relate to this appointment was made from the cost centre of the Group CEO, the Group CEO's approved these invoices.

4.7. From its inception until the final report was issued in July 2017, the forensic investigation and the litigation that flowed from it was a matter under the strict purview of the Board. Group Legal Services understood that their role was to assist the investigation team with providing them the information that they required and also facilitate meetings between them and officials of PRASA.

4.8. Werksmans never reported anything to Group Legal Services. Reports of their work were presented to the then Board and the then Minister of Transport, Ms Dipuo Peters. We were aware of the invoices that were submitted but these were signed by Mr. Zide, in his capacity as the Company Secretary (because the investigation was a Board matter), and Mr. Khena as the Acting Group CEO.

4.9. Around June 2016, we raised concerns with the then Chairperson of the Board that Group Legal Services can be more meaningfully utilised in the process and that we were concerned with the manner in which the investigations were conducted as well as the cost thereof. At this point, it appeared to us that the investigators were not properly managed by PRASA because the management of such a thoroughgoing investigation cannot be left to two non-executive directors (Mr. Molefe and Ms. Manase). After this engagement, we were allowed to see the reports that had been submitted to the Board. However, it was stressed that the reports could only be read at the premises of Werksmans and we were not allowed to take copies thereof. This was clearly not an effective way of assisting with the management of the investigation.

4.10. Around June 2016, the Chairman of the Board was on leave and we were invited to a meeting at Werksmans. We understood one of the purposes of the meeting at Werksmans to be to discuss the cost of the investigation. When we arrived at this meeting, there was a discussion around the forensic investigation in general and Ms Manase indicated to Mr. Bernard Hotz, the lead partner of Werksmans, in our presence, that she will discuss the costs of the investigations with him in a separate meeting. After the general discussion, Mr. Hotz and Ms. Manase moved to another boardroom at Werksmans. We do not know what was discussed and agreed between Ms. Manase and Mr. Hotz.

4.11. Towards the middle of July 2016, Ms. Manase instructed the Group Audit Executive, Mr. Rasheeque Zaman ("Mr. Zaman") to prepare (with our assistance) a budget for these investigations for the following year's allocation. This request was made after the PRASA budgeting process had been finalised. Assistance was provided to Mr. Zaman and we understood that the budget was submitted to the Board for their approval. We do not know whether there was a Board approval for this budget.

4.12. It is very clear that since the investigations were always within the remit of the Board as part of its duties as Accounting Authority to investigate irregularities, this budget was best placed in the office of the Group CEO. Werksmans' payments for the work of the investigation and the litigation that flows from it,

were made and are still made from the cost centre of the Group CEO. All the Group CEO's who have served PRASA during this period are aware of this

4.13. In February 2017, the then Acting Group CEO, Mr. Collins Letsoalo ("Mr. Letsoalo") requested a letter to be prepared to be sent to the Chairperson of the Board addressing the Chairperson on Werksmans' investigations.

4.14. During that period, Werksmans was requested to provide a document reflecting the disaggregation of matters they were dealing with and also to provide the time frame of finalizing the investigations. The agreement that was reached between Werksmans and the PRASA Board is that the investigations would be conducted until the end of July 2017.

4.15. It was only in 2017, that the Legal Department was instructed to sign off on the Werksmans invoices and this related to the civil matters that were conducted by Werksmans on behalf of PRASA flowing from the investigations. Even these invoices, were paid out of the cost centre of the office of the Group CEO.

5. THE SCOPE OF THE INVESTIGATION

5.1. As per **MF1**, the scope of the investigation was the investigation of fruitless and wasteful and irregular expenditure found by the Auditor-General in the 2014/15 annual financial statements. This was the scope as at 6 August 2015.

5.2. On 24 August 2015, the office of the Public Protector issued a report entitled Derailed[1] ("the Derailed Report"). One of the recommendations of the Derailed Report directed the then Chairperson of the Board of PRASA to:

"To support National Treasury in conducting a forensic investigation into all PRASA contracts above R10 million since 2012 and take measures to address

[1] A Report on an Investigation into Allegations of Maladministration Relating to Financial Mismanagement, Tender Irregularities and Appointment Irregularities Against the Passenger Rail Agency of South Africa (PRASA); Report 3 of 2015/16

any findings regarding systemic administrative deficiencies allowing maladministration and related improprieties in its procurement system.[2]"

5.3. Pursuant to the above recommendation and at the beginning of 2016, a meeting was held between the Board of PRASA and the then Chief Procurement Officer of National Treasury, Mr. Kenneth Brown to discuss the support that the Chairperson of the Board was directed to extend to the National Treasury. It is our understanding that, at this meeting, the Board and National Treasury agreed to refer some of the transactions that were above R10 million to Werksmans for investigation. We understand that the transactions that were added to the Werksmans mandate were added on the basis that they were related to the transactions that fell within the original mandate of 6 August 2015. This agreement increased the number of transactions from 33 to about 140.

6. THE OUTCOMES OF THE FORENSIC INVESTIGATION CONDUCTED BY WERKSMANS ATTORNEYS

6.1. **MF8** is a document that shows a representation of the number of professionals that were engaged in the forensic investigation that was led by Werksmans as well as some of the high-level outcomes of the Forensic Investigation as at 23 February 2017. This document was prepared for presentation to the Portfolio Committee on Transport in February 2017. In our view, it is natural for an investigation that has produced the kind of outcomes that were produced by this investigation to be highly contested; particularly when such investigation is carried out by a public entity.

6.2. All indications are that the people that were implicated in crimes and maladministration as a result of the investigations appear well-resourced and well-connected. They have managed to stymie the work of law enforcement agencies for about 5 years after PRASA offered all the assistance it could lawfully provide. The size of the contracts that were terminated as a result of the investigations are material and those that benefitted and stood to benefit

[2] Paragraph 9.2.5 of the Derailed Report

have shown over the years and through various proxies that they will not take the results of the investigation lying down.

6.3. For example, the grooming and deployment of someone like Mr. Daniel Mthimkulu, fits well in the playbook of juniorisation for ill-intent. It is a playbook that has been repeated with good effect in many state owned entities. It would be naïve to believe that those who took time to groom and deploy Mr. Mthimkulu were doing so only so that he could rig the locomotives tender in favour of Swifambo. It is clear that the intention was using the junior to take over the entire technical and engineering budget of PRASA for the longest time. The corrupt locomotives tender was one of the many gluttonous benefits that were expected. The gluttony is well-demonstrated by the fact that, although Swifambo received R400 to 800 million from fronting, it currently has nothing to show for this windfall. Similarly, the Siyaya Companies that benefitted almost R1 billion (by 2015 estimates), liquidated themselves as soon as the PRASA taps dried up.

6.4. The results of the investigation were adopted by the Auditor-General and included in the computation of the fruitless and wasteful and irregular expenditure of PRASA in the years that followed the investigations. The results of the investigation were, therefore endorsed by an institution that is established in terms of Chapter 9 of the Constitution. It is our understanding that the investigation of the SIU (conducted under the proclamation and the secondment agreement) is also based on the information gathered by the Werksmans investigation. The Board that was led by Ms. Khanyisile Kweyama ("the 2018 Board") instructed Werksmans to provide the SIU with all their reports and the supporting documents of the reports.

6.5. From the forensic investigation, PRASA made application for the review and setting aside of the contract that PRASA had awarded to Swifambo Rail Leasing (Pty) Limited (In Liquidation) ("Swifambo"). This application was successful in the Gauteng South High Court, this decision was confirmed by the Supreme Court of Appeal and the Constitutional Court found that Swifambo did not have reasonable prospects of success in their intended challenge at the Constitutional Court.

6.6. The contract that was concluded between PRASA and Swifambo exposed PRASA to an unmitigated currency fluctuation risk. As at around March 2015, this risk was computed to be R2,5 billion (that is, PRASA was expected to pay an amount of R2,5 billion more on the contract to cover the unmitigated currency risk). The supply contract between PRASA and Swifambo did not include maintenance contract, which is contrary to what is commonplace with contracts like this. The review and setting aside of this contract rids PRASA of these material unmitigated risks.

6.7. In respect of the Swifambo transaction, the investigators also assisted PRASA to lodge a criminal complaint, prepared a statement for this complaint, assisted to produce a detailed cash-flow analysis for the Directorate of Priority Crime and Investigation ("the DPCI") and held numerous meetings with the DPCI, the Asset Forfeiture Unit and other criminal investigations units. Notably this criminal complaint as well as the attendant contemplated actions like the attachment of assets suspected to be proceeds of crime were thwarted when the leadership of the investigating team of the DPCI was changed in 2016. The change of the investigation team and the impact of it points to the power behind the interests in this matter.

6.8. The investigation also found numerous irregularities in the award of the ISAMS Contracts (Phase 1 – R1,9 billion, Phase 1 Extension – R350 million, Phase 2 – R2,4 billion and the Phase 1 Upgrade and Maintenance contract – R800 million (Total – R5,45 billion)) awarded to Siyangena Technologies (Pty) Limited ("Siyangena"). The Gauteng High Court reviewed these awards and set them aside. As expected, Siyangena has made application for leave to appeal. This application is pending.

6.9. The Siyangena transaction has also been referred to the DPCI for investigation. Attempts to have a suitably qualified professional to do the cash flow analysis were thwarted by the DPCI after PRASA undertook to pay for these services.

So far, three senior employees[3] have been dismissed from PRASA as a result of being implicated in fraud and corruption that relates to this transaction. Another senior employee resigned in the middle of her disciplinary proceedings[4]. The court hearing the Review Application of the Siyangena contract invited some of these employees to submit affidavits to counter the allegations made against PRASA in the review application. Our reading of the affidavits submitted by these employees have not done anything to suggest the absence of fraud, corruption and maladministration in the awards of these contracts. Even Siyangena appears to believe that the setting aside of these contracts is certain, we say this because even before the institution of the review application, Siyangena launched an application which seeks to make a determination of a 'just and equitable' remedy. This is a remedy that is only considered after the review and setting aside of a contract.

6.10. The above are the publicized highlights of the investigations. The lesser known highlights relate to more than 40 reports submitted in terms of section 34 of the Prevention and Combatting of Criminal Activities Act. The DPCI has not done anything with these reports. Group Legal Services does not have any detail of these reports, all we have is the list of the entities reported on. This list comes from a letter that was sent to parliament ahead from of the appearance of the DPCI in parliament.

6.11. It is our view that the investigation placed PRASA in the public glare as a public entity that is prepared to fight corruption within its own ranks. This came in the wake of the Derailed Report, which, as per its title, showed PRASA to be a public entity that had largely gone rogue and had its controls collapsed through many years of the repurposing of PRASA.

[3] Mr. Luyanda Gantsho (Executive Manager: Depot Modernisation Project – PRASA Technical), Mr. Chris Mbatha (Chief Information Officer) and Mr. Tumi Mohube (General Manager: Enterprise Risk Management)
[4] Ms. Tara Ngubane (Chief Executive Officer: PRASA CRES)

7. THE CURRENT STATUS OF WORK PERFORMED BY WERKSMANS

7.1. Currently Werksmans is dealing with the litigation that flowed from the investigations. Werksmans is best placed to assist PRASA with this litigation as the litigation strategy in all these matters is a product of consultations between PRASA and Werksmans. Instructing other attorneys to take over this litigation will only lead to delay and fruitless and wasteful expenditure.

7.2. The most of this litigation are the claims submitted in the Swifambo liquidation as well as the various litigation that has been launched by Auswell Mashaba (formerly a director of Swifambo) and companies related to him in the context of the liquidation. This support is likely to lead to recovery of money for PRASA. The manner in which Mr. Mashaba has litigated in the context of the liquidation shows that there are material interests that he is protecting.

7.3. The other important matter is the review of the contracts awarded to Siyangena. This matter is set down for hearing before a full bench by special allocation of the Deputy Judge President for the 24 to 28 February 2020. At this stage, counsel is supposed to be working on heads of argument that are supposed to be filed in January and preparing for the hearing in February 2020. The snag that this matter has come across is the refusal by the Group CFO to pay PRASA suppliers for reasons only known to her.

7.4. There are other matters such as the appeal launched by Mr. Mthimkulu against the judgment for him to pay R5,7 million owing to PRASA, as well as the referral of Mr. Gantsho's dismissal to the Commission for Conciliation Arbitration and Mediation (the CCMA).

8. CONCLUSION

8.1. The above represents our recollection of the engagement between PRASA and Werksmans.

8.2. Should you have any further information or requirements, please do not hesitate to contact us. We hold ourselves available to discuss this memorandum at your instance and request.

Martha Ngoye

Martha Ngoye
Group Executive: Legal, Risk and Compliance

SUPPORTED

Thandeka Mabija
Acting Group Chief Executive Officer

DOCUMENTS RELEVANT TO THE MEMO

- MF1 – An extract of the AG's management letter
- MF2 – Letter of engagement
- MF3 – Board Resolution that relate to the appointment of Werksmans
- MF4 – Letter of engagement that was concluded between PRASA and Ngubane
- MF5 – A memo that was prepared after Mr. Letsoalo instructed that a letter be addressed to the Chairperson of the Board about the work of Werksmans
- MF6 – Disaggregation and time-frame document
- MF7 – The list of transactions that were investigated by Werksmans
- MF8 – Number of professionals that were engaged in the forensic investigation that was led by Werksmans as well as some of the high level outcomes of the Forensic Investigation as at 23 February 2017

MF1

PROCURMENT AND CONTRACT MANAGEMENT

IRREGULAR EXPENDITURE

3. Procurement and contract management - Werksmans (Corp CoF 7)

Audit finding

Section 15(1) of the Public Audit Act, states that:
"When performing an audit referred to in section 11, the Auditor-General or an authorised auditor has at all reasonable times full and unrestricted access to—
(a) any document, book or written or electronic record or information of the auditee or which reflects or may elucidate the business, financial results, financial position or performance of the auditee;
(b) any of the assets of or under the control of the auditee; or
(c) any staff member or representative of the auditee."

In terms of section 217 of the constitution of the Republic of South Africa *"When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective"*

In terms of section 51(1) of the Public Finance Management Act (PFMA) *"An accounting authority for a public entity must ensure that that public entity has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective"*

Section 55 of the PFMA states the following regarding the annual report and financial statements:

"(1) The accounting authority for a public entity—
(a) must keep full and proper records of the financial affairs of the public entity;
(b) prepare financial statements for each financial year in accordance with generally accepted accounting practice, unless the Accounting Standards Board approves the application of generally recognised accounting practice for that public entity;

Paragraph 2.2 of the 2014 PRASA SCM Policy states that "*PRASA in compliance with Section 217 of the constitution of the Republic of South Africa, ensure that when contracting for goods and or services shall do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective"*

The following information for the tender awarded to the supplier as reflected below was requested in request for information 6 – Corporate SCM on the 23rd of February 2017 and remains outstanding:

- Advertisement of the tender;
- Minutes of the compulsory briefing session;
- Register for the compulsory briefing session;
- Closing bid register;
- Unsuccessful bidders' documents
- The appointment letters for the members of the Bid Specification Committee, Bid Evaluation Committee and the Bid Adjudication Committee;
- Attendance register and minutes of the Bid Specification committee;
- Attendance register and minutes of the Bid Evaluation committee;
- Report of the Bid Evaluation committee;
- Actual scoring sheets of the members of the Bid Evaluation committee;
- Attendance register and minutes of the Bid Adjudication committee;
- Report of the Bid Adjudication committee;
- Appointment letter of successful bidder;

The details of the award are as follows:

Service Provider	Amount paid to date as per SAP Report
Werksmans Attorneys	R130 003 941.73

The AGSA was unable to determine whether the procurement process followed was fair, equitable, transparent, competitive and cost-effective; and compliant with the prevailing SCM prescripts due to non-submission of the required information. This is non-compliance with the provisions of the PFMA and the Public Audit Act.

Furthermore, the AGSA was not provided a deviation approved by the Board regarding this matter.

There is a risk of non-compliance with relevant SCM regulations which may result in irregular expenditure.

Internal control deficiency

Financial and performance management - Compliance monitoring

There is a slow response by the Company Secretary in initiating procurement without communicating requirements with the supply chain management division which will be able to assist in addressing the ongoing deficiencies over monitoring of compliance with legislated prescripts and the SCM policy.

Recommendation

Management should ensure that:

- All SCM record keeping is properly maintained and safeguarded; and
- All outstanding information is provided to the AGSA immediately for review.

Management respond

Management comment on audit finding

- *Company Secretariat acknowledges the validity of this finding, and in that note it is important to ensure that all SCM requirements operate within the parameters of SCM legislative framework. The procurement regarding the Werksmans was a Closed/Negotiated/Nominated procedure and this was managed by Company Secretariat office due to the criticality of the function as the Board of Control required services of investigators due to the Public Protector's report.*
- *According to Treasury Regulations there are number of procurement procedures that can be applied when emergency or urgent procurement is imminent. The Board of Control agreed that this matter be dealt with in closed/negotiated/nominated procedures as threats were not known where they emanated from.*

Management comment on internal control deficiencies • *It is critical for Non/Executive Management to ensure that all procurement processes are performed within check and balances, to prevent these kinds of findings it was deliberated with SCM that all ad-hoc functions that will be required by the Business Units must be acquired through a panel of service providers. A panel of service providers in cases of emergency/urgent will assist both SCM and business units to acquire services quicker within the SCM legislative framework.* • *Once a panel of service providers is acquired, when the emergency or urgent event occurs; SCM practitioners will be able to issue RFQ to those suppliers that are within the panel and ensure that the process of selecting a bidder is transparent, fair, and that value for money is realized.*
Management comment on recommendation • *The recommendations are welcomed; moreover, and above the recommendations all Business Units across PRASA are required to inform SCM practitioners to perform their functions and activities with integrity and within the acceptable code of conduct.* • *Corporate SCM has started conducting training to all SCM practitioners (Corporate Office, Divisions (Rail, CRES and Technical), Subsidiaries (Autopax and Intersite. Once the SCM practitioners' training is completed, training will carry over to the end-users to ensure that they understand procurement processes. When the training processes are completed, consequence management will be instilled for officials who transgress.*
Remedial action • *Ensure quality of service delivery to end-users by acquiring a list of service providers that will be dealing with ad-hoc requirements* • *Condone and enforce compliance to SCM functions by business units* • *Instil consequence management*

What actions will be taken	***By whom***	***By when***
• *Compilation of Transgression register* • *Compilation of irregular expenditure register*	*SCM: Senior Management*	*First quarter 2017*

Auditor's conclusion

Management response noted and management indicated that the service provider was selected from the list/Panel of PRASA Attorneys/Law Firms. This panel was compiled by SARCC and no SCM process was followed by PRASA in the set-up of the panel. Further, there is no SCM policy followed when selecting suppliers from this panel, it is done based on the preference of the user. Therefore, the method used to select the service provider is not fair, equitable, transparent, competitive and cost effective and does not comply with the requirements of S.51(1)(a)(iii) of the PFMA because of the following:

- Not all the services providers in the list/panel were given fair chance to participate/bid as the services were confined to Werksmans Attorneys.

Therefore, the above results in non-compliance with section 217 of the Constitution of Republic of South Africa and section 51(1) of the Public Finance Management Act and the payment made to the service provider result in irregular expenditure.

National Treasury SCM Instruction No 3 of 2016-2017 defines an "emergency" as a serious an unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action and there is insufficient time to invite competitive bids. The "emergency" appointment of Werksmans Attorneys does not meet the criteria as specified.

A deviation approved by the Board has also not been provided for audit to substantiate not following procurement processes.
Management has disclosed the expenditure as irregular on the disclosure note. The finding will remain on the management report.

DRAFT

MF2

MF2.

"WLO"

WERKSMANS
ATTORNEYS

Passenger Rail Agency of South Africa
Prasa House
1040 Burnett Street
Hatfield
Pretoria

Attention: Acting Group Chief Executive Officer

Johannesburg Office
155 5th Street
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com
enquiries@werksmans.com

YOUR REFERENCE:
OUR REFERENCE: B Hotz
DIRECT PHONE: +27 11 535 8106
DIRECT FAX: +27 11 535 8606
EMAIL ADDRESS: bhotz@werksmans.com

5 August 2015

Dear Sirs

TERMS OF ENGAGEMENT – LEGAL SERVICES

We appreciate your appointment of Werksmans Inc (**"Werksmans"**) and look forward to developing and continuing our relationship with you.

This letter and its annexures set out the terms and conditions that will govern Werksmans' relationship with you in relation to the matter referred to 1 (**"your matter"**).

1 **Scope of engagement**

The scope of our engagement and the services to be rendered by us in relation to your matter is described in Annexure A to this letter.

2 **Instructions**

We need comprehensive instructions and all relevant information in order to provide you with the highest quality legal services. We may request you to confirm oral instructions and provide certain information in writing. Please notify us immediately of any changes to your instructions.

3 **Team**

One director will have ultimate responsibility for your matter. That director may involve such members of our staff (including other directors, associates and candidate attorneys) as he or she deems necessary to perform the services required in relation to your matter.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa
Directors D Hertz (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata AR Bernon NMN Bhengu L Bick HGB Bosholf GT Bosse TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Janson van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing F Levenstein JS Lochner JG Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo C Moraitis KO Motshwane L Naidoo J Nicklg JJ Niemand BPF Oliver WE Oosthuizen S Padayachy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BR Roothman W Rosenberg NL Scott TA Sibida LK Silbeiman JA Smit JS Smit CJ Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg HJ van Niekerk PJ van Tonder JP van Wyk A Vakalidis RN Wakefield DC Walker D Wegierski M Wiehahn DC Williams DG Williams E Wood BW Workman-Davies

4 Fees and disbursements

4.1 Fees for professional services rendered

4.1.1 Our fees for professional services rendered are based on the time spent on, and the value added by us to, your matter.

4.1.2 We record our time spent in units, where one unit equals one hour. Each period of six minutes or part thereof spent working on your matter will be recorded as 0.1 unit. Our current hourly charge-out rates in relation to your matter, excluding value-added tax ("**VAT**"), are set out in Annexure B to this letter. Our rates will be reviewed and increased in March of each year.

4.1.3 Time-based fees are assessed by a fee panel and may be adjusted upwards, taking into account, amongst others, the following factors -

4.1.3.1 the urgency, importance and volume of the work;

4.1.3.2 the complexity, difficulty or novelty of the matter;

4.1.3.3 the skill, labour, specialised knowledge and responsibility required of the professional staff working on the matter;

4.1.3.4 the nature and importance of the documents prepared or perused;

4.1.3.5 the place where and circumstances in which the services or any part of the services were rendered;

4.1.3.6 where money or property is involved, its amount or value; and

4.1.3.7 the experience or seniority of the professional staff working on the matter.

4.1.4 If we wish to charge a fee which is greater than a fee calculated on actual time spent, such fee will only be charged after discussion with you and remains subject to your agreement. In the absence of agreement, we will charge for time spent.

4.2 Disbursements

In addition to our fees referred to in 4.1, you will be liable for disbursements and expenses incurred by us in relation to your matter (collectively, "**disbursements**") including (but not limited to) the costs of briefing independent counsel, travel and accommodation, correspondent attorney's fees (referred to in 4.3.8), expert witness fees (referred to in 4.3.7), Sheriff's services, messenger and courier services, secretarial overtime, legal cost consultants' fees (referred to in 4.3.3), filing fees, computerised research, telephone charges, copying and printing and forensic specialist services and related costs, provided that the disbursements specified in Annexure C will be recovered from you at the rates specified in that Annexure.

4.3 Litigious matters

4.3.1 There is a tariff of fees for professional services rendered in a litigious matter ("**tariff**"), which is contained in the Uniform Rules of Court. A copy of the tariff is available on request. In many instances, the tariff specifies a fee that is not calculable on a time basis. **We draw to your attention the fact that our fees are not based on the tariff, but are instead determined in the manner described**

in 4.1. Furthermore, our fees are considerably greater than the fees listed in the tariff.

4.3.2 In a civil litigation matter, the successful party is often awarded costs in terms of the tariff. However, as the tariff is lower than our fees, even if you are awarded costs, you may only recover a small portion of your legal costs from the unsuccessful party. If you are the unsuccessful party, you may well be liable to the successful party for its costs in terms of the tariff. **Please note that you are liable to pay our fees and disbursements in full, irrespective of whether you are successful or unsuccessful, and irrespective of whether you expect to recover any costs from another party.**

4.3.3 If a costs award is made in your matter, the amount of the costs payable pursuant to the award must be assessed before a court official in a process called "taxation". We will administer, on your behalf, any such taxation process for a fee determined in terms of 4.1, and will employ specialist legal costs consultants, whose fees will constitute a disbursement.

4.3.4 As regards the employment of independent counsel, whilst certain matters may only require the services of one counsel, in appropriate circumstances, a matter may warrant the employment of senior and junior counsel, and occasionally several counsel. If you have a particular preference as to which counsel we should brief on your behalf, please advise us at the time that this is discussed with you. In the absence of an instruction from you in this regard, we will instruct counsel whom we believe to be the most suitably qualified and experienced for your matter.

4.3.5 Please note that if a matter is settled, withdrawn or postponed at the instance of any party -

4.3.5.1 not more than two days prior to the date of the proceedings, counsel will charge his or her full fee for the first day of the proceedings;

4.3.5.2 not less than three days and not more than seven days prior to the date of the proceedings, counsel will charge two-thirds of his or her fee for the first day of the proceedings; and

4.3.5.3 not less than eight days and not more than twenty-one days prior to the date of the proceedings, counsel will charge half of his or her fee for the first day of the proceedings.

4.3.6 Counsels' fees may also include a "collapse fee", if agreed to by you. This fee, if agreed, will be payable if your matter does not proceed on the date allocated for the proceedings and will be in addition to the fees set out in 4.3.5.

4.3.7 It may also be necessary to employ one or more expert witnesses to furnish opinions or give evidence on technical, accounting and other issues. We will discuss the engagement of such experts with you prior to any formal appointment. If you have any particular preference as to whom we should engage on your behalf, please advise us at the time this is discussed with you. In the absence of an indication from you in this regard, we will appoint the experts whom we believe to be the most suitably qualified and experienced for your matter.

4.3.8 Furthermore, it may be necessary for us to engage a correspondent firm of attorneys in another city or town to assist us if the litigation is to be undertaken in a court

other than the High Court of South Africa, Gauteng Local Division, Johannesburg or the High Court of South Africa, Western Cape Division, Cape Town.

4.3.9 If your matter is litigious, and our fees and/or disbursements in respect of your matter are required to be assessed for any reason, you agree that the assessment will be undertaken by the Council of the Law Society of the Northern Provinces or any fee assessment committee appointed by that Council.

4.4 **Estimates**

Any estimate of fees or disbursements given by us will be an approximation only, based on the information provided to us at the time and our experience in similar matters of the work involved. **Unless we expressly agree otherwise in writing, we are not bound by any estimate given at any time before or during the progress of your matter.**

4.5 **VAT**

4.5.1 All fees quoted are exclusive of VAT. We will charge you any applicable VAT in respect of both fees and disbursements. Even if the original charge to Werksmans in respect of a disbursement was not subject to VAT, such disbursement may nevertheless be subject to VAT when we invoice you.

4.5.2 We rely on representations made by you to determine whether our services are zero-rated for VAT purposes. If we treat any services as being subject to the zero rate and such services are later found to be taxable, you are obliged to pay us the amount of VAT as well as any penalties or interest resulting from such failure to pay VAT. Similarly, we will reimburse you if we recover VAT which we charged you in error from the tax authorities.

5 **Billing and payment**

5.1 We will submit timesheets to you on a weekly basis and will invoice you on a monthly basis for services provide by us and disbursements incurred in relation to your matter. Invoices for our fees will be accompanied by a memorandum describing the nature of the services rendered.

5.2 All invoices, whether for fees or disbursements, are payable by the thirtieth day after the date of the invoice ("**due date**"), without set-off or deduction of any nature whatsoever and, if not paid by the forty-fifth day after the date of invoice, will bear interest on the outstanding amount at a rate which is equal to the prime rate of the Standard Bank of South Africa Limited, calculated from the due date to date of payment.

5.3 If you fail to make payment of our invoice within 60 days then we will be entitled, without prejudice to any of our other legal remedies, to suspend the rendering of any services in terms of this letter until such time as the outstanding amount has been paid in full. We will not be liable for any loss or damage of any nature whatsoever that you may suffer or incur as a result of such suspension of services.

5.4 Payment of any amount may be effected by a direct electronic funds transfer into our business account, the details of which will be reflected on our invoices.

5.5 Invoices raised during a particular month will be summarised on monthly statements.

5.6 If you have any query or other cause for concern in respect of an account at any time, please do not hesitate to contact us immediately. We will do our utmost to resolve the matter in question without delay. Please direct your queries to the director who is

responsible for your matter or to one of the following members of Werksmans' staff in the accounting department -

5.6.1 Ms Anne-Marie du Toit
Debtors Management
+27 11 535 8126
adutoit@werksmans.com; or

5.6.2 Ms Cecilia Bunting
Credit Control
+27 11 535 8149
cbunting@werksmans.com.

5.7 If our fees and disbursements are not paid, we shall be entitled to retain (as a lien) all documents in our possession that relate to your matter, whether or not the documents have been prepared by us, until the outstanding amount, together with interest thereon, has been paid in full.

6 Complaints

6.1 If you require any information or need to resolve an issue relating to the quality of our professional service or our fees, please take it up with the director responsible for your matter. Alternatively, if you prefer or if you are still not satisfied, please raise your concern with our chairman, David Hertz (telephone number +27 11 535 8283).

6.2 We believe that there should be open communication and liaison between our clients and senior members of our professional staff and are committed to resolving any problems that you may have without delay.

7 Limitation of liability

7.1 For the purposes of this paragraph 7, Werksmans' **"associates"** means Werksmans' affiliates and the directors, employees and consultants of Werksmans and its affiliates.

7.2 The aggregate liability of Werksmans and its associates (whether in contract, delict or otherwise) arising from or in connection with your engagement of Werksmans in respect of your matter is limited to twice the amount charged and received by Werksmans (excluding value-added tax and disbursements) in respect of your matter.

7.3 Werksmans and its associates shall have no liability, arising from or in connection with your engagement of Werksmans, to any person other than yourself (**"third party"**). If, notwithstanding what is stated in this paragraph, Werksmans and/or any of its associates are liable to any third party, any liability to you referred to in 7.2 shall be reduced by an amount equal to the amount for which Werksmans and/or its associates are liable to the third party.

7.4 This paragraph 7 constitutes a stipulation for the benefit of each of Werksmans' associates, capable of acceptance by any of them at any time.

7.5

8 Confidentiality and money laundering legislation

8.1 Communications between us and you, our client, and information obtained from you which has not been made public, are strictly private and confidential and will thus not be

disclosed to third parties save as is authorised by you or required by law. We may, however, disclose any relevant information in confidence to our service providers (for example, information technology service providers, photocopiers, printers and translators), unless otherwise instructed in writing by you. We may also disclose any relevant information in confidence to our insurers and professional advisors in connection with any actual or threatened legal proceedings involving us.

8.2 Communications relating to legal advice sought from us or communications relating to contemplated or actual legal proceedings may well be subject to legal professional privilege. However, please be aware that communicating with third parties or people within your organisation who are not involved in instructing us or seeking our advice may result in the loss of such legal professional privilege.

8.3 In terms of legislation relating to money laundering and other financial information, we are required to report any unusual or suspicious transactions that do not form the subject matter of your instructions to us and of which you make us aware or of which we become suspicious during the course of your instructions to us. This is a direct legal obligation that we are required to perform.

8.4 Such legislation also obliges us to obtain and verify certain information about you, our client, your representatives and agents and the transaction in which you are involved and in which we represent you. We will require certain information from you in this regard.

8.5 If your matter ceases to be confidential, we may wish to disclose our involvement in the matter (but not the confidential details of the matter) for marketing purposes. You hereby consent to our making such disclosure and, in addition, to our using your logo (if applicable) for such marketing, unless you instruct us otherwise.

9 Data protection and marketing communications

9.1 We will process personal information that you or your authorised representatives provide us in accordance with any applicable data protection laws that may be in force in South Africa from time to time.

9.2 You consent to –

9.2.1 the processing of your personal information by us, our service providers and professional advisers (who may be outside South Africa) for all purposes contemplated in this letter, on the basis set out in 8.1;

9.2.2 the retention by us of your personal information for as long as permitted or required for legal, regulatory, governance, fraud prevention and marketing purposes.

9.3 If you wish to confirm or correct the personal information that we have on record for you, please contact the director responsible for your matter or our Compliance Officer on +27 11 535 8000.

9.4

10 Copyright

We retain copyright and other intellectual property rights in all documents drafted by us and all ideas and material developed, designed or created by us. Notwithstanding this retention, you will be entitled to make copies of all documents drafted by us for internal and confidential use only.

11 **Retention of documents**

Files are retained by us for seven years from the date of final invoice in respect of a matter, after which period they may be destroyed. Please advise us in writing if you would like us to retain any document in safe custody, or keep any document for a period longer than seven years for any reason.

12 **Termination**

12.1 Either you or we may terminate our engagement in respect of your matter at any time by giving 60 days prior notice in writing. We will only terminate our engagement on good cause. Good cause includes, but is not limited to, any failure to pay timeously or at all any fees or disbursements, or where we are not in receipt of instructions to progress your matter further after having requested your instructions, or where we are of the view either that it is not in your interests or that it is not in our interests for us to continue to represent you. We will not be liable for any loss or damage of any nature whatsoever that may be suffered or incurred by you as a result of our terminating our engagement in terms of this 12.1.

12.2 If our engagement in respect of your matter is terminated for any reason whatsoever, we will be entitled to payment of our fees and disbursements incurred in respect of services rendered in respect of your matter prior to such termination.

Please confirm your agreement with the provisions of this letter, by initialling each page of this letter, signing in full where indicated and returning it to us. By signing this letter, you warrant that you are duly authorised to sign this letter and that you have compiled with all legal requirements (including in terms of any law or regulation, and all internal procedural requirements) for you to validly engage our services in terms of this letter.

Notwithstanding date of signature hereof, the commencement date of this engagement will be 5 August 2015.

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We look forward to working with you.

Yours faithfully

Werksmans Inc

We, the undersigned, hereby agree to the content of this letter.

Signed by NKOSINATHI KHENA

at ILLOVO on 6 AUGUST 2015

for **PASSENGER RAIL AGENCY OF SOUTH AFRICA**

who warrants that he is duly authorised hereto

ANNEXURE A

1. PRASA has duly appointed Werksmans to perform a forensic investigation on various instances of irregular, fruitless and wasteful expenditure incurred by PRASA, and all irregular and/or unlawful activity related thereto, outlined but not limited to the Auditor-General of South Africa draft report dated 31 March 2015.

2. This document forms Annexure "A" to Werksmans' Engagement Letter entered into by PRASA in respect of the provision of Services and support to PRASA and forms an integral part of Werksmans' Engagement Letter.

3. Werksmans' and/or its subcontractors shall be obliged to render the following Services:

3.1 Investigate the irregular, fruitless and wasteful expenditure incurred by the officials of PRASA;

3.2 Investigate the falsification, misrepresentation and overstatement of qualifications by the officials of PRASA

3.3 Investigate any other allegations of misconduct, corruption, fraud, and irregular actions by PRASA officials

3.4 Provide recommendations to PRASA on the findings that arise from the investigations and on the possible actions to be taken against anyone

3.5 Provide recommendations to PRASA on how to prevent further occurrences of the findings and on compliance with applicable government laws, rules, regulations, policies and procedures

3.6 Development and review of PRASA policies to the extent that the investigation recommends such;

3.7 Provide advice on fiduciary duties and structure, as well as on corporate governance and administrative issues.

3.8 Present formal and informal written and/or oral opinions concerning the findings with the first initial written report being due by the end of August 2015, This date is subject to the outcomes conveyed at progress meetings and it may be varied at those meetings.

3.9 Review and advise PRASA on the various contracts relating to the fruitless and wasteful expenditure and their implications

3.10 Attending monthly progress meetings with designated PRASA representatives to provide oral updates.

3.11 All of the above Services may be added to and/or expanded upon, upon receiving a request therefore from PRASA from time to time.

ANNEXURE B

WERKSMANS' RATES

1. This document constitutes Annexure "B" to Werksmans' Engagement Letter entered into by PRASA in respect of the Services to be rendered to PRASA and forms an integral part of Werksmans' Engagement Letter.

2. PRASA agrees that the billing rates set out in this Annexure B will be reviewed and negotiated once per annum in March. The Parties will negotiate and agree any amendments to the billing rates, however, any adjustment to the billing rates will not be less than the Consumer Price Index (CPI) Headline Inflation Rate as published by Statistics South Africa on 1 March of every year, or if the publication of such index is discontinued, the most similar index as compiled and published monthly by Statistics South Africa in a statistical news release or anybody authorised in its stead, in terms of the Statistics Act 1976 as amended (or any statute replacing such Act).

3. PRASA therefore agrees that this Annexure B will be amended annually to reflect Werksmans' adjusted billing rates.

4. In consideration for rendering the Services outlined in Annexure A to the Werksmans' Engagement Letter, Werksmans shall be entitled to charge the following service fees from PRASA in the 2015/2016 financial year:

HOURLY CHARGE – OUT RATES (EXCLUDING VAT)

Designation	Hourly Rate
Director - more than 15 years' experience as an admitted attorney	R4,300
Director-More than 8 years but less than 15 years' experience as an admitted	R3,500

attorney	
Director-Less than 8 years' experience as an admitted attorney	R3100
Senior Associate	R2,200
Associate	R1,500
Candidate Attorney (2nd year)	R1,100
Candidate Attorney (1st year)	R800

ANNEXURE C

DISBURSEMENT RATES

Forensic Specialist Firm (Excluding VAT)

Designation	Hourly Rate
Partner (Director)	R2,672
Specialist	R 2,672
Senior Manager	R 2,309
Manager	R 1,714
Senior Investigator; Senior Forensic Data Analyst	R 1,714
Investigators; Junior Forensic Data Analyst	R 1,210
Senior Accounting Analyst	R 1,079
Accounting Analyst	R 817
Forensic Data Capturer	R 817
Close Protection Officer	R 817
Administration Assistant	R 685
Junior Accounting Analyst	R 432

Copying and printing

From 1 to 1000 copies	R1.50 / page
From 1001 to 1200 copies	R1.00 / page
From 1201 to 1400 copies	R0.75 / page
From 1401 upwards	R0.50 / page

Faxing

Local:	R2.00 / page
National:	R4.00 / page

International: R12.00 / page

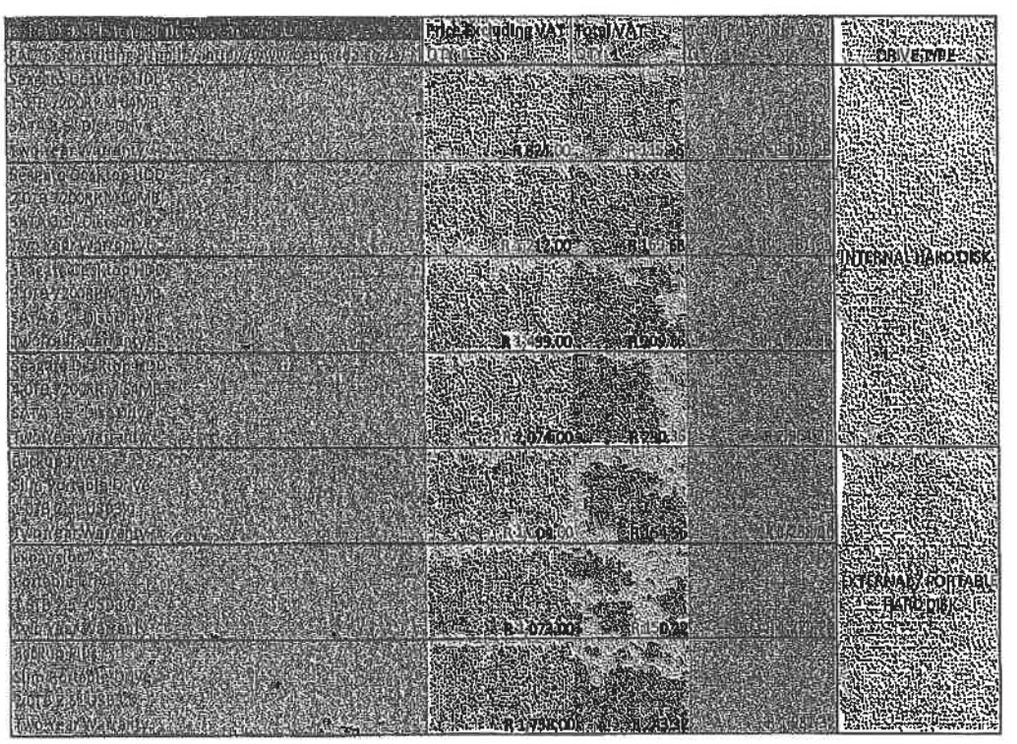
Telephone

*Local:	R1.00 / minute
National and cell:	R2.00 / minute
International:	R6.00 / minute

*A minimum cost to post the charge of R4.00. Therefore local calls are only charged once they exceed four minutes.

All costs relating to IT forensic and IT specialist Services

All costs relating to IT forensic and IT specialist Services are as incurred. Subject to the following:



The above prices do fluctuate on a weekly basis (due to the foreign exchange rate) and changes within 5% of the above prices will be absorbed by the IT specialists. Changes in excess of 5% will be charged to PRASA

Full supporting documentation is always provided.

Travel

Flights, accommodation and general travel expenses are as incurred. Subject to the following restrictions:

1. Flight tickets must be economy class; and
2. Hotel accommodation must be at corporate rates to be secured by Werksmans and/or its subcontractors.

Full supporting documentation is always provided.

Reimbursement for petrol and use of personal vehicles

Fluctuates based on the price of petrol.

Currently R4.60 / km

Further disbursements incurred during the course of investigations

All further disbursements incurred during the course of investigations are as incurred. Full supporting documentation is always provided.

MF3

MF 3

RESOLUTION OF THE BOARD OF CONTROL OF THE PASSENGER RAIL AGENCY OF SOUTH AFRICA, a public entity established in terms of the LEGAL SUCCESSION to the SOUTH AFRICAN TRANSPORT SERVICES ACT 9 OF 1989
("PRASA")

IT IS RECORDED THAT:

PRASA duly appointed WERKSMANS ATTORNEYS ("Werksmans") to perform a forensic Investigation into various instances of irregular, fruitless and wasteful expenditure incurred by PRASA, and all irregular and unlawful activities related thereto, some of which are set out in a report by the Auditor General of South Africa in the Draft Management Report dated 31 March 2015 ("the Investigation").

Whilst the Investigation is not yet complete, it is apparent from the preliminary findings that PRASA will have to take certain remedial steps which may result in PRASA having to institute and/or defend legal proceedings.

The Board needs to ensure that PRASA is in a position to be able to institute and/or defend any legal proceedings without any undue delay.

IT IS RESOLVED THAT:

1 PRASA launch any application proceedings and institute any action proceedings that PRASA may be duly advised (by Werksmans) to launch or

institute, and which proceedings are deemed to be the appropriate remedial actions to any findings that may arise from the Investigation.

2 PRASA defend any application proceedings and action proceedings that may be launched or instituted by any third parties as a result of remedial steps taken by PRASA to deal with any findings by Werksmans during the course of the Investigation.

3 THAT **POPO SIMON MOLEFE** be and is hereby authorised to take all steps and do all things necessary with regards to the proceedings referred to in paragraphs 1 and 2, above including the signing of all documents and deposing to affidavits in regard thereto, and insofar as he has done so before the adoption of these resolutions, such action/s be and is/are hereby ratified.

4 THAT **WERKSMANS ATTORNEYS** of 155-5th Street, Sandown, Sandton be appointed as PRASA's attorneys in regard to the proceedings referred to in paragraphs 1 and 2 above.

SIGNED AT HATFIELD ON 21 SEPTEMBER 2015

COMPANY SECRETARY

MF4

MF 4.

NGUBANE & CO.
CHARTERED ACCOUNTANTS | AUDITORS

Building 1 | Midrand Business Park
563 Old Pretoria Main Road
MIDRAND | 1685

PO Box 8468 | Halfway House
MIDRAND | 1685

Tel: +27 11 254 0800 | Fax: +27 11 805 0168
E-mail: jhb@ngubane.co.za
www.ngubane.co.za

24 July 2015

The Acting Group Chief Executive Officer
Passenger Rail Agency of South Africa "PRASA"
PRASA House
1040 Burnett Street
Hatfield, Pretoria

Attention : Acting Group Chief Executive Officer

APPOINTMENT OF SERVICE PROVIDER TO PERFORM FORENSIC INVESTIGATION ON IRREGULAR, FRUITLESS AND WASTEFUL EXPENDITURE

INTRODUCTION

We hereby write to formally accept our appointment to perform forensic investigation on the irregular, fruitless and wasteful expenditure incurred by the officials of PRASA. We detail in this letter our understanding of the terms of reference and timeframes and applicable charge out rates.

OUR UNDERSTANDING OF TERMS OF REFERENCE

We are to perform the following:

- Investigate the irregular, fruitless and wasteful expenditure incurred by the officials of PRASA
- Investigate the falsification , misrepresentation and overstatement of qualifications by the officials of PRASA
- Investigate any other allegations of misconduct , corruption, fraud and irregular actions by PRASA officials
- Make recommendations to PRASA on our findings and on actions to be taken against anyone
- Make recommendations to PRASA on how to prevent further occurrences of the findings

We acknowledge that the first draft is expected by end of August 2015 and that we are supposed to report to Audit Committee at all the Audit Committee meetings. Furthermore, we are expected to provide progress update to the Audit Committee Chairperson on regular basis.

Directors:
TB Nkomozephi, E Sibanda, HGS Mpungose, N Mokou, N Ravele,
SM Jogee, ET Chapanduka, MN Govender, DA Mbatha, MO Mathetemusa

Reg.No. 2010/016757/21

APPLICABLE CHARGE OUT RATES

Ngubane & Co shall offer these services at the AGSA charge out rates that were approved and published by SAICA as applicable for the financial year ending 31 March 2015/16.

It has to be noted upfront that there are certain experts or specialists that are not governed by these SAICA published rates and accordingly, their rates shall be communicated as of when their involvement is required.

May you indicate, by signing the acceptance space below, that we are of the same understanding of the terms of our appointment.

Yours faithfully

Wilfred Bhekabantu Ngubane
Chief Executive Officer
Ngubane & Co.

The contents of your acceptance above are hereby confirmed as correct and accurate and accepted on behalf of PRASA by:

Signature: .....

Full name: M-A KHENA

Designation: ACTING GCEO

Date: 24/7/2015

MF5

MF 5

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Be moved

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

MEMORANDUM

To:	**MR. COLLINS LETSOALO** **ACTING GROUP CHIEF EXECUTIVE OFFICER**
From:	**MS. MARTHA NGOYE** **GROUP EXECUTIVE: LEGAL, RISK AND COMPLIANCE**
Date:	**21 February 2017**
Subject:	**DRAFT LETTER TO CHAIRMAN ON FORENSIC INVESTIGATIONS AND CONFIRMATION OF INSTRUCTIONS**

1. PURPOSE

1.1. The primary purpose of this memorandum is to submit to the Acting Group CEO a draft of the letter requested by the Acting Group CEO to be sent to the Chairman of the Board on Management's involvement in the Forensic Investigations conducted by Werksmans Attorneys, which letter must be transcribed on the Acting Group CEO's letterhead.

1.2. This memo also confirms the instructions given to the Group Legal Function by the Acting Group CEO at the Extended Exco of 20 February 2017 in respect of the Forensic Investigations.

2. BACKGROUND

2.1. I attach herewith **Annexure A**, a draft letter that is to be viewed by you and, if it meets your approval, transcribed on to your letterhead to be signed by the Acting Group CEO. This letter addressed to the Chairman of the PRASA Board. A soft copy of this letter has been sent to your office via email.

2.2. I hereby confirm your instructions for the Group Legal Function not to deal with Werskmans Attorneys on the Forensic Investigations, but to proceed with the firm on the Civil matters they are currently handling on behalf of PRASA.

DRAFT LETTER TO CHAIRMAN ON FORENSIC INVESTIGATIONS AND CONFIRMATION OF INSTRUCTIONS

2.3. I hereby advise that following our meeting of yesterday, I asked for a meeting this morning with the Werksmans Attorneys. The purpose of the meeting was to advise them of your instructions for the Group Legal Function not be involved in the forensic investigations in relation to the Forensic Investigations. I have also reiterated your instruction to them to not proceed with the criminal investigation and labour matters as these are outside their mandate.

2.4. I have requested them to address all correspondence to you so that you are kept abreast of the civil matters that they are dealing with.

2.5. They raised their concern with their unpaid bills and I suggested that they clarify the issues with you.

2.6. I was advised that a meeting will be set up for tomorrow with Counsel to discuss the Siyangena matter as agreed with you yesterday. An invitation will therefore be sent out from them accordingly.

Prepared by

Martha Ngoye
Group Executive: Legal, Risk and Insurance
Date: 21/02/2017

Annex "A"

TO BE TRANSCRIBED ONTO THE LETTERHEAD OF MR COLLINS LETSOALO

Dear Dr. Molefe,

FORENSIC INVESTIGATION UNDERTAKEN BY WERKSMANS ATTORNEYS AS MANDATED BY THE BOARD

Your letter of 13th February 2017 that is addressed to General Ntlemeza has reference. I wish to place on record that I do not agree with your approach and the contents of your letter. Furthermore, I am of the firm belief that this letter contradicts your instruction that management should lead the forensic investigation that is undertaken by Werksmans Attorneys.

In the circumstances, I hereby inform you that I will not be authorizing the payment of any invoices of Werksmans Attorneys that concern this investigation going forward. I have also specifically instructed Group Legal Services to, henceforth, not have any dealings with Werksmans Attorneys in relation all the forensic investigations.

Yours faithfully,

Collins Letsoalo
Acting Group CEO
PRASA

..... MS MARTHA NGOYE GE: LEGAL, RISK & COMPLIANCE DATE: 21/02/2017	SUBMITTED BY AND RECOMMENDED THAT THE AGCEO SIGNS THE ATTACHED:
..... MR COLLINS LETSOALO AGCEO DATE:	COMMENTS

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CONFIDENTIAL

SUBJECT	**Memorandum to AGCEO – Collins Letsoalo** **Forensic Investigations: Chairman's Letter to the DPCI, General Ntlemeza**

UNIT	**Legal**

DIVISION	**PRASA Corporate**

ROUTE FORM - COMPLETE

..... **Mr / Ms Surname** **Designation** SE: Legal, Risk, Compliance **Date:** 13/02/2017	**AUTHOR** Memorandum "Forensic Investigations: Chairman's letter to the DPCI, General Ntlemeza, dated 13 February 2017
..... **Mr. Collins Letsoalo** **AGCEO** **Date:**	**APPROVED / NOT APPROVED / COMMENTS** _____ _____ _____ _____ _____

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

Memorandum

To:	**THE ACTING GROUP CEO: COLLINS LETSOALO**
From:	**GROUP EXEC : LEGAL, RISK & COMPLIANCE**
Date:	13 February 2017
Subject:	**FORENSIC INVESTIGATIONS : CHAIRMAN'S LETTER TO THE DPCI, GENERAL NTLEMEZA**

Dear Collins,

I have enclosed for your information a letter I have been given from the Chairman addressed to General Ntlemeza. The letter will be delivered today at his offices.

Fani and I had a meeting on Friday with General Khana on the investigations.

I have had to do a separate letter to General Khana advising him of the Chairman's letter.

A copy of the same letter will also be sent to Shaun Abrahams, National Director of Public Prosecutions for his information.

I am happy to take you through the issues but I am hoping that the Chairman will also discuss the matter with you.

MS MARTHA NGOYE
GROUP EXECUTIVE: LEGAL, RISK & COMPLIANCE
DATE: 13/02/2017.

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

PRASA HOUSE
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Pretoria

Private Bag X101
Bloemfontein, 2017
T: +27 12 748 3000

THE NATIONAL DIRECTORATE OF PUBLIC PROSECUTIONS
NATIONAL PROSECUTING AUTHORITY
ADVOCATE S ABRAHAMS
VICTORIA & GRIFFITHS MXENGE
VGM BUILDING
123 WESTLAKE AVENUE
WEAVIND PARK
SILVERTON
PRETORIA, 0184

13 February 2017

Dear Advocate Abrahams,

PRASA INVESTIGATIONS: HILLBROW CASE 405/07/2016 AND BROOKLYN CASE 278/09/2015

We enclose for your attention a copy of a letter addressed by the Chairman of the Board of Control of PRASA, Dr Molefe to General Ntlemeza.

Yours sincerely

PRASA
MS MARTHA NGOYE
GROUP EXECUTIVE: LEGAL, RISK & COMPLIANCE

Directors Dr P Molefe (Chairman), CP Loiseau (Acting Group CEO)
K George, ZP Manuse, C Mawangwana, MJ Mutlala,
TB Philanse, WS Sicanhama

Company Secretary
L Zide

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MAJOR GENERAL KHANA
DIRECTORATE FOR PRIORITY CRIME INVESTIGATIONS
SOUTH AFRICAN POLICE SERVICE
A5 PROMAT BUILDING
CRESSWELL ROAD
SILVERTON
PRETORIA, 0186

13 February 2017

Dear Major General Khana,

PRASA INVESTIGATIONS: HILLBROW CASE 405/07/2016 AND BROOKLYN CASE 278/09/2015

1 We refer to your letter dated 25 January 2017.

2 We refer you to the letter from the Chairman of the Board of Control of PRASA, Dr Molefe to General Ntlemeza, a copy of which is attached for your ease of reference.

3 PRASA will continue to tender its co-operation with the DPCI and the NPA. However, as you will note from paragraph 33 of Dr Molefe's letter, we have been

Directors Dr P Molefe (Chairman), CP Loisanne (Acting Group CEO) X George, ZP Manasa, C Manyungwane, MJ Matlala, TB Pakkane, WS Steenkamp

Company Secretary L.Zide

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instructed to refrain from engaging with you pending receipt of the response to Dr Molefe's letter.

Yours sincerely

PRASA
MS MARTHA NGOYE
GROUP EXECUTIVE: LEGAL, RISK & COMPLIANCE

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13 February 2017

THE HEAD:

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
GENERAL B NTLEMEZA
SOUTH AFRICAN POLICE SERVICE
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
SOUTH AFRICAN POLICE SERVICE
A5 PROMAT BUILDING
1 CRESSWELL ROAD
SILVERTON
PRETORIA, 0186

Dear General Ntlemeza,

PRASA INVESTIGATIONS: HILLBROW CASE 405/07/2015 AND BROOKLYN CASE 278/09/2015

1 The above matters refer.

2 I address you in particular with reference to the tender irregularities and related unlawful activity in respect of the Swifambo and Siyangena matters. The Swifambo matter is being investigated under case number Hillbrow CAS405/07/2015 and the Siyangena matter is being investigated under Brooklyn CAS278/09/2015.

3 The Directorate for Priority Crimes ('*DPCI*'), the Asset Forfeiture Unit, NPA ('*AFU*') and Passenger Rail Agency of South Africa ('*PRASA*') have, for over a year,

prioritized both matters for investigation and effective response by the responsible functionaries. This is warranted not least due to the fact that the allegations in both matters involve substantial amounts of public monies, relate to tender irregularities and associated unlawful activity that has a detrimental effect on public transport delivery affecting South Africans nationally and concern the diversion of substantial amounts of public monies for personal gain and corruption. They also concern recent or current contracts and the circumstances are such that it is necessary to act promptly in order to preserve the proceeds of crime. They are matters that relate to allegations of national priority offences as defined in Chapter 6 of the South African Police Services Act 68 of 1995 ('*the SAPS Act*') and are of public importance.

4 In light of the nature of the matters, I am deeply concerned that South African citizens and the fiscus are prejudiced by the fact that the DPCI has done nothing tangible to respond effectively to these matters, despite PRASA's ongoing co-operation and assistance.

5 I refer you to recent correspondence with relevant role-players, attached for ease of reference:

5.1 Major General Khana's letter to Ms M Ngoye and Mr C Letsoalo dated 25 January 2017. (A)

5.2 Ms M Ngoye's letter to Major General Khana dated 25 November 2016. (B)

5.3 Major General Khana's letter to Ms M Ngoye, Group Executive, Legal Risk and Compliance at PRASA and Mr C Letsoalo, Acting GCEO of PRASA dated 29 September 2016. (C)

5.4 My letter to Major General Khana dated 18 September 2016 (D)

5.5 My letter to yourself and the National Director of Public Prosecutions, Advocate Shaun Abrahams of 13 May 2016 (E)

5.6 The response received from Adv Abrahams of 11 August 2016 (F)

6 PRASA is and has been actively assisting the DPCI and the AFU with the investigation of the above matters, from as far back as August 2015 and engaging with the NPA on an ongoing basis. Insofar as Major General Khana expresses any concern, in his letter of 25 January 2017, that PRASA has not mandated the reporting of the above matters, this is manifestly unwarranted. Although Mr Mamabolo provided the initial statement in CAS 405/07/2015 on his own volition, he subsequently provided detailed statements in respect of the both the Swifambo and Siyangena matters mandated by PRASA on 28 September 2015 and 23 March 2016 respectively. While Swifambo and Siyangena warrant priority investigation, PRASA supports the investigation of all tender related irregularities that have been reported to SAPS and the DPCI. As you are aware, on 18 May 2016, PRASA duly reported various unlawful activity as contemplated by section 34 of the Prevention and Combatting of Corrupt Activities Act 12 of 2004.

7 In light of the full history of the investigations into the Swifambo and Siyangena matters, PRASA contends that the DPCI has failed reasonably to comply with its constitutional and statutory obligations to investigate these matters and to bring the investigations to finality. In consequence, persons alleged to be responsible for national priority offences have not been held to account and there is a serious risk that the ability to recover significant public funds with recourse to the NPA's powers under the National Prosecuting Authority Act 32 of 1998 ('*the NPA Act*') is or may soon be compromised. It is, of course, of vital importance that assets that are used to perpetrate crime or are the proceeds of crime are preserved, and at the appropriate time confiscated or forfeited.

8 PRASA has, throughout the investigation period tendered its full co-operation with both the DPCI and the AFU to investigate reported matters promptly and effectively, with priority to be given to the Swifambo and Siyangena matters, and to enable the preservation of assets that PRASA believes are the proceeds of crime. To this end, at its own cost, PRASA has made available a highly resourced and experienced investigative team, Horwath Forensics (Pty) Ltd ('*Horwath*'), the services of two private prosecutors (Advocates Lawrence Hodes SC and Naomi Manaka) and has conducted extensive relevant investigations insofar in as these are within its legal powers. Horwath has uncovered a substantial amount of material information relevant to both the Swifambo and Siyangena matters as well as other matters that have been reported.

9 To date, the DPCI has retained control over the investigations. As far as PRASA is aware, the DPCI has not, in terms of section 17D(3) of the SAPS Act, requested the NPA to exercise powers in terms of section 28 of the NPA Act. According to Adv

Abrahams' letter of 11 August 2016 (F), the matters are the subject of investigation by the DPCI under the guidance of an unnamed prosecutor, the investigations are still ongoing and the sufficiency or otherwise of resources will be a matter of ongoing assessment.

10 As regards the sufficiency of DPCI resources, I note your recent advice that the DPCI has placed investigators across the country on alert so that it can tackle the matter head on. (Your letter of 25 January 2017 to Ms Ngoye and Mr Letsoalo (A)) There can accordingly be no basis for suggesting that the Swifambo and Siyangena investigations cannot be promptly finalized and asset preservation proceedings commenced if not now, in the very near future. This is not least in light of the assistance and co-operation offered by PRASA.

11 It is, however, of grave concern that the recent correspondence from Major General Khana makes it clear that DPCI has done very little to date to progress and finalise the Siyangena and Swifambo investigations and facilitate related asset preservation procedures. The questions that Major General Khana asks and the comments that he makes suggest that he has either failed properly to acquaint himself with the information already to hand and the investigation history or is deliberately seeking to frustrate the effective investigation of the matters and their finalisation. This is despite the fact that the investigations have been under his command for over a year, and since at least 27 January 2016 with significant resources being placed at his disposal.

12 In the early phases of the investigations in 2015, the co-ordinated efforts of the DPCI, the AFU, the NPA and PRASA resulted, as at 14 January 2016, in an approved

Investigation plan for Swifambo. Mr Mamabolo supplied a detailed statement on 28 September 2015, alleged crimes, suspects and witnesses had been identified, the DPCI had exercised section 205 powers, and Horwath had been authorized (in December 2015) *inter alia* to conduct a cash flow and transactional analysis ('*the Swifambo financial analysis*'). The AFU was poised to commence the necessary asset protection procedures under the Prevention of Organised Crime Act 121 of 1998 ('*POCA*') upon receipt of the Swifambo financial analysis. This was at a time when the investigation was under the command of Major General Mosipi, the investigating officer assigned was Col Komane acting under the command of Brigadier Magson. Col Mosito together with other DPCI / SAPS personnel were engaged in the investigation team and there was ongoing liaison with the NPA and AFU.

13 Since 27 January 2016, the investigations and related asset protection procedures have effectively stalled. This coincides with the appointment of Major General Khana to lead the investigations and the departure from the team of Major General Mosipi. Although there have been many meetings including with Major General Khana and others involved, and many promises made, DPCI has, quite simply, not progressed the investigations reasonably or adequately. DPCI has been apprised of more than adequate information to progress, and indeed finalise, both the Siyangena and the Swifambo investigations for a long time.

14 I highlight key concerns in respect of each investigation.

SWIFAMBO MATTER

15 As mentioned above, the DPCI has been in a position effectively to investigate the Swifambo matter from at least 14 January 2016: an approved investigation plan was by then in place.

16 I am aware that material information and evidence arising from Horwath's investigations has been available to the DPCI over time, but the DPCI has failed or declined to receive it and to enable the NPA to utilize it for purposes of asset protection. More particularly, I refer to the following:

16.1 The Swifambo financial analysis which has been available since October 2016;

16.2 16 lever arch files containing documentary evidence available to the DPCI from July 2016.

17 It is further apparent that the DPCI has simply failed to obtain necessary witness statements despite long being apprised of both witnesses and suspects. In this regard, PRASA's investigators have been and continue to be available to assist the DPCI with witness statements insofar as this is required but cannot itself direct the investigation or statement taking process. It is also apparent that no suspects have been issued with any warning statements.

18 Major General Khana has sought in his recent correspondence to suggest that PRASA has not provided DPCI with sufficient information relating to the Swifambo tender to enable DPCI to conduct the investigation. This does not warrant scrutiny and it appears, rather, that Major General Khana and his team have either failed to

acquaint themselves with the material already provided to them and more particular the 28 September 2015 statement of Mr Mamabolo and the content and materiality of the civil papers, or have no intention of doing so with any seriousness. PRASA has always been willing to assist the DPCI to take statements from potential witnesses involved in the tender procedures including within its own ranks, where appropriate and subject to DPCI direction. However, this procedure ought to have been initiated over a year ago.

SIYANGENA

19 The Siyangena case was initially reported in September 2015 under Brooklyn CAS278/09/2015. DPCI has been in possession of the detailed statement of Mr Parker Mamabolo (which includes 8 lever arch files of relevant and supporting annexures) since March 2016. DPCI has been in a position to prepare its investigation plan from at least this stage: indeed, I understand that such a plan was prepared.

20 I am aware that section 205 procedures have been followed for purposes of conducting a cash flow and transactional analysis in relation to the Siyangena matter ('*the Siyangena financial analysis*'). The DPCI has repeatedly undertaken to appoint Horwath to conduct the Siyangena financial analysis. Major General Khana has, himself, given this undertaking as far back as April 2016 and as recently as November 2016. This has not been done thereby prejudicing the investigation and asset protection. I understand further that DPCI has not, itself conducted any cash flow and transactional analysis despite the information being available. Horwath is in a position to do the Siyangena financial analysis promptly and within 3 weeks of

DPCI providing it with the information obtained as a result of the section 205 procedures.

21 As regards the need to take statements, I understand that the DPCI has taken only limited statements and interviewed only limited potential witnesses. This is despite the fact that DPCI has known for a very long time who potential witnesses and suspects are.

22 Furthermore, PRASA has, through Horwath, conducted extensive investigations and obtained material information both from open documentary sources and from engaging with potential witnesses. These investigations relate to the property transactions that are believed to be transactions effected with the proceeds of crime in connection with the Siyangena tender irregularities. DPCI is aware of this

Recent communications

23 It is now clear from engagements and communications with Major General Khana that since January 2016, the DPCI has failed to conduct its investigations in connection with either the Swifambo or the Siyangena matters in a manner that is compliant with its constitutional and statutory obligations. An initial meeting with Major General Khana took place on 27 January 2016. By April 2016, PRASA was led to believe that the investigation of the matters was back on track despite Major General Mosipi's departure. However, nothing tangible has happened and the promises made did not materialize. In correspondence from Ms Ngoye dated 25 November 2016, Ms Ngoye sought a meeting with Major General Khana and the

investigating team with a view to progressing the investigations including agreeing on the matters identified in paragraphs 6.1 to 6.5 of her letter.

24 Major General Khana's response of 25 January 2017 is unacceptable. He proposes a meeting 'to explain the position and role of the SAPS (DPCI) in dealing with reported crime'. This is unnecessary. PRASA is familiar with the role of SAPS and DPCI in this regard. He also wishes to highlight shortcomings in the allegations contained in Mr Mamabolo's statement of July 2015 in CAS405/07/15 and to emphasise the need for further supporting documentation and evidence. In doing so, it is clear that he is seeking to divert attention away from conducting the priority investigations of Swifambo and Siyangena. While PRASA will continue to co-operate with the investigation of all reported complaints, it is unreasonable and unlawful to fail to progress these priority investigations to finality at this stage. It is also clear from recent correspondence that Major General Khana is not familiar with the information and statements already provided by PRASA and the investigation history. PRASA has provided more than adequate information and statements for the DPCI to perform its functions and will continue to do so as necessary.

25 In light of the investigation history to date and the importance of progressing the Swifambo and Siyangena matters to finality at this stage, I hereby call upon the DPCI to do the following:

In respect of both the Swifambo and Siyangena matters

26 To advise within 7 days:

26.1 The number and identities of investigating officers and DPCI officials (including FAFI members) assigned to each matter;

26.2 The identity of the person or persons under whose command the teams are working;

26.3 To identify the prosecutors who have been assigned to 'guide' each case.

27 To commit, every two weeks, to provide progress reports to PRASA (as complainant) and Horwath on the status of the investigations;

28 To commit, within three months, to convene a meeting with PRASA (as complainant), DPCI and the NPA (including the assigned prosecutors and AFU officials) to provide a full report on the status of the investigation and the readiness for prosecution.

In respect of the Swifambo matter

29 To confirm that the DPCI will take such steps as are necessary to finalise the Swifambo investigation by doing *inter alia* the following:

29.1 Within one week of the date of this letter, to arrange a meeting with Horwath, to receive:

29.1.1 The Swifambo financial analysis and upon its receipt to place it in the hands of both Financial and Asset Forfeiture Investigations ('*FAFI*') and the AFU;

29.1.2 The 16 lever arch files of documentary evidence relating to the Swifambo tender and tender irregularities which have been secured by Horwarth for purposes of the investigation and have been available to the DPCI since July 2016.

29.2 To take the necessary statements from witnesses (both identified to date and whose identities will become apparent from the Swifambo financial analysis) within the following time frames:

29.2.1 Statements from PRASA witnesses within a period of one month;

29.2.2 Other witnesses already identified within a period of two months;

29.2.3 Additional witnesses and witnesses whose identities will become apparent from the Swifambo financial analysis and / or who may reside outside South Africa within three months.

(Please note that as already tendered, PRASA and Horwath are available to assist the DPCI to take statements from PRASA employees or other witnesses under the appropriate direction of the relevant investigating officers. While DPCI is already apprised of this information, attached hereto is a list of witnesses for ease of reference (G).)

29.3 Within 3 weeks, to arrange a meeting with Horwath, AFU, FAFI and the relevant investigating officer(s) to assess the readiness of the AFU to obtain asset preservation orders in terms of POCA and to plan accordingly.

30 In the event that the DPCI does not have the capacity to do the above, to advise PRASA forthwith and to make a request of the NPA in terms of section 17D(1) of the SAPS Act.

In respect of the Siyangena matter

31 To confirm that the DPCI will take such steps as are necessary to finalise the investigation of the Siyangena matter by doing *inter alia* the following:

31.1 Within one week to appoint Horwath to conduct the Siyangena financial analysis utilizing the information obtained pursuant to section 205 in line with the undertakings to do so and to hand over the subpoenaed documentation which we are advised by DPCI is in its possession.

31.2 Noting that Horwath will conduct a preliminary first phase cash flow report within 21 days of receipt of the information and provide it to the DPCI, to receive the report and provide it to FAFI and the AFU.

31.3 Within 3 weeks thereafter, to arrange a meeting with Horwath, AFU, FAFI and the relevant investigating officer(s) to assess the readiness of the AFU to obtain asset preservation orders in terms of POCA and to plan accordingly.

31.4 To take the necessary statements from witnesses (both identified to date and whose identities will become apparent from the Siyangena financial analysis) within the following time frames:

31.4.1 Statements from PRASA witnesses within a period of one month;

31.4.2 Other witnesses already identified within a period of two months;

31.4.3 Additional witnesses and witnesses whose identities will become apparent from the Siyangena financial analysis and / or who may reside outside South Africa within three months.

31.5 (Please note that as already tendered, PRASA and Horwath are available to assist the DPCI to take statements from PRASA employees or other witnesses under the appropriate direction of the relevant investigating officers. While DPCI is already apprised of this information, attached hereto is a list of witnesses for ease of reference(G).)

32 In the event that the DPCI does not have the capacity to do the above, to advise PRASA forthwith and to make a request of the NPA in terms of section 17D(1) of the SAPS Act.

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

33 Please be advised that while PRASA remains willing to co-operate and assist the DPCI to conduct its investigations, I have requested PRASA officials to refrain from further meetings with the DPCI until I have received a response to this letter. The purpose of doing so is to ensure that meetings held are properly directed to ensuring that the investigations are brought to finality and to mitigate further harm occurring as a result of the DPCI's failure to comply with its constitutional and statutory obligations to date.

34 I request your undertaking to do what I call for in paragraphs 26 to 32 above on or before close of business on Friday 17 February 2017, failing which PRASA reserves its right to approach a Court for competent relief.

35 Insofar as I do not deal with every issue addressed in the correspondence to which I refer above, this should not be regarded as any admission and all of PRASA's rights are reserved.

Yours sincerely

PRASA
DR. P.S. MOLEFE
CHAIRMAN OF THE BOARD
2017/02/13

A

SAP 21

SUID-AFRIKAANSE POLISIEDIENS

SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X1500, SILVERTON, 0127

Verwysing Reference	26/18/2(214)
Navrae Enquiries	Maj General ADR Khana
Telefoon Telephone	012 846 4101
Faksnommer Fax number	012 846 4404

HEAD: SERIOUS COMMERCIAL CRIME
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
SOUTH AFRICAN POLICE SERVICE
SILVERTON
0127

25 January 2017

A. The Group Executive
Legal Risk and Compliance
Passenger Rail Agency of South Africa
Hatfield
PRETORIA

ATT: Ms M Ngoye

B. The Acting Group Chief Executive Officer
Passenger Rail Agency of South Africa
Hatfield
PRETORIA

ATT: Mr C Letsoalo

C. The Section Head
Serious Economic Offences Unit
Serious Commercial Crime
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

PRASA INVESTIGATIONS: HILLBROW CAS 405/07/2016 AND BROOKLYN CAS 278/09/2015

A&B. Your unreferenced minute dated 2016/11/25 refers.

I wish to tender my apology for the late acknowledgement of receipt and response to your letter.

I have taken note of your background information as per paragraph 2.1-2.14 of said letter.

I must state that I am quite concerned regarding your opening remarks in 2.1 pertaining to the facts that Mr. Mamabolo made the statement of his own volition and the fact that he was not authorised by Prasa to register the case.

Note is also taken of the fact that you indicate under 2.1 that his statement is not based on the report of the Public Protector but rather that of SATAWU to the Public Protector in 2012.

I pause to state that, as much as I appreciate the information in paragraph 2.2-2.14, and although it may be relevant to the broader matter, I want to respectfully state that it does not address the issues and requests raised in my evenly numbered minute dated 2016/10/27.

PRASA INVESTIGATIONS: HILLBROW CAS 405/07/2016 AND BROOKLYN CAS 278/09/2015

The issues I raised are issues which we ordinarily will raise with the complainant, but thought it prudent to engage you as senior management. In view of your statement that Mr. Mamabolo was not authorised to make the statement in Hillbrow CAS 405/07/2015, we now do not know whether we should now deal with him directly as your response or still continue with his engagement.

This matter however is now already recorded at Parliamentary level and I want to suggest that we continue to regard it as having been reported by PRASA, reported by Mr. Mamabolo.

I think that it may be best that we have a follow up for the following reasons:

a) To explain the position and role of the SAPS (DPCI) in dealing with reported crime; and

b) To highlight the shortcomings in the statements which we dealt with at length during our previous session and explain why we need the additional information in the following instances on the allegations contained in Hillbrow CAS 405/07/2015.

The reported allegations were made with no supporting documentation or evidence of any nature. In the event of allegations of any kind, nature or extend, it will always be required that the person making the allegations be able to substantiate it. It is important that we as the police in our investigations collate all relevant evidence in support of the allegations complained of.

The purpose hereto is to place the prosecutor assigned to the case in a position to be able to make an informed decision whether to prosecute or not. It is noted that you state in your response that documentation had been provided to Colonel Mosito. It must be stated that the documents referred to in paragraph 3.1 are documentation that relate to the civil matter.

It must be stated that because we are conducting a criminal investigation, we do not use the statements and other documentation, which is relevant to the civil case. We will rather retake the statements (or it can be done by yourselves) to which the relevant annexures (supporting documentation) must be appended.

It must also further be stated that although we stated that we will start with the Swifambo and Siyangena matters, it is also essential that you look at the statements of Mr. Mamabolo and in our proposed meeting we will then arrange that the assigned investigator and his/her team sit with dedicated Prasa staff to obtain the requisite documentation.

We deemed it rather necessary to meet again in person so that Brigadier Makinyane the Section Head (Commander) of the Serious Economic Offences Unit (SEOU), and myself can engage with yourself and the GCEO, Mr. Letsoalo to explain to you the extend of our earlier letter again.

PRASA INVESTIGATIONS: HILLBROW CAS 405/07/2016 AND BROOKLYN CAS 278/09/2015

Please note that it would be appreciated if you could avail yourself for a meeting on 2017/01/30 or 2017/01/31. Kindly note that it will be appreciated if the requested information on all matters raised as per paragraph 1-22 of the statement of Mr. Mamobolo can be attended to.

This office has already placed investigators across the country on alert so that we can tackle the matter head-on. It is however dependent on us to get the requisite information, statements, and documentation so that we can sit with the prosecutor on case planning.

You may reply with the proposed date for the meeting by return email or contact my secretary, Ms. Nkambule on 012 846 4101.

C. Copy for your information.

MAJOR GENERAL
HEAD: SERIOUS COMMERCIAL CRIME
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
ADR KHANA

Date : 2017/01/25

SS7-OMN-726

B

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

PRASA HOUSE
1040 Burnett Street
Hatfield
Pretoria

Private Bag X101
Braamfontein, 2017
T: +27 12 748 7010

25 November 2016

The South African Police Service
Private Bag X1500,
Silverton
0127

Attention: Major-General ADR Khana
Head Serious Commercial Crime

BY HAND

Dear Major General ADR Khana

PRASA INVESTIGATIONS: HILLBROW CAS 405/07/2016 AND BROOKLYN CAS 278/09/2015

1. I refer to your letter dated 29 September 2016 (Ref.: 26/18/2(214)) which was addressed to myself and copied to the Acting Group Chief Executive Officer of PRASA and handed to us at the meeting of the 27th October 2016 held at the Hatfield offices of PRASA. Before responding to the matters that have been raised in your letter under reply, I thought it appropriate to first record the background of the matters as we understand it. This background comes from the documents that you have provided to us as well as the interactions that we have had with you. I will thereafter deal with the Siyangena and Swifambo matters in turn. I will then address the section 34 reports that were submitted to the Directorate of Priority Crime and Investigation ("the DPCI") through your offices and propose the way forward that we believe will assist in taking the matters forward.

Directors: Dr P Mojele (Chairman), C Letsoalo (Acting Group CEO), C Cele, X George, NS Khanyile, ZP Manana, C Manyungwana, MJ Matiala, L McMillan, TB Phitsane, WS Rhoanamp

Company Secretary: L Zide

2. The background is as follows:

2.1. On 8 July 2015, a PRASA employee, Philemon Makgatlela Mamabolo ("Mr Mamabolo"), of his own volition, went to the Rosebank Police Station and submitted a statement that he had prepared. This statement was registered under Hillbrow CAS 405/07/2015. In doing this, Mr Mamabolo did not request authority from PRASA and was not authorised by PRASA to make this statement and to hand it over to the police, he did this as a person who was aware of allegations that may point to the commission of the crimes that he mentions in this statement. The first time that I saw this statement was when it was handed to me by you at the meeting of 27 October 2016. Having looked at Mr Mamabolo's statement, it appears that all that Mr Mamabolo did was to place in a sworn statement the allegations that were contained in the complaint that was made by SATAWU to the Public Protector in 2012. That complaint culminated in the report that was issued by the Public Protector in August 2015, titled "Derailed". Mr Mamabolo draws certain inferences from the allegations that are contained in his statement in the understanding that such inferences will be tested by the investigation that was to be conducted by the SAPS. The expectation therefore was that the charges to be laid, if any, will be dependant on the evidence gathered through the police investigation.

2.2. During August 2015 two reports from two institutions established in terms of Chapter 9 of the Constitution came to the attention of the Board of Control of PRASA ("the Board"): the management report by the Auditor-General on

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fruitless and wasteful and irregular expenditure by PRASA and the Public Protector's report titled "Derailed". These two reports obliged the Board to institute an investigation into the matters that were raised in those two reports. The Board appointed Werksmans Attorneys to conduct a forensic investigation to investigate the matters raised by these reports. I return later to some of the outcomes of this forensic investigation.

2.3. During September 2015, Mr Paul O' Sullivan informed me that he intended to report a criminal complaint relating to what he believed was fraud, corruption and money laundering that was related to the award of a contract to Siyangena Technologies (Pty) Limited ("Siyangena"). In his communication with me, Mr O' Sullivan demanded that PRASA should not proceed with any payments that were due to Siyangena and indicated that, should PRASA not accede to such demand, Mr O' Sullivan will approach the court for an urgent interdict. Mr O' Sullivan provided me with a draft affidavit that he indicated would be made at the Brooklyn Police Station. I do not know what happened to this case. From your letter dated 29 September 2016, it appears that this case is Brooklyn CAS 278/09/2015.

2.4. By letter dated 16 October 2015, the then Acting Group Chief Executive Officer (Group CEO) of PRASA, Mr Nathi Khena wrote a letter to Howarth Forensics, a firm of forensic chartered accountants, requesting them to assist the South African Police Services ("SAPS") at PRASA's cost. Naturally, this would have been preceded by engagements between representatives of PRASA and the SAPS alluding to this need.

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2.5. By letter dated 23 December 2015, the Acting Head of the Specialised Commercial Crime Unit, Adv BC Chauke indicated his support of the appointment of Horwath Forensics in respect of Hillbrow CAS 405/07/2015.

2.6. By letter dated 28 December 2015 the Head of Commercial Crime in the DPCI, Mr NP Mhlongo, appointed Horwath Forensics to assist the DPCI with the analysis of the cash flow for Hillbrow CAS 405/07/2015.

2.7. As far as I am aware, no similar appointment has been made in respect of the Brooklyn CAS 278/09/2015. You will notice from what is stated below that we expected that a similar appointment of Howarth Forensics would be made by you for Brooklyn CAS 278/09/2015.

2.8. You provided us with an unsigned and undated statement by Mr Mamabolo. Paragraph 7 of this statement makes reference to the affidavit referred to in 2.1 above. This statement deals with the award of the tender by PRASA to Swifambo Rail Leasing ("the Swifambo Matter").

2.9. On 28 April 2016 and through the facilitation of the Chairman of the Board, Dr Popo Molefe, a meeting was held between officials of the DPCI (led by you), the forensic investigators (led by Werksmans Attorneys) and the officials of PRASA (led by Dr Molefe). I was present at this meeting. At this meeting, the following was, inter alia, discussed:

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2.9.1. The forensic investigators were introduced to the DPCI officials and the composition and the reason for the composition of the investigative team was explained;

2.9.2. The events that led to the appointment of Werksmans Attorneys were explained to you and some of the highlights of the investigation were shared with you;

2.9.3. You indicated that you had decided to focus the investigation on the Swifambo and Siyangena matters as a starting point. You also indicated that you had identified the 'main suspects' in these matters, that the subpoenas in terms of section 205 of the Criminal Procedure Act had been issued and that analysis of the data obtained will be commenced with and preparations will be made for forfeiture of assets in terms of the Prevention of Organised Crime Act.

2.9.4. You noted the appointment of Howarth Forensics by the DPCI as forensic chartered accountants to attend to the cash flow analysis in the Hillbrow CAS 405/07/2015 (the Swifambo case) and indicated that you will appoint Howarth Forensics to assist the DPCI with Brooklyn CAS 278/09/2016 (the Siyangena case). You indicated that Howarth Forensics will receive their instructions from you, will report to you and will be remunerated by PRASA. You indicated that you would report to PRASA from time-to-time such details as would be

permitted by law. We indicated our agreement with this arrangement and wrote a letter to Howarth Forensics confirming this arrangement.

2.9.5. You indicated that meetings will be held between the investigators and officials from the Asset Forfeiture Unit to start preparations for preservation applications.

2.9.6. From this meeting I was encouraged that the DPCI is focusing on these matters with the seriousness and urgency that they deserve. In particular, it appeared that should the flow of funds show that a crime has been committed; the proceeds of the crime may be attached for the benefit of the fiscus. In respect of the Swifambo case, PRASA has already paid R2,6 billion and has an additional obligation of at least, R1,5 billion. The Siyangena matter relates to contracts in excess of R3 billion. Both these matters are the subject of civil proceedings instituted by the Board of PRASA. As you well know, this does not obviate the need for the institution of criminal proceedings should a crime be found to have been committed and the fiscus will benefit from attachment of any proceeds of crime in these matters.

2.10. Subsequent to this meeting, I attended a meeting where we were introduced to the officials of the Asset Forfeiture Unit. At this meeting, their role was discussed in general terms and PRASA officials left the meeting so that officials of FAFI could have in-depth discussions with the relevant persons.

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2.11. On 26 May 2016 you called and asked to meet with me urgently. This meeting was arranged for the morning of 27 May 2016. At this meeting, we were introduced to Brigadier Makinyane and Colonel Nelwamondo (the Legal Advisor to the DPCI). You indicated that you became concerned after receiving a letter from BDK Attorneys in which they alleged that the SAPS was working with a private firm of forensic investigators, allowed this firm of forensic investigators to have unlawful access to banking accounts of certain persons and that this constituted an irregularity. You did not know whether Howarth Forensics was a forensic investigation firm or a firm of forensic chartered accountants. We indicated to you that Howarth Forensics are a firm of chartered accountants with knowledge, experience and expertise in forensic investigations and that they understood the secrecy with which they work. We indicated that we will send you the business profiles of Howarth Forensics and that of Ngubane and Associates.

2.12. The business profiles of Howarth Forensics and Ngubane and Associates were provided to you on 1 June 2016. At the meeting of 27 May 2016, you also informed us that Brigadier Makinyane will work on the Siyangena matter and Brigadier Maxin would continue the work on the Swifambo matter. We were under the impression that once you are satisfied that Howarth Forensics was a firm of chartered accountants, you would issue the letter appointing them to work on the Siyangena matter. We do not know if this letter has been issued and whether an analysis of the cash flows in the Siyangena matter have been commenced with. You will recall that allegations of gratification have already been made in the media in respect of the

Siyangena transaction. A speedy analysis of the cash flows in this matter will assist to either confirm these allegations or prove them to be false. It is crucially important for this analysis to be commenced with and finalised so that in the event that those that have been publicly maligned are innocent, their innocence may be proven.

2.13. We met with you on 3 June 2016 after we shared the business profiles. At this meeting, you enquired about what happened to the Gibela matter. We informed you that the Board had been advised by Senior Counsel to request the condonation of the irregularities that had been identified by the Auditor-General on the appointment of the BEE shareholder of Gibela. Further that the Board had attended to request for condonation in this regard and that, at that point, no criminality had been suspected in the Gibela transaction.

2.14. The next formal engagement that we had with you on the matters was on 27 October 2016 when you delivered the letter under reply and discussed its content with us.

3. Your letter of 29 September 2016

3.1. The letter under reply repeats what you indicated to us at the meeting of 28 April 2016 that the Serious Economic Offences Unit ("the SEOU") had decided to focus primarily on the Swifambo and the Siyangena matters. We therefore believe that what you need assistance with from Mr Mamabolo's statement are the issues raised in respect of these two matters. To this end,

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we understand that the documents that were filed in the course of the review applications that were launched by the Chairman of the Board, Dr Popo Molefe, in respect of these two matters have already been provided to Colonel Mosito, as well as to Advocate Coetser of the Asset Forfeiture Unit. These affidavits contain all the information that you require in this regard. For your ease of reference, we hereby forward to you further copies of the court papers in these matters.

3.2. As stated above, Mr Mamabolo acted of his own volition when making the statement of July 2015. That much is stated in that statement. The two further affidavits were prepared by Mr Mamabolo with the assistance of the investigators appointment as part of the forensic investigation underway.

3.3. Your main inquiry relates to whether Mr Mamabolo has any direct evidence of fraud, criminality, a common purpose to commit the alleged crimes and shared benefits from the proceeds of the crime. We believe that Mr Mamabolo has provided enough information and evidence to show irregularities that are so glaring as to give a reasonable suspicion of criminality, common purpose and a shared benefit of the proceeds of crime or irregularities. It is our expectation that:

3.3.1. the persons identified in Mr Mamabolo's statements are questioned to the extent that it is clear that they are not involved in the criminality; and

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3.3.2. subpoenas will be issued to enable an analysis of how money flowed from PRASA to all the beneficiaries it reached and understand the rationale for the flow in each instance.

3.4. The SAPS has the legal competence and expertise to attend to these. Obviously the sooner they are attended to, the better for the fiscus and to public confidence in the criminal justice system. PRASA, it's investigators and Mr Mamabolo do not have the legal competence to attend to these. We hope that you will attend to these expeditiously. I hereunder demonstrate this by reference to Mr Mamabolo's statement.

Mamabolo's statement on Siyangena

3.5. The statements made in page 3 of Mr Mamabolo's affidavit of July 2015 are the following:

"Mr Lucky Montana, Dr Daniel Mthimkulu and Josephat Phungula, Chief Procurement Officer fraudulently awarded Siyangena Technologies (Pty) Ltd, a company [owned] *by Mr Mario Ferreira, a contract of R2,9 billion for the installation and maintenance of CCTV cameras and equipments for control rooms at Prasa train stations with the purpose of sharing the monetary proceeds from that contract with Siyangena Technologies (Pty) Ltd in contravention of Prevention of Corruption Act.*

.....

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Mr Lucky Montana and his mother, Ms Mary Montana, in contravention of Prevention of Corruption Act occupied a house in Pretoria owned by Mr Riaan van der Walt, legal advisor of Siyangena Technologies (Pty) Ltd who bought the house for the beneficial use and occupation by Mrs Mary Montana, which house was bought from the proceeds of the contract of R2,9 billion fraudulently awarded to Siyangena Technologies (Pty) Ltd"

3.6. Above Mr Mamabolo states that:

3.6.1. The contract was awarded fraudulently to Siyangena with the purpose of sharing the proceeds of that award. The fraud and sharing of the proceeds from this contract can only be tested by analysing the cash that flowed from this contract. This can only be done by the SAPS as PRASA and/or Mr Mamabolo are not authorised to do this.

3.6.2. Mr Montana and his mother, Mrs Mary Montana occupied a house owned by Mr Riaan van der Walt a legal advisor of Siyangena. This carries two allegations: firstly, that Mrs Mary Montana resided in a house that was owned by Mr Riaan van der Walt. Secondly, it is alleged that that house was bought through the proceeds of the Siyangena contract. I am of the view that the DPCI can interview Mrs Mary Montana to establish if she resided in a house owned by Mr Riaan van der Walt. If Mrs Montana resided in such house, establish how that house was purchased and the circumstances in which she

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resided in that house. Whether the house was purchased from the proceeds of the Siyangena contract can be checked from the flow of funds.

3.7. The affidavit of March 2016 states the following:

3.7.1. During November 2008, a letter from an Original Equipment Manufacturer ("an OEM") namely Cominfo was issued to confirm that Siyangena *"is the exclusive OEM partner for the PRASA Project to import, sell, provide service and maintenance works for entrance control products (turnstiles and gates) manufactured by COMINFO Inc."* It is peculiar that this letter mentions a "PRASA Project" that had not been advertised at the time that the letter was issued. This suggests that the information on this "PRASA Project" was known to Siyangena and/or Cominfo about 7 months before the closing date of the tender.

3.7.2. During 2009 a tender was issued for the installation of "access gates" at the Doornfontein and Nasrec stations. The closing date of this tender was 17 June 2009. The engagement of the contemplated supplier was going to be that of a nominated subcontractor and would have an agreement with the construction company that is working on the stations. The RFP for the Nasrec tender required Dallmeier CCTV cameras. The adjudication report of this tender indicated that one of

the tenderers was advised by the OEM of the Dallmeier CCTV cameras that Siyangena was the sole local agent for this equipment.

3.7.3. During January or February 2010 Mr Luyanda Gantsho penned a motivation wherein he requests the Group CEO to approve the appointment of Siyangena to attend to a similar system at Cape Town, Rhodesfield, Orlando, Century City, Langa, Moses Mabhida and Bridge City stations. The basis of this appointment without following the tender procedure is the urgency of the project. Mr Gantsho peculiarly says that Siyangena had been approached to determine their capacity to deliver the project within the perceived timelines and that *"the SCM committee was not supportive of the action to approach any supplier including Siyangena"*. The guise under which this agreement was issued is that this was an extension of the Nasrec and Doornfontein. It could not be an extension because there was no contract between PRASA and Siyangena for the Nasrec and Doornfontein. As it appears from your letter under reply that you are well acquainted with the Public Protector's report titled "Derailed", you will have noted from it that this letter was not provided to the Public Protector and that the Public Protector was not happy with the responses in this regard.

3.7.4. I pause to point out that I am aware that the statement of Mr O' Sullivan includes correspondence that show that the other bidders did raise the requirement of brand names as a concern and that these

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bidders stated that Siyangena was the only one that was accredited for all the brand-related requirements of the RFP. The constitutional prescripts of a fair, equitable, transparent, competitive and cost effective prices as required by section 217 of the Constitution appears to have been flouted.

3.7.5. Siyangena was appointed for a further 62 stations for a price of R1,95 billion. This was referred to as Phase 1. Siyangena was also appointed for Phase 2. The circumstances under which these awards were made were the same, that is, where brand names were mentioned in the RFP and Siyangena was the only supplier that could supply those stated brands.

3.7.6. Mamabolo makes a number of allegations that can only be tested through an analysis of cash flows from accounts that may be of interest in the matter. I propose not to deal with these instances as I believe that it is the role of the SAPS to investigate these, test them and report on them.

3.8. In summary, Mr Mamabolo's statement provides evidence to the effect that:

3.8.1. At least six months before the issue of the tender for the speed gates, a supplier of Siyangena knew about this tender and confirmed "to whom it may concern" that Siyangena was its sole distributor for "the PRASA Project"; and

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3.8.2. Lists a number of properties registered in the name of Precise Trade and Invest 02 (Pty) Limited ("Precise Trade") and that involved Mr Montana.

3.8.3. What is stated in this statement supplements what is contained in this regard from the July 2015 affidavit of Mr Mamabolo.

3.9. I pause to state that it is now a matter of public record that Mr Montana is in business with Mr van der Walt, an attorney in the employ of the attorneys of Siyangena. I am certain that the flow of funds may shed some light on the genesis of this business relationship and the property transactions that are reported to involve Mr Montana, Mr van der Walt and a company called Precise Trade.

3.10. We therefore implore you to speedily proceed with the appointment of Howarth Forensics to assist you with the analysis of the flow of funds so that some of the information that you require may be obtained from the bank records that show the identities of the persons to whom the funds flowed and their commercial purposes for such flows.

Mamabolo's Statement on Swifambo

3.11. Having gone through Mamabolo's statement on the Swifambo matter it seems to me that it lays the foundation for a thorough investigation of the

cash flow analysis that will show who the beneficiaries of the proceeds of this contract have been.

3.12. Mamabolo provided you the following information and documentary evidence:

3.12.1. On 22 April 2010, Mafori Finance Vrydheid (Pty) Limited ("Mafori") was registered;

3.12.2. On 2 December 2011, PRASA issued the Request for Proposals for the leasing of locomotives ("the locomotives RFP"). This was 4 months before Mr Auswell Mashaba took over the running of this company;

3.12.3. By letter dated 24 February 2012, Van Wyk Accountants issued a letter which states, among others, that Mafori is a new company that has never traded before;

3.12.4. On 7 March 2012, Mr Auswell Mashaba is appointed as a director of Mafori;

3.12.5. On 9 March 2012 (two days after Mashaba takes over Swifambo/Mafori), Swifambo/Mafori submits its bid in respect of the locomotives RFP;

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3.12.6. On 12 March 2012, Van Wyk Accountants submitted a request for the change of Mafori's name from Mafori to Swifambo Rail Leasing;

3.12.7. On 25 March 2013, PRASA concluded a contract with Swifambo Rail Leasing, this contract is pursuant to the process that followed the issue of the locomotives RFP. The award of this contract was audited by the Auditor General ("the AG"). As you well know, the AG is one of the institutions that are established in terms of Chapter 9 of the Constitution and its independence cannot be questioned. Having audited this award, the AG was of the opinion that the award should not have been made because:

3.12.7.1. Swifambo did not have a valid tax clearance certificate at the time it submitted the bid;

3.12.7.2. Vossloh, which later became the subcontractor did not submit a letter of good standing from its country's tax authority;

3.12.7.3. Vossloh's B-BBEE certificate was not submitted;

3.12.7.4. The tender documents were not signed by Vossloh; and

3.12.7.5. PRASA did not ensure that the technical evaluation of Swifambo is based on its own capabilities to deliver the locomotives. This is because there was no subcontract

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agreement between Vossloh and Swifambo at the time of evaluation.

3.12.8. On 5 April 2013, a mere two weeks after the contract was signed and before the effective date of the contract, an amount of R460,528,315.79 was paid to Swifambo Rail Holdings (Pty) Limited. This payment should not have been made because:

3.12.8.1. The contract between PRASA and Swifambo had not become effective; and

3.12.8.2. There was no contract between PRASA and Swifambo Rail Holdings.

3.12.9. According to Mr Auswell Mashaba, a week after this payment was made and on 11 April 2013, Swifambo Rail Holdings paid an amount of R14,3 million to Nkosi Sabelo Incorporated. This was followed by a payment of R14,2 million into the same beneficiary and a payment of R10,4 million to Knowles Hussain, apparently for Nkosi Sabelo Incorporated. The payments that are related to Nkosi Sabelo Incorporated amount to R38,9 million. Other payments were made to Similex (Pty) Limited and these cumulatively amount to R40,14 million. The breakdown provided by Mr Mashaba to Mr Mamabolo reflects an amount of R7,9 million which is said to be a "handling fee". Mr Mashaba informed Mr Mamabolo and the Chairman of the

PRASA Board that none of these entities have a business relationship with Swifambo and he did not know the reason for these payments. Mr Mashaba's information came to the attention of Mr Mamabolo unsolicited.

3.12.10. On 4 July 2013, Swifambo Rail Leasing and Vossloh (the Original Equipment Manufacturer) concluded an agreement for the supply of the locomotives.

3.13. The information that was provided to you is therefore that:

3.13.1. a tender was awarded to Swifambo Rail Leasing when there were a number of cogent reasons (as stated by the AG) not to award it to Swifambo Rail Leasing;

3.13.2. the first payment that was made for this tender was made before PRASA had any obligation to pay because the contract had not yet become effective; and

3.13.3. unsolicited information from a director of Swifambo alleges that that director was instructed to pay people who did not have any business dealings with Swifambo. These payments were made after PRASA made the payment that was not due.

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

3.14. It is concerning that in the meeting that we had when you delivered the letter under reply, you did not state that the analysis of the cash flows had been done. If this analysis had been done, you did not indicate whether or not it supports the inferences made by Mr Mamabolo that the people who enabled this transaction were acting with a common fraudulent purpose and that they shared the benefits of this contract. It is my considered view that Mr Mamabolo's inference can only be confirmed or shown to be incorrect by analysing the cash flows from the accounts of the persons of interest in this transaction. The SAPS, which we believe is seized with this matter, is one of a very few institutions that can subpoena banking records to see the identity of the beneficiaries of monies paid into those banking accounts. I am concerned that your letter appears to be asking PRASA to show what your analysis should show. It seems to me that PRASA is the one that should be asking you whether you are able to find evidence of a common fraudulent purpose and a common benefit. I therefore request that you advise how far your investigation has gone and what it has shown.

4. The requested documents and information

4.1. Mr Mamabolo has provided you with a true copy of the SCM Policy (what you refer to as the procurement policy in your letter under reply).

4.2. In respect of the Siyangena matter Mr Mamabolo indicated the policy provisions that were relevant. Any further information you require will be in the civil matter files that are submitted with this letter.

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4.3. The Swifambo matter has been audited by the AG. The AG is aware of the policies that were flouted, the reasons why Swifambo should not have been awarded the tender and why the first payment should not have been made. The civil matter files are provided for your record purposes and to provide you with further information that you have requested.

4.4. The analysis of the cash flows will show the benefits that accrued to certain individuals. If these are undue benefits, they may provide evidence of the prejudice suffered by PRASA.

4.5. The investigators have provided the SAPS with the following:

4.5.1. Providing documents (in an indexed and chronological order);

4.5.2. Identifying suspects, witnesses and persons of interest;

4.5.3. Identifying assets, properties and the like of relevance;

4.5.4. Securing electronic evidence for review; and

4.5.5. Suggesting an investigation diary and timeline.

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5. The reports in terms of section 34 of the PRECCA Act.

5.1. During May 2016, Werksmans Attorneys, on the instructions of the Board submitted 39 reports in terms of Section 34 of Prevention and Combatting of Corrupt Activities Act, Act 12 of 2004 ("the PRECCA Act"). When we enquired from you about these reports, you indicated that your view was that the submission of these reports was "malicious compliance". You appeared to come to this conclusion by conflating the intent of the statements that were made by Mr Mamabolo in his personal capacity and a formal report in terms of section 34 of the PRECCA Act submitted on behalf of the Board. It is unfortunate that you believe that the Board would be malicious in the performance of its duties which are in terms of the PRECCA Act as well as the Public Finance Management Act of 1999.

5.2. Please be assured that there is no malicious intent in the submission of the reports by the Board. PRASA takes exception to your characterisation of the submission of the reports in this manner. The reports flow from a comprehensive forensic investigation that was instituted by the Board and that raised a suspicion that the entities and persons mentioned therein have committed the offences mentioned in subsection 1 of section 34.

5.3. We implore you to ensure that these matters are properly registered in your records and that they are investigated without delay. We accept that the matters of Siyangena and Swifambo may take preference.

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6. In conclusion we propose that a meeting be held at your earliest convenience to discuss and agree on the following:

6.1. The identity of investigators from SAPS that are working on these matters;

6.2. The scope and extent of the existing criminal cases – this is to cover the documents provided to the SAPS, the investigations conducted by the SAPS to date and what investigation and evidence is required to take the investigation to a point where the evidence may be presented to the National Prosecuting Authority for a decision on whether or not to prosecute;

6.3. The further evidentiary requirements for each of the criminal investigations and the assignment of tasks to either the SAPS investigators and/or our attorneys;

6.4. Agree on an investigation plan including the time lines and milestones, the securing of further relevant evidence, obtaining statements from witnesses, obtaining evidence from financial institutions and other institutions that may assist with further evidence, attending to attachment of any proceeds of any crime that may be found and obtaining warning statements from identified suspects;

6.5. Set a monthly progress review process between us and your investigators wherein they would be required to review the agreed tasks against

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milestones set and report back on progress made and/or any delays encountered.

7. I trust that the above will assist in ensuring that the criminal investigations are attended to with the speed that will best serve the interests of all concerned. I also believe that any outstanding matters will be dealt with and resolved at the meeting that I proposed above.

Martha Ngoye
Group Executive: Legal, Risk and Compliance
Passenger Rail Agency of South Africa

Enclosures:

Documents filed in the Swifambo Review Application; and

Documents filed in the Siyangena Review Application

C

SAP 21

SUID-AFRIKAANSE POLISIEDIENS

SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X1500, SILVERTON, 0127

Verwysing Reference	28/18/2(214)
Navrae Enquiries	Major General ADR Khana
Telefoon Telephone	012 846 4101
Faksnommer Fax number	012 846 4404

HEAD: SERIOUS COMMERCIAL CRIME
DIRECTORATE FOR PRIORITY
CRIME INVESTIGATION
HEAD OFFICE

PRETORIA

29 September 2016

A. The Group Executive
Legal Risk and Compliance
Passenger Rail Agency of South Africa
Hatfield
PRETORIA

Attention: Ms M Ngoye

B. The Acting Group Chief Executive Officer
Passenger Rail Agency of South Africa
Hatfield
PRETORIA

Attention: Mr C Letsoalo

PRASA INVESTIGATIONS: HILLBROW CAS 405/07/2016 AND BROOKLYN CAS 278/09/2015

A. This seeks to inform yourselves that the investigation of Hillbrow CAS 405/07/2015 and Brooklyn CAS 278/09/2015 have been referred to the SEOU for further investigation for each allegation as per paragraph 1 – 22.

This office has noted the statement of Mr Mamobolo dated 2015/07/06 in Hillbrow CAS 405/07/2015 contains various allegations aimed at different individuals and / or companies. These allegations would require in-depth investigations and a host of supporting documentation for each allegation listed as per paragraph 1 – 22 in the attached statement of Mr Mamobolo.

This office hereby, would like to request yourself to secure and provide the Section Head: Serious Economic Offences Unit with the necessary information, in order to expedite the investigation in the different allegations.

Please note that pursuant to our previous discussions, this office has decided to give the matters involving the allegations against Swifambo and Siyangena Technologies our priority attention and the rest of the other allegations will then follow.

PRASA INVESTIGATIONS: HILLBROW CAS 405/07/2016 AND BROOKLYN CAS 278/09/2015

This office will now first deal with the documents which needs to be secured and supplied in corroboration of the said allegations. I will deal with the allegations in order of its chronological sequence in the statement.

Due to the fact that the allegations is similar in nature, the required information does not differ much, save we will request such.

It is requested that you furnish us with:

a) An additional and comprehensive statement detailing and substantiating the alleged allegations and the manner in which the alleged fraud (in common purpose) was committed by the identified individuals. The statement must forthwith also state the benefits accrued by the said individuals, which processes or SCM policies were flouted and how, as well as the prejudices suffered by PRASA or the potential prejudice.

b) Secondly, it will be appreciated if you could outline the procurement policy and processes for PRASA, as well as the manner in which these processes and / or policies were breached / flouted where so alleged. It is advised that if the deponent is not conversant with the policy or processes, then PRASA can delegate any knowledgeable person within PRASA to depose to that statement and provide the mentioned office with the same.

c) It is of utmost importance that the roles of each individual mentioned in any allegation, must be clearly and concisely stipulated and where necessary with reference to relevant documentation which must also be marked and annexured accordingly.

d) It is further requested that certified copies of all SCM policies, relevant contracts and documentation of the entire supply chain cycle up to final payment and all information / documentation must be properly filed and indexed in support of the said statement. You are also requested to note that your supplementary statement, information and document must be extensive to also cover the allegations contained in the allegations in paragraph 2 – 22 with the exception of paragraph 10. It will be appreciated if preference to the allegations regarding Swifambo and Siyangena Technologies can be prioritised.

Your attention is further drawn to the fact that allegations regarding Siyangena Technologies are also being investigated vide Brooklyn CAS 278/09/2015. This matter was reported by Mr Paul O'Sullivan and supported by your affidavit dated 2016/02/05.

Please note that the allegations in paragraph 10 are a repeat of the allegations in paragraph 8.

PRASA INVESTIGATIONS: HILLBROW CAS 405/07/2015 AND BROOKLYN CAS 278/09/2015

It is noted that the allegations listed 1 – 22, are worded to the effect that it refers to words like "In common purpose with....." "Fraudulently and without following procurement procedures", "fraudulently awarded....."

This office appreciates that your office in using these words has an understanding on the profoundness and extend of the meaning in legal terms of these words. It is thus necessary that your supplementary statement as requested as per paragraph 6 (a) supra must address the abovementioned phrases in the following manner:

a) "In common purpose"
It must address how the notion of common purpose is manifested were so stated. I.e. it must highlight how, when and between whom the common purpose became manifested.

b) "Fraudulently and...."
The statement mentions "fraudulently" but does not reflect the fraudulently conduct nor does it state how and when the fraud was committed.

c) "Fraudulently and without following (procurement) procedures"
The statement again does not state the fraudulent conduct nor when or how the fraud was committed. It further speaks to the fact that procurement procedures were not followed but there is nothing in the statement that speaks to the process that was followed (if any) in the alleged fraudulent conduct.

In addition, it is also imperative that the reflection on the fraudulent behaviour must be substantiated by documentary evidence where applicable.

Secondly, it is the understanding of this office that the allegations as listed in the statement are deduced from the report of the Public Protector. However, the wording of the Public Protector's report differs materially from words as listed in paragraph 5 supra.

Your office is now hereby called upon to clarify the discrepancies in the wording of the allegations as opposed to the references to the same type of allegations in the report of the Public Protector where the latter report speaks of irregularities, or contracts that was awarded irregularly. This is stark contrast to the wording of the allegation's.

The allegations regarding the contract awarded to Siyangena Technologies is contained both in paragraph 9 of the appended affidavit of Mr Mamoboto as well as it is registered as a separate case docket vide Brooklyn CAS 278/09/2015.

Kindly note that the matter is being investigated by the office of Serious Economic Offences Unit under the command of Brigadier Makinyane.

PRASA INVESTIGATIONS: HILLBROW CAS 405/07/2016 AND BROOKLYN CAS 278/09/2015

During earlier discussions with Mr Mamobolo, he indicated that the requested information mentioned herein is available, and the assumption is thus that it will not take too long for your office to heed to our request.

B.1 For your information.

MAJOR GENERAL

HEAD: SERIOUS COMMERCIAL CRIME

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

ADR KHANA

Date:

SS7-OMN-754

D

Office of Dr. Popo Molefe
Chairman

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

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Pretoria

Private Bag X101
Bramfontein, 2017
T: +27 12 740 7010

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
MAJOR GENERAL KHANA
SOUTH AFRICAN POLICE SERVICE
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
SOUTH AFRICAN POLICE SERVICE
A5 PROMAT BUILDING
1 CRESSWELL ROAD
SILVERTON
PRETORIA, 0186

Dear Major General Khana,

PREVENTION AND COMBATTING OF CORRUPT ACTIVITIES ACT 12 OF 2004 ("PRECCA") : PASSENGER RAIL AGENCY OF SOUTH AFRICA ("PRASA")

1 We refer to the meeting held at your offices on 28 April 2016.

2 We are most anxious to arrange a follow up meeting with you so that you and your team can provide us with a status update in relation to the 43 criminal complaints which have to date been lodged with your offices arising out of the forensic investigation commissioned by the Board of PRASA.

Directors Dr P Molefe (Chairman), C Letsoalo (Acting Group CEO)
C Cele, X George, NS Khanna, ZP Manuse,
C Monyangwana, MJ Mallela, L McMillan,
TG Phitsane, WS Steenkamp

Company Secretary:
L. Zide

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3 We would also be grateful if you could confirm that you have provided the necessary written authorisation to Horwath Forensics for the purposes of analysing the flow of funds in respect of the criminal complaint relating to Siyangena.

4 We firmly believe that the Board's commitment to eradicating the mammoth scale of unlawful behaviour which has been uncovered through the process of the independent forensic investigation can only attain the anticipated level of success if it is combined with the allocation of sufficient dedicated personnel from your offices who, in conjunction with sufficient dedicated prosecutors can ensure that all of the already identified wrongdoers can be prosecuted for the pillaging of a State Owned Entity.

5 We would be most grateful if you could revert to us at your earliest convenience in order to convene the desired follow-up meeting.

Yours truly

DR P.S. MOLEFE
CHAIRMAN OF THE BOARD
DATE: 2016/09/18

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SOUTH AFRICAN POLICE SERVICE
A5 PROMAT BUILDING
CRESSWELL ROAD
SILVERTON
PRETORIA, 0186

Dear Sirs,

PREVENTION AND COMBATTING OF CORRUPT ACTIVITIES ACT 12 OF 2004 ("PRECCA") : PASSENGER RAIL AGENCY OF SOUTH AFRICA ("PRASA")

Introduction:

1 We wish to express our gratitude for the deployment of Major General Khana and his team (with whom we have already engaged, to handle the criminal investigations which will hopefully lead to the successful prosecutions of those individuals and entities who have seen fit to plunder a State owned entity and thereby imperil PRASA's mandate from Government to provide a world class safe, reliable and efficient transport service to all commuters.

2 PRASA, as the implementing arm of the National Department of Transport, the sole shareholder, is primarily focused on the mandate contained in the *Legal Succession Act of South African Transport Services Act 9* of 1989, as amended.

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3 The main objectives and main business of PRASA are to:

3.1 Ensure that, at the request of the Department of Transport, rail commuter services are provided within, to and from the Republic in the public interest.

3.2 Provide, in accordance with the Department of Transport, for long haul passenger rail and bus services within, to and from the Republic in terms of the principles set out in section 4 of the *National Land Transport Transition Act 22 of 2000*.

3.3 PRASA shall generate income from the exploitation of assets acquired by it, which include real estate and property portfolios.

3.4 A further requirement is that, in carrying out its objectives and business, PRASA shall have due regard for key Government, social, economic and transport imperatives and policy objectives.

3.5 As a public entity, Government initiatives remain a strategy driver for PRASA. This is manifested through legislation, government policies and strategies, such as:

3.5.1 National Transport Policy;

3.5.2 Public Transport Strategy;

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3.5.3 Legislation;

3.5.4 Green Paper on Rail; and

3.5.5 Economic Strategy and Job creation initiatives.

4 The Directorate for Priority Crime Investigation (DPCI) was established as an independent directorate within the South African Police Service in terms of Section 17C of the *South African Police Service Act*, 1995 as amended by the South African *Police Service Amendment Act* 57 of 2008.

5 The DPCI is responsible for the combating, investigation and prevention of national priority crimes such as serious organised crime, serious commercial crime and serious corruption in terms of Section 17B and 17D of the *South African Police Service Act* of 1995 as amended.

6 Section 179 of the *Constitution of the Republic of South Africa*, 1996 (Act No. 108 of 1996), created a single National Prosecution Authority (NPA).

7 The Office of the National Director of Public Prosecutions (NDPP) was established on 1 August 1998, in terms of Section 179(1) of the Constitution.

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8 Legislation governing the prosecution authority is the National Prosecuting Authority Act 32 of 1998 and provides the prosecuting authority with the power to institute criminal proceedings on behalf of the State and carry out any necessary functions incidental to instituting criminal proceedings.

Background:

9 Public Protector Investigation:

9.1 In 2015, the Public Protector of South Africa published a report entitled "*Derailed*" No. 3 of 2015/16. The report communicated findings and the appropriate remedial action in terms of the remedial power given by Section 182(1)(c) of the Constitution, following the investigation of 37 complaints initially lodged by the South African Transport and Allied Workers Union (SATAWU) in 2012 and later pursued by the National Transport Movement (NTM), alleging maladministration and related improper conduct involving procurement irregularities, conflict of interest, nepotism and human resources mismanagement, including victimisation of whistle-blowers, by the erstwhile Group Chief Executive Officer and other functionaries at PRASA.

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9.2 The Public Protector found that 19 of the 32 complaints were substantiated. There was a "*systematic failure*" to comply with supply chain management policies and a culture of hiding information.

10 The Auditor General of South Africa (AGSA) findings:

10.1 In 2015, the AGSA issued several adverse findings against the erstwhile PRASA board and operations.

10.2 A new chairperson and board were appointed at PRASA in August 2014. In discharge of their fiduciary duties, they employed the services of Werksmans Attorneys who in conjunction with AGSA, the South African Police Service and the National Prosecuting Authority, commenced with further investigations into these findings.

11 To date, PRASA has engaged with AGSA, National Treasury, Financial Intelligence Centre, officials from the DPCI, South African Police Service, Asset Forfeiture Unit, NPA and others. To this end:

11.1 A number of cases have been reported to the Central Reporting Office of the DPCI for further investigation and in compliance with PRASA's duty to report as prescribed by PRECCA.

11.2 A number of criminal cases where PRASA is the complainant have also been registered with the South African Police Service.

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11.3 In addition to this, PRASA has already instituted a number of civil proceedings against business entities and persons to review and set aside agreements which were improperly awarded and to recoup losses sustained by PRASA. Further such actions are expected to follow in due course.

11.4 I attach for your convenience, two founding affidavits (including the supplementary matter in respect of the Siyangena matter) relating to what has become commonly known as the "*Swifambo matter*" and the "*Siyangena matter*" together with the AGSA report and the Public Protector report. You will no doubt appreciate and agree that the scale and complexity of the alleged offences, the losses to PRASA and the nature of the allegations are extremely serious and of huge financial proportion thereby directly impacting upon Government's ability to provide to its citizenry.

12 PRASA has sought legal advice in respect of instituting criminal proceedings against those identified as allegedly having had a hand in the identified transgressions. PRASA believes that even a cursory perusal of the AGSA report referred to, the Public Protector's report and the founding papers settled in the civil matters referred to above, clearly demonstrate the severe damage caused to PRASA, the State's ability to fulfil its transport mandate and more especially, to the many citizens of our country

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who rely on PRASA's services on a daily basis. We further believe that the facts as they stand, present a *prima facie* case of racketeering as defined in Section 2(1) of the *Prevention of Organised Crime Act* 121 of 1989 (POCA).

13 The PRASA Board has already been called upon on several occasions to account to relevant Parliamentary Committees as to the progress made in its efforts to deal with the AGSA and Public Protector findings and in particular in relation to the progress of criminal proceedings against the various wrongdoers.

Formal request for assistance:

14 Chapter 3 of the Constitution deals with matters of co-operative governance between State entities.

15 Section 40(1) emphasises that State entities in the Republic are distinctive, interdependent and interrelated.

16 Section 40(2) requires of all spheres of Government to observe and adhere to the principles in this Chapter and to conduct their activities within the parameters that the Chapter provides.

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17 In terms of Section 41(1), under the heading "*Principles of Co-Operative Government and Intergovernmental Relations*" all spheres of Government and all organs of State within each sphere are required to among others:

17.1 foster friendly relations;

17.2 assist and support one another;

17.3 inform one another of, and consult one another on, matters of common interest; and

17.4 co-ordinate their actions and legislation with one another.

18 Arising from these investigations, and in the spirit of the Constitutional imperative of co-operative governance, the following requests are therefore directed to your good offices for your urgent consideration:

18.1 That the DPCI, once Major General Khana and his team have had sufficient opportunity to acquaint themselves with the relevant facts, declares the investigations into matters registered with them as serious offences and assign resources to these cases, commensurate with the needs of the citizenry, so as to ensure a functional PRASA, bringing those guilty to book and ensure the recoupment of any losses to PRASA and the State.

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18.2 That the NDPP considers certifying (in terms of Section 2(4) of POCA) the investigations into the matters registered with the DPCI as racketeering cases. Similarly, you are requested to consider assigning NPA resources sufficient to the complexity of the cases and the measure of losses and continued risk to the State and PRASA. In this regard, we enclose for your attention a copy of a letter which we addressed to Advocate Wolfaardt (Deputy Director of Public Prosecutions – Specialised Commercial Crime Unit) on 16 February 2016.

19 We look forward to receiving your acknowledgement of receipt as well as your favourable response hereto at your earliest convenience.

Yours truly

DR P.S. MOLEFE
CHAIRMAN OF THE BOARD
DATE 13/05/2016

F

NATIONAL PROSECUTING AUTHORITY
South Africa

OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Victoria & Griffiths Mxenge Building,
123 Westlake Avenue, Weavind Park Silverton,
Pretoria, 0001

Private Bag X752, Pretoria, 0001

Contact number: 012 845 6758
Email: ndpp@npa.gov.za
www.npa.gov.za

1 August 2016

Dr P. Molefe
Chairman of the Board
Passenger Rail Agency of South Africa
Private Bag X101
Braamfontein
2017

Dear Doctor Molefe

SUBJECT: PREVENTION AND COMBATTING OF CORRUPT ACTIVITIES ACT, 12 OF 2004; PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA)

I refer to your letter dated 13 May 2016 with regard to the abovementioned matter.

I have established that the matter is currently the subject of investigation by the Directorate of Priority Crime Investigation (DPCI) under the guidance of a prosecutor. A decision whether or not to prosecute will only be taken after the investigation has been finalised by the DPCI.

Depending on the outcome of the investigations a charge of racketeering in terms of the provisions of the Prevention of Organised Crime Act, 121 of 1998 (POCA) may or may not be one of the preferred charges to be considered.

However, were a charge of racketeering to be one of the preferred charges in the matter, section 2(4) of POCA provides that such prosecution must be authorised in writing by the National Director. Such determination can only be made after the investigations are finalised.

With respect to your request in paragraph 18.2 of your letter to consider certifying the investigation as racketeering, I wish to advise that section 2(4) of POCA refers to authorisation of a prosecution and not an investigation and can only be applied after the investigations are finalised and the evidence justifies the authorisation in terms of the said provisions.

Accordingly a decision to or not to prosecute in the matter and on what charges, in the case of a decision to prosecute, can only be made after the investigations are finalised. The sufficiency or otherwise of resources in the matter will be a matter of ongoing assessment.

I trust that you find the above in order.

Sincerely

ADV SK ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
11/08/2016

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LIST OF POTENTIAL WITNESSES

WITNESS	TIME FRAME	MATTER	Still employed by PRASA
BEC MEMBER – NTOMBEZININGI SHEZI - ID:7009030473080 CELL: 0834000345	2 MONTH	SWIFAMBO	
BEC MEMBER – THABO LAURENCE MAHLOBOGWANE ID: 7408235624085 CELL: 0839668006	1 MONTH	SWIFAMBO	X
BEC MEMBER – PETER STOW ID: 5010135146086 CELL: 0832843026	2 MONTH	SWIFAMBO	
BEC MEMBER –BENEDICT MFANAFUTHI KHUMALO ID: 7506085437084 CELL: 0823757393	1 MONTH	SWIFAMBO	X
BEC MEMBER –JABULANI NKOSI ID: 7311215371083 CELL: 0730917243	1 MONTH	SWIFAMBO	X
BEC MEMBER – JOSEPH MAGORO ID: 6506055251086 CELL: 0735895870	1 MONTH	SWIFAMBO	X
BEC MEMBER – JABU MATLARI ID: CELL:	1 MONTH	SWIFAMBO	X
MOSENGWA MOFI ID: 6809145543086 CELL: 0834429374	2 MONTH	SWIFAMBO	
TSHEPO LUCKY MONTANA ID: 7004255660081 CELL: 0827714698	2 MONTH	SWIFAMBO	

WITNESS	TIME FRAME	MATTER	Still employed by PRASA
CHRISTOPHER MBATHA ID: 6803075397084 CELL: 0824130206	1 MONTH	SWIFAMBO	X
MOTSHUTSHI DANIEL MTIMKULU ID: 7412285635082 CELL: 0784577757 / 0832648576	2 MONTH	SWIFAMBO	
JOSEPHAT PHUNGULA ID: 6711135510085 CELL: 0832788577 / 0728220754	2 MONTH	SWIFAMBO	
BRENDA MALONGETE ID: 7011020396081 CELL: 0822194701	2 MONTH	SWIFAMBO	
DMS ATTORNEYS – LERATO MATHOPO ID: 7512230330083 CELL: 0826435831	2 MONTH	SWIFAMBO	
SIFISO BUTHELEZI ID: 8012225476081 CELL: 0832838933 / 0832712504	2 MONTH	SWIFAMBO	
BRIDGETTE GASA ID: 7702080449089 CELL: 0829055434	2 MONTH	SWIFAMBO	
KEVIN MOONSAMY ID: 6003235029087 CELL:0832831244	1 MONTH	SWIFAMBO	X
NONGABISAYA MAREKO ID: 6705090354083 CELL: 0832942555	1 MONTH	SWIFAMBO	X
JERITA MOTSHOLOGANE ID: 6801060289084 CELL: 0833767514	1 MONTH	SWIFAMBO	X

WITNESS	TIME FRAME	MATTER	Still employed by PRASA
INGWA SICHULA ID:5711275205182 CELL: 0832843507 / 0837614383	1 MONTH	SWIFAMBO	X
FENTON GASTIN ID: 7111085920187 CELL: 0828716842	2 MONTH	SWIFAMBO	
WILLIAM GEORGE BILL POTGIETER ID: 5105225034083 CELL: 0832978911	2 MONTH	SWIFAMBO	
AUSWELL MASHABA ID: 6403175730084 CELL: 0824577075	2 MONTH	SWIFAMBO	
CYNTHIA MICHELLE PARRISH – PASSPORT NO: 442936175 CELL: 0798857826	2 MONTH	SWIFAMBO	
WILLIAM JEMERSON ID: 7008146023185 CELL: 0824509947	2 MONTH	SWIFAMBO	
JACQUELINE NOLWANDLE MBOWENI ID; 6110030746086 CELL: 0824947469	2 MONTH	SWIFAMBO	
MAKHOSINI THANIEL MASHELE ID: 7405195333087 CELL: 0732102758	2 MONTH	SWIFAMBO	
BEKANI EFRAIM MASHABA ID: 8103145400085 CELL: 0763724519	2 MONTH	SWIFAMBO	
SONIA SEBOTSA ID: 7112150879084 CELL: 0823721704	2 MONTH	SWIFAMBO	

WITNESS	TIME FRAME	MATTER	Still employed by PRASA
POLO RADEBE ID: 7511111074083 CELL: 0823059371	2 MONTH	SWIFAMBO	
THAMSANQA GWALA ID 6308285366085 CELL: 0824662913	2 MONTH	SWIFAMBO	
YOLANDA GWALA ID: 8703030556089 CELL: 0829295833	2 MONTH	SWIFAMBO	
PALELLO LEBAKA ID: 7403295353089 CELL: 0782246284	2 MONTH	SWIFAMBO	
MAKHENSA SOLLY MABUNDA ID: 7705205326082 CELL: 0722373883	2 MONTH	SWIFAMBO	
MARIA CAETANO DA CRUZ GOMES PASSPORT NUMBER: N1432258 CELL: 0726090056	2 MONTH	SWIFAMBO	
DOMINGOS FRANCISCO ANTONIO GOMES PASSPORT NUMBER: N1072531 CELL: 0824387161	2 MONTH	SWIFAMBO	
MAPHINDELA GEORGE SABELO ID NO: 7110065524084 CELL: 0828593401	2 MONTH	SWIFAMBO	
LETSANE RATHABA ID: 8010165295081 CELL: 0825742961	1 MONTH	SWIFAMBO	X
RSR - CAESAR MTETWA ID: 7202185425084 CELL: 0785641235	2 MONTH	SWIFAMBO	

WITNESS	TIME FRAME	MATTER	Still employed by PRASA
NELSON MPHAILANE ID: 7306135368086 CELL: 0834440172	1 MONTH	SWIFAMBO	X
MASHILA MATLALA ID: 6806040989083 CELL: 0829030252	1 MONTH	SWIFAMBO	X
CTPC MEMBER – TIRO HOLELE ID: 7108255404083 CELL: 0829221294	1 MONTH	SWIFAMBO	X
CTPC MEMBER – SIPHIWE MATHOBELA ID: 6808086931086 CELL: 0829771646	2 MONTH	SWIFAMBO	
CTPC MEMBER – MAISHE BOPAPE ID: 6411025791081 CELL: 0823617837	2 MONTH	SWIFAMBO	
SYDNEY KHUZWAYO ID: 6410165582086 CELL: 0722826229	1 MONTH	SWIFAMBO	X
OTHUSITSE MOGOELELWA ID: 8302255511083 CELL: 083564889	2 MONTH	SWIFAMBO	
BRIAN ALEXANDER ID: 6605095024089 CELL: 0833277773	1 MONTH	SWIFAMBO	X
TSHEPO LUCKY MONTANA ID: 7004255660081 CELL: 0827714698	2 MONTH	SIYANGENA	
CHRISTOPHER MBATHA ID: 6803075397084 CELL: 0824130206	1 MONTH	SIYANGENA	X

WITNESS	TIME FRAME	MATTER	Still employed by PRASA
PRAGASON REDDY ID: 5507045063087 CELL: 0828928213	2 MONTH	SIYANGENA	
MOTSHUTSHI DANIEL MTIMKULU ID: 7412285635082 CELL: 0784577757 / 0832648576	2 MONTH	SIYANGENA	
JOSEPHAT PHUNGULA ID: 6711135510085 CELL: 0832788577 / 0728220754	2 MONTH	SIYANGENA	
KEVIN MOONSAMY ID: 6003235029087 CELL: 0832831244	1 MONTH	SIYANGENA	X
JERITA MOTSHOLOGANE ID: 6801060289084 CELL: 0833767514	1 MONTH	SIYANGENA	X
FENTON GASTIN ID: 7111085920187 CELL: 0828716842	2 MONTH	SIYANGENA	
PALELLO LEBAKA ID: 7403295353089 CELL: 0782246284	2 MONTH	SIYANGENA	
SYDNEY KHUZWAYO ID: 6410165582086 CELL: 0722826229	1 MONTH	SIYANGENA	X
OTHUSITSE MOGOELELWA ID: 8302255511083 CELL: 083564889	2 MONTH	SIYANGENA	
RUI FEREIRA (SIYANGENA QUALITY MANAGER) ID: CELL:	2 MONTH	SIYANGENA	

WITNESS	TIME FRAME	MATTER	Still employed by PRASA
MARIO FERREIRA ID: 6606285067086 CELL: 0824520723	2 MONTH	SIYANGENA	
TOM DUBEK (SIYANGENA PROCUREMENT MANAGER) ID: CELL:	2 MONTH	SIYANGENA	
JOSE DE OLIVEIRA (SIYANGENA PROJECT OFFICE MANAGER) ID: CELL:	2 MONTH	SIYANGENA	
TARA NGUBANE (POSSIBLE WITNESS) ID: 7009140547088 CELL: 0828886840	1 MONTH	SIYANGENA	X
LUYANDO GANTSHO ID: 6609255828081 CELL: 0827725028 / 0832583034	1 MONTH	SIYANGENA	X
JAN ADRIAAN VAN DER WALT ID: 7305185010085 CELL: 0827781720	2 MONTH	SIYANGENA	
CHRIS METELERKAMP ID: 6704045019081 CELL: 0824171840	2 MONTH	SIYANGENA	
REGGIE KISTEN (POSSIBLE WITNESS) ID: 7207185037086 CELL: 0829974158	1 MONTH	SIYANGENA	X
JOHAN GEORGE SMITH (POSSIBLE WITNESS?) IT634/2014 MINOR PROPERTY TRUST ID: 6503075018009 CELL: 0824441105	2 MONTH	SIYANGENA	

WITNESS	TIME FRAME	MATTER	Still employed by PRASA
KAREN DE BEER ID: 6008310132086 CELL: 0825692305	2 MONTH	SIYANGENA	
JUSTIN JOHN ID: 8408035016085 CELL: 0844332246	2 MONTH	SIYANGENA	
DRIES VAN DER WALT ID: 5906295134087 CELL: 0827757401	1 MONTH	SIYANGENA	X
JASPER MNUKWA ID: 7701046350084 CELL: 0725626784	1 MONTH	SIYANGENA	X
STEPHENS MANDONGOMANI NGOBENI ID: 7002125810084 CELL: 0834618290	2 MONTH	SIYANGENA	
DEDE BUKASA ID: 5901018476089 CELL: 0825623741	2 MONTH	SIYANGENA	
FRANCOIS VAN EEDEN ID: 5512305043084 CELL: 0834538339	1 MONTH	SIYANGENA	X
THANDEKA BUTHELEZI (THEN TANDEKA XAKAZA) – POTENTIAL SUSPECT ID: 6307070425080 CELL: 0827825820	1 MONTH	SIYANGENA	X

WITNESS	TIME FRAME	MATTER	Still employed by PRASA
CROMET MOLEPO ID: 5503205342080 CELL: 0827463551	1 MONTH	SIYANGENA	X
TEDDY NHLANHLA PHOMA ID: 8401105704086 CELL: 0839298764	1 MONTH	SIYANGENA	X
TUMI MOHUBE ID: 7003015460089 CELL: 0828585302 / 0736731243	1 MONTH	SIYANGENA	X
PULE MOILOA - DETAILS TO BE SUPPLIED BY FORENSIC TEAM ID: 7006205383086 CELL: 0833933035	2 MONTH	SIYANGENA	
HUNADI MANYATSE ID: 7901120309085 CELL: 0834017281	2 MONTH	SIYANGENA	
PIET SEBOLA ID: 7905205415089 CELL: 0825082213	1 MONTH	SIYANGENA	X

WITNESS	TIME FRAME	MATTER	Still employed by PRASA
ERNST SWANEPOEL ID: 5109105137081 CELL: 0832286496	2 MONTH	SIYANGENA	
KERSAGAN REDDY (SA FENCE AND GATE) ID: 7901125149080 CELL: 0833245149	2 MONTH	SIYANGENA	
ROLAND FEIL (SALES DIRECTOR FOR DALLMEIER) ID: CELL:	2 MONTH	SIYANGENA	
ELKE SCHAFER (SALES DEPT FOR AUTEC) ID: CELL:	2 MONTH	SIYANGENA	
JARMIL VLCEK (EXPORT SALES DIRECTOR FOR COMINFO) ID: CELL:	2 MONTH	SIYANGENA	
KAPARO MOLEFI ID: 7206245567082 CELL: 0833000250	1 MONTH	SIYANGENA	X

WITNESS	TIME FRAME	MATTER	Still employed by PRASA
YVONNE PAGE ID: 6001180001085 CELL: 0829013358	1 MONTH	SIYANGENA	X
IMRAN KHAN ID: 7406235064088 CELL: 0847111183	1 MONTH	SIYANGENA	X

MF6

MF 6.

PRASA
RETURN OF ALL MATTERS UNDER INVESTIGATION

Submission to (if applicable): Investigation list per 7(b) prelim report
Date of this version: 14-Feb-17

This sheet shows: This document lists all entities under the Werksmans investigation. This document must be read with the underlying report for each entity (where applicable)

Please note.
* The invoice value is per SAP, extracted from PROCAT (SAP database which is for the period from 2010 to end of 2015). It does not include invoices preceding or proceeding this period. We cannot confirm the contract values at this stage for all the suppliers listed due to the incompleteness of the contract register at PRASA.
** PRASA has lodged reports with the SAPS in terms of section 34 of the Prevention and Combating of Corrupt Activities Act of 12 of 2004 (PRECCA)

SOURCE	No. (sorted by value)	Supplier selected	CURRENT STATUS: COMPLETED	CURRENT STATUS: IN PROGRESS	CURRENT STATUS: IDENTIFIED / INITIAL PHASE	STATUS DETAILS	GUESSTIMATED TIME TO COMPLETE	SECTION 34 ISSUED (PRECCA)**	Invoice value per SAP* (R'S)
AGSA	1	Gibela Rail Transport - closed by legal	✓			Complete.	N/A - Complete	NO	5,700,599,747.00
Investigation findings	2	TFE (Transnet Rail Engineering)		✓		Forensic audit complete - handed over to investigative team.	6 months	NO	3,755,893,843.25
PP	3	Siyangena Technologies		✓		In court and receiving necessary assistance from both forensic auditing and investigative team.	9 months	YES	2,926,572,453.60
AGSA	4	Swifambo Rail Leasing Proprietary Limited - IV		✓		In court and receiving necessary assistance from both forensic auditing and investigative team.	9 months	YES	2,650,207,950.35
Investigation findings	5	WKCTRA		✓		Forensic audit complete - handed over to investigative team.	6 months	NO	1,935,192,933.85
Investigation findings	6	CTE		✓		Forensic audit complete - handed over to investigative team.	6 months	NO	1,098,155,476.44
PP	7	Siyaya DB Consulting Engineers			✓	Initial investigations undertaken by both forensic auditing and investigative team.	9 months	YES	912,004,795.25
Investigation findings	8	UCW (NOW OPICOConSWA)		✓		Forensic audit complete - handed over to investigative team	6 months	NO	637,667,334.57
Investigation findings	9	MALEDI		✓		Forensic audit complete - handed over to investigative team	6 months	NO	568,598,675.79
Investigation findings	10	Rolling Stock Repair Services		✓		Forensic audit complete - handed over to investigative team.	6 months	NO	493,801,911.65
Investigation findings	11	SA Fence and Gate (Pty) Ltd			✓	Investigations undertaken by both forensic auditing and investigative team.	6 months	NO	319,670,730.24
Investigation findings	12	Gemini Moon Trading 7 (Pty) Ltd t/a XL Mesus Travel	✓			Investigations undertaken by both forensic auditing and investigative team.	3 months	NO	270,180,504.95
PP	13	Royal Security (R 2.5m per month)	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Roy Moodley has been established, which necessitates	3 months	YES	261,987,987.56
Investigation findings	14	Enza Construction			✓	Initial investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Siyangena has been established, which necessitates	6 months	NO	171,105,986.32
AGSA	15	Sechaba	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required.	3 months	YES	143,055,193.79
Confinements	16	Molemo			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	118,473,942.69
Investigation findings	17	Black Star Communications	✓			Initial investigations undertaken by both forensic auditing and investigative team.	3 months	NO	110,047,147.06
PP	18	Vimsitre Security Services Company	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required.	3 months	YES	106,141,093.90
Investigation findings	19	RS Security Services			✓	Investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Roy Moodley has been established, which necessitates	6 months	NO	103,881,075.78
Confinements	20	Ikhwezele Senwol Manufacturing	✓			Investigations currently being undertaken by forensic auditing.	3 months	YES	96,270,179.58
AGSA	21	Intense Protection and Tourist Services CC	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required.	3 months	NO	83,601,395.49
Confinements	22	DTD Danby			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	70,639,701.60
Confinements	23	Active Power (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	68,514,604.99
Confinements	24	David Solgobela Rail Engineering Services (Pty)			✓	Initial investigations undertaken by both forensic auditing and investigative team - thus far a link to Mabule Rail has been established, which necessitates further investigation.	6 months	YES	68,059,585.64
Confinements	25	Bakara Engineering		✓		Forms part of irregular confinements - initial analysis is underway by forensic auditing.	4 months	YES	59,346,165.02
Confinements	26	Chanlou			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	58,179,909.37
AGSA	27	Baran Projects South Africa (Pty) Ltd (Baran Projects)	✓			Initial investigations undertaken by forensic auditing which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation	N/A - Complete	YES	57,300,000.00
Investigation findings	28	Marble Arch Trading cc			✓	Initial investigations undertaken by forensic auditing - handed over to investigative team.	6 months	NO	55,155,839.43
Confinements	29	Mbene Trading			✓	Initial investigations have been undertaken by investigative team - forensic auditing to commence their analysis.	4 months	YES	54,757,789.83
Investigation findings	30	Sebenza forwarding & Shipping			✓	Investigations undertaken by both forensic auditing and investigative team - direct link to Mr SH Buthelezi, erstwhile Chairman of PRASA.	6 months	YES	52,326,946.83
Investigation findings	31	Mondale Gelleto Investments		✓		Forensic audit complete - handed over to investigative team.	9 months	NO	46,973,276.02
Investigation findings	32	Vossloh South Africa (Pty) Ltd / Vossloh Kiepe AG (Air			✓	Initial investigations undertaken by both forensic auditing and investigative team.	9 months	NO	46,077,195.00
Confinements	33	Wave Armature Winders (Pty) ltd			✓	Initial investigations undertaken by forensic auditing team.	6 months	YES	45,560,447.23
Confinements	34	Bhaya Khaya Trading (Pty) ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	43,356,971.62
Confinements	35	Machya (Pty) ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	41,896,485.51
Investigation findings	36	Siyahamba Engineering	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	3 months	YES	43,270,141.82
Confinements	37	Gerilex Agencies (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	39,053,713.38
Investigation findings	38	Valucorp 408 cc t/a Sudesh Dayanand Forensic	✓			Investigations undertaken by both forensic auditing and investigative team.	3 months	NO	37,928,791.00
AGSA	39	Ithuba Security Providers (consolidated)	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required.	3 months	YES	37,356,347.40
Confinements	40	Y Rail (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	35,950,763.88
AGSA	41	Chakela Hotels	✓			Complete. Disciplinary action was to be taken against employee by PRASA Rail.	N/A - Complete	NO	35,707,962.94
Confinements	42	Nandiso Mfiki Consulting Services	✓			Investigations undertaken by both forensic auditing and investigative team - a link has been established to Daniel Mkimkulu - necessitates further investigation.	3 months	YES	33,018,076.53
Confinements	43	Ithubele Rail and Infrastructure (Pty) Ltd	✓			Investigations undertaken by both forensic auditing and investigative team - led to the resignation of Mathe Bopape and requires further investigation.	3 months	YES	31,413,470.42
Confinements	44	Magnador (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	30,685,302.54
Confinements	45	Langa Lebelele Trading CC			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	30,597,126.98
Confinements	46	Tunnel Engineering			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	30,274,414.83
Investigation findings	47	Andriapha Mbita Thakathi Transport Services	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	3 months	YES	29,692,636.23
AGSA	48	Soltinky Consulting (Pty) Ltd closed by legal	✓			Complete.	N/A - Complete	NO	27,419,578.82
Confinements	49	Dikoza Rail (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	25,925,597.77
Investigation findings	50	Steindl Projects			✓	Initial investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Tanky Moneoa has been established, which	6 months	YES	24,665,268.49
Confinements	51	Sibanye Trade & Services (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	23,700,093.34
Investigation findings	52	Resurgent Risk Managers (Pty) Ltd	✓			Investigations undertaken by both forensic auditing and investigative team.	3 months	NO	22,668,867.72
Confinements	53	Kwabo-Rhamolo Projects Cooperative Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	22,113,779.00
Confinements	54	Marketing & Safety Environment			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	19,282,259.00
Investigation findings	55	Take Note Trading	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Hlavdap Investment Solutions, Gypsum Fertiliser, Wayland,	9 months	NO	18,000,000.00
Confinements	56	Tecuvart			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	17,967,284.16
Confinements	57	Maredi Telecoms			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	15,124,488.84
AGSA	58	Motswako Office Solutions	✓			Initial investigations undertaken by forensic auditing which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation	3 months	YES	14,057,243.50
AGSA	59	KE Daniels	✓			Initial investigations undertaken by the investigative team which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further	N/A - Complete	YES	14,057,243.50
Confinements	60	MK3 Trading			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	12,679,032.77
AGSA	61	Batalala Construction CC	✓			Complete. Disciplinary action taken against employee.	N/A - Complete	NO	12,571,845.66

SOURCE	No. (sorted by value)	Supplier selected	COMPLETED	IN PROGRESS	IDENTIFIED / INITIAL PHASE	STATUS DETAILS	(UN)ESTIMATED TIME TO COMPLETE	SECTION 34 ISSUED (PRECCA)**	Invoice value per SAP* (Rs)
Investigation findings	62	S A General Trading Cc	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	N/A - Complete	YES	11,814,037.83
Confinements	63	Aeon Rail (Pty) Ltd	✓			Investigations undertaken by both forensic auditing and investigative team.	3 months	YES	11,733,894.16
Investigation findings	64	Ikhayalihle Cleaning Services	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	3 months	YES	11,673,306.00
Confinements	65	Mbokodo Rail			✓	Forms part of irregular confinements - an indirect relationship with a PRASA employee has been discovered which necessitates further investigation.	6 months	YES	10,919,904.36
Confinements	66	Hanisa Group (Bloemfontein)			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	9,209,563.14
Confinements	67	Conogan Engineering			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	9,137,614.09
Investigation findings	68	Yunani Capital		✓		Investigations undertaken by both forensic auditing and investigative team.	9 months	YES	8,946,150.00
Investigation findings	69	University Of Johannesburg National Youth Development	✓			Complete	N/A - Complete	NO	8,314,056.42
Investigation findings	70	Rail Way Trading			✓	Investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Roy Moodley has been established, which necessitates	6 months	NO	7,706,205.24
AGSA	71	Nambiti Technologies	✓			Initial investigations undertaken by forensic auditing which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation	3 months	YES	7,603,739.18
PP	72	Ndwandwe Consultants	✓			Initial investigations undertaken by forensic auditing which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation	3 months	YES	6,868,400.00
Investigation findings	73	Afrikapacity Electroweb (Pty) Ltd	✓			Investigations undertaken by both forensic auditing and investigative team.	3 months	NO	6,365,727.56
Confinements	74	AB Rail Services / ARS Engineering Project (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	6,056,344.26
Confinements	75	In Motion (Swoosh) Rail Services			✓	Forms part of irregular confinements - an indirect relationship with a PRASA employee has been discovered which necessitates further investigation.	6 months	YES	5,538,297.90
Confinements	76	Machine Tool Promotions (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	5,600,536.02
Confinements	77	Tubular Track			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	NO	5,501,962.45
Confinements	78	Itsogo Rail TSO (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	5,376,636.38
Investigation findings	79	BVI consulting	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	N/A - Complete	YES	5,070,205.74
Investigation findings	80	Aviakom	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	N/A - Complete	YES	4,921,953.98
Investigation findings	81	Imvre suppliers	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	N/A - Complete	YES	4,921,305.54
Confinements	82	Mode Tech (Pty) ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	3,704,573.41
Investigation findings	83	Phaahlama-Makhoko Investments	✓			Complete.	N/A - Complete	NO	3,602,095.80
Confinements	84	Zwanda Rail Engineering			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	3,189,765.60
Confinements	85	Aqua Transport			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	2,523,134.36
Confinements	86	The Elkok group (Pty) Ltd			✓	Forms part of irregular confinements - an indirect relationship with a PRASA employee has been discovered which necessitates further investigation.	6 months	YES	2,372,182.44
Investigation findings	87	Rivir Nawa Business Solutions (Pty) Ltd	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required.	3 months	NO	2,352,675.00
Confinements	88	Lungisa Switchgear & Transformers			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	2,242,062.65
Investigation findings	89	GOLDEX		✓		Forensic audit complete - handed over to investigative team.	6 months	YES	2,239,227.45
Investigation findings	90	21st Century Pay Solutions Group	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	3 months	YES	2,148,307.50
Confinements	91	Star Choice			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	2,037,435.90
Confinements	92	Scope Engineering			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	1,906,680.29
Confinements	93	Women In Motion			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	1,872,573.79
Confinements	94	Rail Space (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities. Forensic auditing have uncovered a link	6 months	YES	1,797,402.77
Confinements	95	Molamu Mosotho Trading & Projects			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	1,496,591.26
Investigation findings	96	Black Business Council	✓			Complete.	N/A - Complete	NO	1,400,000.00
Confinements	97	MW Buyers (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	1,285,847.03
Confinements	98	Ratsibo Rail Engineering			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	999,965.59
Confinements	99	Utlwazi (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	935,391.40
AGSA	100	Isinkwazi Supplies CC	✓			Initial investigations undertaken by forensic auditing which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation	N/A - Complete	YES	923,699.41
Confinements	101	Jozi Rail (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	902,439.80
Confinements	102	Tontovox (Pty) Ltd T/A Asanda Engineering Services			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	868,508.57
Investigation findings	103	Express Tools	✓			Initial investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to MMC has been established, which necessitates further	3 months	YES	837,389.52
Investigation findings	104	Carbon Brush Technology	✓			Initial investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to MMC has been established, which necessitates further	3 months	NO	819,833.40
Confinements	105	Ginger Ice (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	602,080.00
Confinements	106	Crisp Air (Pty) ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	580,121.63
Investigation findings	107	Sort Me Out It Solutions	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	N/A - Complete	YES	226,060.50
Confinements	108	Archway Projects			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	222,590.30
Investigation findings	109	Provantage Media Group			✓	Initial investigations undertaken by investigative team.	6 months	NO	209,760.00
Investigation findings	110	Berrybright Trade And Invest 1222	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	N/A - Complete	YES	192,750.00
Confinements	111	Mamabene (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	133,609.36
Confinements	112	Pedal Trading			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	113	Rail X			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities. Forensic auditing have uncovered a link	6 months	YES	No transactions identified
Confinements	114	4 Phase Rails Technik (pty) ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	115	Ngakhokgele Inkululeko			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	116	BG locomotives			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	117	Big Eye Investments			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	118	Warrington & Mount (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	119	Idea Sciences			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	120	Inabongi (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	121	KAMO Rail (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities. Forensic auditing have uncovered a link	6 months	YES	No transactions identified
Confinements	122	Lachia Railway			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	123	Lawrence Global Manufacturing			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	124	Mamaite Rail (Pty) ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	125	Mzumbe Rail			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	126	Rail 2 Rail			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	127	Ratsoga Logistics			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	128	S & N Project Management			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	129	Selibo Engineering (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified

SOURCE	No. (sorted by value)	Supplier selected	COMPLETED	IN PROGRESS	IDENTIFIED / INITIAL PHASE	STATUS DETAILS	QUESTIMATED TIME TO COMPLETE	SECTION 24 ISSUED (PPCCCA)**	Invoice value per SAP* (R's)
Confinements	130	SIMS (Pty) Ltd (Stimela Infrastructure Managements			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	131	Sinovuyo (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	132	Transport Workers Company			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	133	Vusha Rail			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	134	Wheel Tech			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	135	Wyko Industrial			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	136	Zephrat Trading & Projects (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	137	ZMK Consulting			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
PP	138	Sides Security Company	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required.	3 months	YES	No transactions identified
PP	139	Umjanji Consortium			✓	Initial investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Provantage has been established, which necessitates	6 months	YES	No transactions identified
AGSA	140	Chuma	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required.	3 months	YES	Chuma did not bill directly - Chuma billed as part of a consortium (uncorrected misstatements of
Investigation findings	141	Kgomomorareng Travel (Pty) Ltd (KMM)	✓			Investigations undertaken by both forensic auditing and investigative team.	3 months	NO	Cannot identify this supplier on SAP - linked to Nexus Travel per JV.
TOTAL									28,900,552,225.24

MF7

MF7.

PRASA
LISTING OF ALL MATTERS UNDER INVESTIGATION

Submission to (if applicable): Investigation list per 7th program report
Date of this version: 14-Feb-17

This sheet shows: This document lists all entities under the Werksmans investigation. This document must be read with the underlying report for each entity (where applicable)

Please note:
* The invoice value is per SAP, extracted from PROCAT (SAP database which is for the period from 2010 to end of 2015). It does not include invoices preceding or proceeding this period. We cannot confirm the contract values at this stage for all the suppliers listed due to the incompleteness of the contract register at PRASA.
** PRASA has lodged reports with the SAPS in terms of section 34 of the Prevention and Combating of Corrupt Activities Act of 12 of 2004 (PRECCA)

SOURCE	No. (sorted by value)	Supplier selected	CURRENT STATUS: COMPLETED	CURRENT STATUS: IN PROGRESS	CURRENT STATUS: IDENTIFIED / INITIAL PHASE	STATUS DETAILS	QUESTIMATED TIME TO COMPLETE	SECTION 34 ISSUED (PRECCA)**	Invoice value per SAP* (R's)
AGSA	1	Cabelo Rail Transport - closed by legal	✓			Complete.	N/A - Complete	NO	5,700,993,747.00
Investigation findings	2	TRE (Transnet Rail Engineering)		✓		Forensic audit complete - handed over to investigative team.	6 months	NO	3,755,893,841.29
PP	3	Siyangena Technologies		✓		In court and receiving necessary assistance from both forensic auditing and investigative team.	9 months	YES	2,626,572,453.60
AGSA	4	Swifambo Rail Leasing Proprietary Limited - JV		✓		In court and receiving necessary assistance from both forensic auditing and investigative team.	9 months	YES	2,650,207,950.85
Investigation findings	5	WICTRA		✓		Forensic audit complete - handed over to investigative team.	6 months	NO	1,935,192,933.85
Investigation findings	6	CTE		✓		Forensic audit complete - handed over to investigative team.	6 months	NO	1,098,195,426.44
PP	7	Siyaya DB Consulting Engineers			✓	Initial investigations undertaken by both forensic auditing and investigative team.	9 months	YES	912,004,795.25
Investigation findings	8	UCW (UBOW ORACOMSEVIA)		✓		Forensic audit complete - handed over to investigative team.	6 months	NO	617,667,834.57
Investigation findings	9	MAEDI		✓		Forensic audit complete - handed over to investigative team.	6 months	NO	568,599,675.79
Investigation findings	10	Rolling Stock Repair Services		✓		Forensic audit complete - handed over to investigative team.	6 months	NO	403,801,593.63
Investigation findings	11	SA Fence and Gate (Pty) Ltd			✓	Investigations undertaken by both forensic auditing and investigative team.	6 months	NO	319,070,710.24
Investigation findings	12	Gemini Moon Trading 7 (Pty) Ltd t/a XL Maxus Travel	✓			Investigations undertaken by both forensic auditing and investigative team.	3 months	NO	270,130,504.99
PP	13	Royal Security (R 2.5m per month)	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Roy Moodley has been established, which necessitates	3 months	YES	261,967,587.58
Investigation findings	14	Enpa Construction			✓	Initial investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Siyangena has been established, which necessitates	6 months	NO	173,305,086.92
AGSA	15	Sechaba	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required.	9 months	YES	143,055,159.79
Confinements	16	Molamo			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	136,479,942.99
Investigation findings	17	Black Star Communications	✓			Initial investigations undertaken by both forensic auditing and investigative team.	3 months	NO	130,047,147.06
PP	18	Vumisa Security Services Company	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required.	3 months	YES	106,341,093.30
Investigation findings	19	R1 Security Services			✓	Investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Roy Moodley has been established, which necessitates	6 months	NO	103,431,275.74
Confinements	20	Isphilidale Semyoni Manufacturing	✓			Investigations currently being undertaken by forensic auditing.	3 months	YES	94,770,129.58
AGSA	21	Intense Protection and Tourist Services CC	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required.	3 months	NO	81,601,895.45
Confinements	22	DCD Dorbyl			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	70,159,891.66
Confinements	23	Active Power (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	68,514,604.99
Confinements	24	David Sekgobela Rail Engineering Services (Pty)			✓	Initial investigations undertaken by both forensic auditing and investigative team - thus far a link to Mabule Rail has been established, which necessitates further investigation	6 months	YES	68,059,585.64
Confinements	25	Bakara Engineering		✓		Forms part of irregular confinements - Initial analysis is underway by forensic auditing.	4 months	YES	59,346,165.02
Confinements	26	Chanlou			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	59,179,909.87
AGSA	27	Baran Projects South Africa (Pty) Ltd (Baran Projects)	✓			Initial investigations undertaken by forensic auditing which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation	N/A - Complete	YES	57,200,000.00
Investigation findings	28	Marble Arch Trading cc			✓	Initial investigations undertaken by forensic auditing - handed over to investigative team.	6 months	NO	55,135,839.42
Confinements	29	Mizana Trading			✓	Initial investigations have been undertaken by investigative team - forensic auditing to commence their analysis.	4 months	YES	54,757,789.83
Investigation findings	30	Sebenza forwarding & Shipping			✓	Investigations undertaken by both forensic auditing and investigative team - direct link to Mr SM Buthelezi, erstwhile Chairman of PRASA.	6 months	YES	52,528,944.81
Investigation findings	31	Nondela Gedeza Investments		✓		Forensic audit complete - handed over to investigative team.	9 months	NO	46,973,276.02
Investigation findings	32	Vossloh South Africa (Pty) Ltd / Vossloh Kiepe AG (Ger			✓	Initial investigations undertaken by both forensic auditing and investigative team.	9 months	NO	46,077,195.00
Confinements	33	Wave Armature Winders (Pty) Ltd			✓	Initial investigations undertaken by forensic auditing team.	6 months	YES	45,560,647.23
Confinements	34	Bhaye Khetye Trading (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	43,156,973.62
Confinements	35	Mazaya (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	41,896,485.51
Investigation findings	36	Seyahamba Engineering	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	3 months	YES	41,270,343.62
Confinements	37	Genlex Agencies (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	39,053,713.38
Investigation findings	38	Velocrop 408 cc t/a Sudesh Dayanand Forensic	✓			Investigations undertaken by both forensic auditing and investigative team.	3 months	NO	37,928,792.00
AGSA	39	Mango Security Providers (consolidated)	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required.	3 months	YES	37,356,347.40
Confinements	40	Y Rail (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	35,960,763.83
AGSA	41	Chakela Hotels	✓			Complete. Disciplinary action was to be taken against employee by PRASA Rail.	N/A - Complete	NO	35,707,962.94
Confinements	42	Nandise Mlisa Consulting Services	✓			Investigations undertaken by both forensic auditing and investigative team - a link has been established to Daniel Mthimkulu - necessitates further investigation.	3 months	YES	33,018,086.53
Confinements	43	Mabule Rail and Infrastructure (Pty) Ltd	✓			Investigations undertaken by both forensic auditing and investigative team - led to the resignation of Moiehe Bopape and requires further investigation.	3 months	YES	31,433,470.42
Confinements	44	Magnolor (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	30,585,302.54
Confinements	45	Langa Lebalele Trading CC			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	30,587,126.98
Confinements	46	Tunnel Engineering			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	30,274,414.83
Investigation findings	47	Andriapha Mbisa Thakathi Transport Services	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	3 months	YES	29,982,636.27
AGSA	48	Sofenity Consulting (Pty) Ltd closed by legal	✓			Complete.	N/A - Complete	NO	27,419,978.82
Confinements	49	Dikoja Rail (Pty) ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	25,035,597.77
Investigation findings	50	Sincindi Projects			✓	Initial investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Lucky Montana has been established, which	6 months	YES	24,865,268.49
Confinements	51	Sibanye Trade & Services (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	23,700,093.34
Investigation findings	52	Resurgent Risk Managers (Pty) Ltd	✓			Investigations undertaken by both forensic auditing and investigative team.	3 months	NO	22,969,367.72
Confinements	53	Kgabo-Mhlambolo Projects Cooperative Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	22,118,779.00
Confinements	54	Manalang & Safety Environment			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	19,282,259.00
Investigation findings	55	Take Note Trading	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Harvdap Investment Solutions, Gypsum Fertilizer, Wayland.	3 months	NO	18,000,000.00
Confinements	56	Tecuvart			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	17,967,284.16
Confinements	57	Moredi Telecoms			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	15,124,488.84
AGSA	58	Motswako Office Solutions	✓			Initial investigations undertaken by forensic auditing which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation	3 months	YES	14,057,243.50
AGSA	59	KE Daniels	✓			Initial investigations undertaken by the investigative team which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further	N/A - Complete	YES	14,057,243.50
Confinements	60	MG Trading			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	12,678,032.77
AGSA	61	Bastafa Construction CC	✓			Complete. Disciplinary action taken against employee.	N/A - Complete	NO	12,571,845.68

SOURCE	No. (sorted by value)	Supplier selected	COMPLETED	IN PROGRESS	IDENTIFIED / INITIAL PHASE	STATUS DETAILS	GUESSTIMATED TIME TO COMPLETE	SECTION 34 ISSUED (PRECCA)**	Invoice value per SAP* (R's)
Investigation findings	62	S R General Trading Cc	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	N/A - Complete	YES	11,814,037.83
Confinements	63	Axon Rail (Pty) Ltd	✓			Investigations undertaken by both forensic auditing and investigative team.	3 months	YES	11,732,894.18
Investigation findings	64	Bhayethiliz Cleaning Services	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	3 months	YES	11,675,306.00
Confinements	65	Mbokodo Rail			✓	Forms part of irregular confinements - an indirect relationship with a PRASA employee has been discovered which necessitates further investigation.	6 months	YES	10,919,604.36
Confinements	66	Hamisa Group (Bloemfontein)			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	9,309,563.14
Confinements	67	Concgan Engineering			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	9,137,614.09
Investigation findings	68	Vunani Capital		✓		Investigations undertaken by both forensic auditing and investigative team.	6 months	YES	8,946,150.00
Investigation findings	69	University Of Johannesburg National Youth Development	✓			Complete.	N/A - Complete	NO	8,314,058.42
Investigation findings	70	Hsi Way Trading			✓	Investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Roy Moodley has been established, which necessitates	6 months	NO	7,706,205.24
AGSA	71	Nambili Technologies	✓			Initial investigations undertaken by forensic auditing which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation	3 months	YES	7,603,729.38
PP	72	Ndwenzeka Consultants	✓			Initial investigations undertaken by forensic auditing which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation	3 months	YES	6,868,400.00
Investigation findings	73	Africapacity Electroweb (Pty) Ltd	✓			Investigations undertaken by both forensic auditing and investigative team.	3 months	NO	6,365,727.56
Confinements	74	All Rail Services / ARS Engineering Project (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	6,056,344.26
Confinements	75	In Motion (Swoosh) Rail Services			✓	Forms part of irregular confinements - an indirect relationship with a PRASA employee has been discovered which necessitates further investigation.	6 months	YES	5,838,297.90
Confinements	76	Machine Tool Promotions (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	5,600,538.02
Confinements	77	Tabular Teach			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	NO	5,503,692.45
Confinements	78	Isongo Rail TSO (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	5,376,636.18
Investigation findings	79	BVI consulting	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	N/A - Complete	YES	5,070,206.74
Investigation findings	80	Anivaikom	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	N/A - Complete	YES	4,921,953.38
Investigation findings	81	Insure suppliers	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	N/A - Complete	YES	4,921,305.54
Confinements	82	Mode Tech (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	3,704,373.41
Investigation findings	83	Phaahama-Ntanbalo Investments	✓			Complete.	N/A - Complete	NO	3,602,095.80
Confinements	84	Zwinaxis Rail Engineering			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	3,189,765.60
Confinements	85	Aqua Transport			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	2,528,134.98
Confinements	86	The Elliox group (Pty) Ltd			✓	Forms part of irregular confinements - an indirect relationship with a PRASA employee has been discovered which necessitates further investigation.	6 months	YES	2,372,182.44
Investigation findings	87	Black Hawk Business Solutions (Pty) Ltd	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required.	3 months	NO	2,352,675.00
Confinements	88	Kungise Switchgear & Transformers			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	2,242,062.65
Investigation findings	89	GOLDEX		✓		Forensic audit complete - handed over to investigative team.	6 months	YES	2,230,227.40
Investigation findings	90	21st Century Pay Solutions Group	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary	3 months	YES	2,148,107.50
Confinements	91	Star Choice			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	2,037,435.90
Confinements	92	Scope Engineering			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	1,906,880.29
Confinements	93	Women In Motion			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	1,872,579.70
Confinements	94	Rail Space (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities. Forensic auditing have uncovered a link	6 months	YES	1,787,402.77
Confinements	95	Mokamu Mosotho Trading & Projects			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	1,496,591.20
Investigation findings	96	Black Business Council	✓			Complete.	N/A - Complete	NO	1,400,000.00
Confinements	97	MW Beyers (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	1,235,842.00
Confinements	98	Raisibe Rail Engineering			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	999,965.59
Confinements	99	Ukhozi (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	915,991.40
AGSA	100	Ilinkwazi Supplies CC	✓			Initial investigations undertaken by forensic auditing which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation	N/A - Complete	YES	911,693.41
Confinements	101	Jozi Rail (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	902,439.60
Confinements	102	Tantovox (Pty) Ltd T/A Asande Engineering Services			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	888,508.57
Investigation findings	103	Express Tools	✓			Initial investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to NMC has been established, which necessitates further	3 months	YES	837,189.52
Investigation findings	104	Carbon Brush Technology	✓			Initial investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to NMC has been established, which necessitates further	3 months	NO	839,433.40
Confinements	105	Ginger Ice (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities	6 months	YES	602,000.00
Confinements	106	Crisp Air (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities	6 months	YES	380,131.63
Investigation findings	107	Sort Me Out It Solutions	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	N/A - Complete	YES	226,060.50
Confinements	108	Archway Projects			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	222,560.30
Investigation findings	109	Prevantage Media Group			✓	Initial investigations undertaken by investigative team.	6 months	NO	209,760.00
Investigation findings	110	Berrybegint Trade And Invest 1222	✓			Forensic audit complete - which culminated in this matter forming part of the Section 34 PRECCA Reports - will necessitate further investigation where necessary.	N/A - Complete	YES	182,750.00
Confinements	111	Hamagame (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	138,609.38
Confinements	112	Pedal Trading			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	113	Rail X			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities. Forensic auditing have uncovered a link	6 months	YES	No transactions identified
Confinements	114	4 Phase Rails Technik (pty) ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	115	Ndabakazele Inkululeko			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	116	BG Locomotives			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	117	Big Eye Investments			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	118	Harrington & Mount (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	119	Idas Sciences			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	120	Imbongi (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	121	KAMO Rail (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities. Forensic auditing have uncovered a link	6 months	YES	No transactions identified
Confinements	122	Lethlka Railway			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	123	Lawrence Global Manufacturing			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	124	Malmate Rail (Pty) ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	125	Mzumbe Rail			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	126	Rail 2 Rail			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	127	Ratsoga Logistics			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	128	S & H Project Management			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	129	Setibo Engineering (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified

SOURCE	No. (sorted by value)	Supplier selected	COMPLETED	IN PROGRESS	IDENTIFIED / INITIAL PHASE	STATUS DETAILS	GUESSTIMATED TIME TO COMPLETE	SECTION 38 ISSUED (DIRECTIVE)	Invoice value per SAP* (R's)
Confinements	130	SIMS (Pty) Ltd (Sikhala Infrastructure Management)			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	131	Sinovuyo (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	132	Transport Workers Company			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	133	Vutha Rail			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	134	Wheel Tech			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	135	Wyko Industrial			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	136	Zephinat Trading & Projects (Pty) Ltd			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
Confinements	137	ZMK Consulting			✓	Forms part of irregular confinements - further investigations will be undertaken upon completion of the selected sample of 6 entities.	6 months	YES	No transactions identified
PP	138	Sidas Security Company	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required	3 months	YES	No transactions identified
PP	139	Umpanj Consortium			✓	Initial investigations undertaken by investigative team - forensic auditing team to assist where required - thus far a link to Provenance has been established, which necessitates	6 months	YES	No transactions identified
ABSA	140	Chuma	✓			Investigations undertaken by investigative team - forensic auditing team to assist where required.	3 months	YES	Chuma did not bill directly - Chuma billed as part of a consortium (uncorrected misstatements of
Investigation findings	141	Kgomomoraseng Travel (Pty) Ltd (KMM)	✓			Investigations undertaken by both forensic auditing and investigative teams.	3 months	NO	Cannot identify this supplier on SAP - linked to Nexus Travel per JV.
TOTAL									33,999,992,235.34

MF8

MF8

OVERVIEW OF PRASA FORENSIC INVESTIGATION BY WERKSMANS – COMMENCED 5 AUGUST 2015

GENESIS OF THE INVESTIGATION

- AUDITOR GENERAL'S 2014/2015 REPORT
- PUBLIC PROTECTOR'S REPORT – AUGUST 2015
- MATTERS ARISING FROM THESE
- BOARD RESOLUTION – JULY 2015

APPOINTMENT OF WERKSMANS

- LETTER OF ENGAGEMENT SIGNED BY AGCEO (N KHENA) ON 6 AUGUST 2015
- IN RESPONSE TO UNFOUNDED ACCUSATIONS REGARDING THE LAWFULNESS OF WERKSMANS' APPOINTMENT, THE ERSTWHILE BOARD INSTRUCTED WEBBER WENTZEL ATTORNEYS TO ADDRESS A LETTER TO THE MINISTER OF TRANSPORT ON 22 JUNE 2017 WHICH DEALT WITH A NUMBER OF ISSUES, INCLUDING THE UNCONTESTED FACTS UPON WHICH WERKSMANS WAS LAWFULLY APPOINTED – REFER TO WEBBER'S LETTER TO MOT OF 22 JUNE 2017

PROGRESS TO DATE

LITIGATION	INVESTIGATION/FORENSIC AUDITING	CRIMINAL COMPLAINTS LODGED BY PRASA
• SWIFAMBO - HIGH COURT APPLICATION TO REVIEW AND SET ASIDE THE CONTRACT – MATTER WAS HEARD ON 1 AND 2 JUNE 2017. - FRANCIS J RULED IN FAVOUR OF PRASA AND DISMISSED MONTANA'S APPLICATION TO BE ADMITTED AS AMICUS - LEAVE TO APPEAL WAS GRANTED TO SWIFAMBO TO BE HEARD IN THE SCA. - LEAVE TO APPEAL WAS REFUSED TO MONTANA WHO HAS NOW PETIONED THE SCA FOR LEAVE. PAPERS HAVE BEEN FILED. - HIGH COURT SUMMONS ISSUED TO RECOVER R2.6BN – PLEADINGS CLOSED – PRE-TRIAL PREPARATION TO COMMENCE	• INVESTIGATION COMMENCED WITH 437 MATTERS OF THESE: • 141 MATTERS WERE INVESTIGATED BY WERKSMANS (CONTRACTS ABOVE R10M) • 229 WERE INVESTIGATED BY NATIONAL TREASURY – (CONTRACTS ABOVE R10M) • 56 WERE DELEGATED TO BE INVESTIGATED BY INTERNAL AUDIT – OTHER SUSPICIOUS TRANSACTIONS (CONTRACTS UNDER R10M)	• SWIFAMBO • SIYANGENA • 40 REPORTS IN TERMS OF S34 OF PREVENTION AND COMBATTING OF CORRUPT ACTIVITIES ACT - MTIMKULU – FRAUD ARISING FROM HIM MISREPRESENTING HIS QUALIFICATIONS • MOGOLELWA - FOR THEFT OF INFORMATION
• SIYANGENA - HIGH COURT APPLICATION TO REVIEW AND SET ASIDE THE CONTRACT – – MATTER WAS HEARD ON 2 AND 3 MAY 2017 - SUTHERLAND J, WITHOUT ADJUDICATING ON THE MERITS, DISMISSED THE CONDONATION OF THE FAILURE TO COMPLY WITH SECTION 9 OF PAJA (PRE THE CONSTITUIONAL COURT RULING IN GIJIMA) - SUTHERLAND J REFUSED LEAVE TO APPEAL AND THE SCA REFUSED THE PETITION – ALL BEFORE GIJIMA. - PRASA WILL BE INSTITUTING A FRESH REVIEW APPLICATION ON THE BACK OF INTER ALIA GIJIMA AND THE FAILURE OF SUTHERLAND J TO DEAL WITH THE MERITS. - DEFENDING CLAIMS INSTITUTED AGAINST PRASA TOTALLING R1.1 BILLION - DEFENCE TO POSSIBLE CLAIMS: (A) ARISING OUT OF A GUARANTEE +- R792 MILLION PLUS INTEREST AT 160%; AND (B) ARISING OUT OF A	• WERKSMANS RETAINED 141 CASES - 7 – PUBLIC PROTECTOR'S FINDINGS - 14 - AUDITOR GENERAL'S FINDINGS (2014/2015) - 79 – IRREGULAR CONFINEMENTS FOUND IN THE COURSE OF THE FORENSIC INVESTIGATIONS - 41 ARISING FROM FURTHER INVESTIGATION • 24 OF THE ABOVE DID NOT REQUIRE FURTHER INVESTIGATION	- LETTER TO DPCI FROM CHAIRMAN OF BOARD OF CONTROL DATED 13 FEBRUARY 2017REGARDING INACTION IN INVESTIGATION. THIS PRECEDED AN APPLICATION TO COURT FOR INTER ALIA, A MANDAMUS AGAINST THE NPA AND THE DPCI - NPA HAVE AGREED TO ABIDE - DPCI HAVE RAISED A TECHNICALITY ALLEGING THAT DR MOLEFE WAS NOT AUTHORISED TO LAUNCH THE APPLICATION. - DPCI HAVE THUSFAR FAILED TO ANSWER THE MERITS OF THE APPLICATION OUTA HAVE APPLIED TO BE ADMITTED AS AN AMICUS

OVERVIEW OF PRASA FORENSIC INVESTIGATION BY WERKSMANS – COMMENCED 5 AUGUST 2015

SUSPENSION OF WORKS +- R28 MILLION - SIYANGENA HAS SOUGHT TO AMEND AND INCREASE ITS CLAIM - PRASA HAS ADOPTED THE STANCE THAT THESE PROCEEDINGS SHOULD BE STAYED PENDING THE OUTCOME OF THE FRESH REVIEW APPLICATION WHICH WILL BE LAUNCHED BY 31 JANUARY 2018.		
• MTIMKULU - HIGH COURT SUMMONS ISSUED TO RECOVER +-R20 MILLION – PLEADINGS CLOSED - FROZEN PENSION FUND BENEFIT	• SUBSEQUENT TO THE FURNISHING OF 7 PRELIMINARY REPORTS, REMAINING MATTERS WERE DISAGGREGATED AT THE REQUEST OF THE THEN AGCEO C LETSOALO IN OCTOBER 2016 INTO 3, 6 AND 9 MONTH PROJECTS.	
• PHUNGULA - HIGH COURT SUMMONS ISSUED TO RECOVER +- R4.5MILLION – AWAITING PLEA - FROZEN PENSION FUND BENEFIT	• 3 MONTH PROJECT ▪ 28 MATTERS FINALISED; ▪ REPORTS AND RECOMMENDATIONS DELIVERED	
• MAZWE FINANCIAL SERVICES - HIGH COURT SUMMONS ISSUED TO RECOVER +- R29MILLION – PLEADINGS CLOSED - PRE- TRIAL PREPARATIONS AND PROCEDURES IN PROGRESS	• 6 MONTH PROJECT ▪ 16 ENTITIES; AND ▪ 75 CONFINEMENT ENTITIES (REDUCED TO 23 BY VALUE IN EXCESS OF R 10 MILLION AND ONGOING NATURE OF CONTRACT) ▪ REPORTS AND RECOMMENDATIONS DELIVERED	
• FENTON GASTIN – FORMER GROUP CFO OF PRASA ▪ APPLICATION TO SET ASIDE CONSULTANCY AGREEMENT CONCLUDED WITH HIM AND RECOVERY OF MONIES PAID TO HIM IN RESPECT OF THE REMAINDER OF HIS CONTRACT AS GCFO. • IN PROCESS OF FINALISING THE REPLYING AFFIDAVIT	• 9 MONTH PROJECT o 6 MATTERS INCLUDING THE INVESTIGATIONS RELATING TO THE ONGOING LITIGATION MATTERS. o REPORTS AND RECOMMENDATIONS DELIVERED	
• LABOUR DISCIPLINARY PROCEEDINGS AGAINST EMPLOYEES - MAISHE BOPAPE: RESIGNED DURING PROCESS - OTHUTISWE MOGOLELWA : DISMISSED FOR FORENSICALLY DELETING INFORMATION FROM THE COMPUTER AND TABLET ISSUED BY PRASA TO MR LUCKY MONTANA - LUYANDO GANTSHO: THE DISCIPLINARY PROCESS HAS ALREADY RUN FOR ---- DAYS AND IS TO RESUME ON 20 JANUARY 2018. DISCIPLINED FOR ACCEPTING GRATIFICATION FROM SIYANGENA – FLAT IN KZN - PROCEEDINGS TO RESUME 22 JANUARY 2018	DATES UPON WHICH REPORTS WERE FURNISHED - FIRST PRELIMINARY REPORT – AUGUST 2015 - SECOND PRELIMINARY REPORT – SEPTEMBER 2015 - THIRD PRELIMINARY REPORT – OCTOBER 2015 - FOURTH PRELIMINARY REPORT – DECEMBER 2015 - FIFTH PRELIMINARY REPORT – FEBRUARY 2016 - SIXTH PRELIMINARY REPORT – MAY 2016 - SEVENTH PRELIMINARY REPORT – AUGUST 2016 - 28 x 3 MONTH REPORTS – DECEMBER 2016 - 23 x 6 MONTH REPORTS – JULY 2017 - 6 x 9 MONTH REPORTS – JULY 2017 **TOTAL REPORTS FURNISHED = 64**	

OVERVIEW OF PRASA FORENSIC INVESTIGATION BY WERKSMANS – COMMENCED 5 AUGUST 2015

TOTAL INVOICE VALUE OF 141 MATTERS UNDER INVESTIGATION

R24 BILLION

- AUDITOR GENERAL (2014/2015) = *+-R8.8 BILLION (*R550MILLION EXTRAPOLATED TO R8.8 BILLION)
- PUBLIC PROTECTOR = +- R4.2 BILLION
- IRREGULAR CONFINEMENTS = +-R1.2 BILLION
- FURTHER INVESTIGATIONS = +- R9.8 BILLION

TEAM RESOURCES USED IN THE INVESTIGATION

- +- 20 LAWYERS
- +- 21 ADVOCATES (SENIOR AND JUNIOR COUNSEL)
- +- 11 IT EXPERTS
- +- 12 FORENSIC AUDITORS AND 21INVESTIGATORS
- +- 4 TECHNICAL EXPERTS (ENGINEERS)

SHORT DESCRIPTION OF INVESTIGATIVE WORK

- INSTALLATION OF PROCUREMENT ANALYSIS TOOL ON THE PRASA NETWORK
- RETRIEVALOF 1.2 BILLION DOCUMENTS OFF PRASA NETWORKS
- FORENSIC IMAGING OF +/- 104 DEVICES (IN ACCORDANCE WITH PRASA'S POLICIES)
- UTILIZATION OF CUSTOMISED WEB BASED SEARCH AND ANALYTICAL APPLICATION TO MANAGE AND ANALYSE THE RETRIEVED DOCUMENTATION
- INTERVIEWING OF NUMEROUS WITNESSES, PERSONS OF INTEREST AND SOURCES OF INFORMATION

DIRECT RESULTS OF INVESTIGATION

- IRREGULAR, FRUITLESS, AND WASTEFUL EXPENDITURE INCREASED FROM R550MILLION IN 2014/2015
  TO
  R13,9 BILLION (2015/2016)

- POTENTIAL EXPOSURE TO PRASA IF SWIFAMBO AND SIYANGENA LITIGATION ARE NOT PURSUED TO THEIR ULTIMATE LEGAL CONCLUSION
  APPROX R 9 BILLION

- TOTAL POTENTIAL SAVINGS (TO PRASA) TO DATE:
  APPROX R3,8 BILLION

Annexure "**2**"

FOR STATE CAPTURE COMMISSION PURPOSES ONLY

AFFIDAVIT

I, the undersigned,

MFANIMPELA MOSES DINGISWAYO

do hereby make oath and state that:

1 I am an adult male formerly employed as the General Manager: Group Legal Services by the Passenger Rail Agency of South Africa ("PRASA") of 1 Mustang Close, Northriding, Randburg.

2 The facts contained herein fall within my personal knowledge, unless the context indicates otherwise, and are to the best of my knowledge and belief both true and correct.

3 I have read the affidavit of Onica Martha Ngoye deposed to on 9 February 2021 and confirm the contents thereof to the extent that they refer to me.

DEPONENT

FOR STATE CAPTURE COMMISSION PURPOSES ONLY

I certify that the above affidavit was signed and sworn to before me at ...Johannesburg this 11th day of February 2021 by the deponent after he declared that the knows and understands the contents of this affidavit, that the deponent has no objection to taking the prescribed oath which the deponent has taken and that the deponent considers the prescribed oath to be binding on his conscience.

KERRY WYNDHAM WOOD
COMMISSIONER OF OATHS
Ex Officio - Practising Attorney RSA
NGL Attorneys
Commerce Square
39 Rivonia Road
Sandton

COMMISSIONER OF OATHS

AFFIDAVIT IN RESPONSE TO ALLEGATION MADE BY

MR TSHEPO LUCKY MONTANA AT THE COMMISSION

ON 21 AND 22 APRIL 2021

I, the undersigned,

ONICA MARTHA NGOYE

do hereby make oath and state:

1. I am an adult female. I am currently employed as Group Executive: Legal, Risk and Compliance by PRASA at 1040 Burnett Street, Hatfield, Pretoria.

2. Unless the context clearly shows the contrary is intended, the facts herein contained are within my own personal knowledge and are to the best of my belief both true and correct.

3. I am currently on suspension by the Board of Control ("the Board") of PRASA and the recently appointed Group Chief Executive Officer ("Group CEO") of PRASA. I received my precautionary suspension letter on 16 April 2021. I have shared with

the Commission the steps taken by the current leadership of PRASA against me, which steps I believe have been taken against me because I am a whistle-blower. I trust that the Commission has directed the members of the Board to present evidence to the Commission answering to my allegations, as I believe that the members of the Board will not assist this Commission unless so directed by the Chairperson of the Commission. I believe that, through the affidavit that I filed with the Commission on 4 March 2021, the Commission has a chance to direct the Board to explain their conduct in relation to a whistleblower before their actions, which are intended to ruin my life, achieve their intended end. I have testified in the Commission that these attempts were started by Mr. Tshepo Lucky Montana ("Mr. Montana"). What is interesting at this stage is that the Board is using the lies previously peddled by Mr. Montana (as a lonely evangelist of the lies) to perpetuate this harassment.

4. Mr. Montana presented oral evidence stating that he has the necessary evidence in the annexures to his affidavit; annexures that he has inexplicably failed to file from the 15th October 2020 when he deposed to his affidavit to date. I therefore have been placed in the invidious position of having to respond to allegations whose basis I do not know. I have elected to, nevertheless, respond to these allegations as best as I can in order to assist the Commission with the facts as I know them and to vindicate my name from the false and defamatory statements made by Mr. Montana at the Commission. I humbly request the Chairperson to afford me time to give evidence on this affidavit, so that the incorrect impression that has been left in the

public is corrected in public.

5. Mr. Montana has testified about a number of things that he does not have personal knowledge of, does not indicate the source of his information, does not indicate the reason he believes such source to be reliable and his evidence is not backed up by any documents. Because Mr. Montana failed to file the annexures to his affidavit over the past six months, all that one has to deal with are his wild allegations made under oath and backed by nothing other than his word. I therefore reserve the right to supplement this response should it be necessary after being furnished with any other documents or information that form the basis of Mr. Montana's allegations against me.

THE SWIFAMBO TRANSACTION

6. The first question I wish to deal with is whether a conclusion can be drawn from Mr. Montana's evidence that I was part of the BAC that recommended the Swifambo transaction to the Board.

6.1. Mr. Montana spent a considerable amount of time testifying that I was part of the Bid Adjudication Committee ("the BAC") that recommended the appointment of Swifambo Rail Leasing (Pty) Limited (currently in liquidation) ("Swifambo") to supply PRASA with locomotives. His evidence is generously peppered with this statement. However, at the end of

his evidence, a very telling exchange happened between him and the Chairperson recorded on the transcription of the hearing of 21 April 2021, page 250 of 371:

*"**CHAIRPERSON:** So what you are saying is – part of what you are saying is how – insofar as the questions that she is talking about, that she says they raised, may have related to how PRASA awarded the Swifambo contract. She could not have raised those questions because she had been part of the people who recommended that Swifambo be awarded the contract. That is part of what you are saying.*

***MR MONTANA:** Yes, Chair. If – let us assume, Chair, they were not involved in the negotiations, okay, but here she is saying, she is talking about the principal transaction. The board approved the principal transaction which – let us assume she does not even attend the let us say the Bid Adjudication Committee but when documents are served, they are served to members of the committee as a committee and they quorate, they present that to the board."*

6.2. Having spent a lot of time on the stand stating that I was *"**at the heart**"* of the Swifambo decision, in his answer to the Chairperson, Mr. Montana makes the throw away comment that alludes to the possibility of me not having attended the meeting that places me *"**at the heart**"* of this of the Swifambo transaction. In his understanding of processes, Mr. Montana also believes that I should have the knowledge of this transaction because documents are served to the members of the committee and the committee presents to the Board. Clearly this is wrong. I cannot be *"**at the heart**"* of a transaction if I did not attend a meeting of a committee that considered a submission and made a recommendation based on that submission.

6.3. I therefore submit, with respect, that Mr. Montana's unsolicited introduction of doubt in his own evidence shows that it cannot be concluded that I was at the meeting that made this recommendation to the Board.

7. The other allegation that Mr. Montana stresses throughout his evidence is that I concealed from the Commission that I was part of the BAC that recommended the Swifambo transaction to the Board. I respond to this allegation as follows:

7.1. Around 2019, Mr. Dingiswayo and I handed over to the Commission the full review application of the Swifambo transaction and the court papers that were then filed in respect of the review application of the awards to Siyangena Technologies (Pty) Limited. The allegation that I was in the BAC that recommended the Swifambo transaction is made in the Swifambo review application. If I had any intention of hiding this allegation, I would not have shared the review application with the Commission; and

7.2. I did not give evidence on the Swifambo transaction; this evidence was given by Mr. Popo Molefe. I believe that the evidence leader would have had regard of the review application papers when preparing for the evidence of Mr. Molefe and leading Mr. Molefe at the Commission. I was not involved in these processes and I do not know why this detail was not presented. If I am to hazard a guess, my view is that in the greater scheme

of the Swifambo corrupt transaction and the misrepresentations that girded it, the allegation of my role in it was not deemed important. Especially considering the fact that it is clear in the affidavit of Mr. Popo Molefe, that not everyone who was mentioned in that affidavit was consulted for a confirmatory affidavit. The evidence is that the individuals that were key in this corrupt transaction are Messrs. Montana, Daniel Mthimkulu, Chris Mbatha, Makhensa Mabunda, Auswell Mashaba and Ms. Brenda Malongete. In the light of the roles played by these individuals, who, it appears, acted in concert, the role alleged to have been played by me is very insignificant considering further that the affidavit of Mr Popo Molefe states that the alleged recommendation made by the BAC was not followed by the GCEO in his report to the FCIP.

7.3. In the circumstances, it is untrue that I concealed this information from the Commission. I provided this information to the Commission and the legal team of the Commission made an election about how this information should be dealt with. I believe that if one understands the Swifambo corruption, one would have come to the same conclusion that the legal team arrived at. It is only one who seeks to deflect attention from himself who will seek to exaggerate this allegation.

8. I believe that, as the Chairperson correctly noted when hearing the evidence of Mr. Ryan Sacks and Mr. Muller, the conduct of PRASA employees who played a part

in this transaction should be carefully investigated. With respect, the views of the Chairperson are warranted and are correct. So far, it appears that shortcuts have been sought to get to people alleged to have sat in Committees.

9. An example of this short cut approach was started in December 2015 when Mr. Nkosinathi Khena (then acting Group CEO of PRASA) asked Mr. Rasheeque Zaman to write letters to the people that were alleged to have been in bid committees that considered the locomotives tender. The people alleged to have been in the BAC responded to this allegation by asking Mr. Khena to allow the investigation to run its course so that at its conclusion, the allegations can be made with the necessary supporting information. This is evidenced in the attached letter marked **OMN1.** This is because we did not have any recollection of this meeting and of this transaction. This is a big transaction and all of us agreed that, had we been in the BAC that considered it, we would remember.

10. The current leadership of PRASA has also taken this step that I, with respect, believe is a short-cut. I also believe that they elected this step because I am a whistle blower. On the direction of the Chairperson at my last appearance at the Commission I submitted an affidavit to the Commission on 4 March 2021 that stated the following about the actions of the current Board and the new Group CEO of PRASA about this transaction:

10.1. *"In annexure **"OMN5"**, PRASA's lawyers have opined, correctly in my view, that the document that shows the approval of the Swifambo*

transaction is unreliable because it is unsigned. In any event, I do not remember sitting in a meeting of the BAC that supported this transaction. That the Board believes that this transaction was approved in 2015 when the review application was launched betrays their haste and zeal to defame me. It also betrays the Board's ignorance of the real mischief of the Swifambo transaction. In my view, the following is the real mischief of the Swifambo transaction:

10.1.1. *The mischief around the Swifambo matter was planned by persons associated to Siyaya and PRASA officials. Mr. Auswell Mashaba alleged that Mr. Makhensa Mabunda approached him to ask him to be the face of Swifambo because he (Mr. Mabunda) had benefitted a lot from PRASA. Mr. Daniel Mthimkulu took the specifications of the Vossloh locomotives and placed that in a Request for Proposals that was issued by PRASA. Mr. Montana ensured that this project was in the procurement plan of PRASA when there was no budget for the project, that the RFP was issued and the entire procurement process was run to the point of approval by the Board of PRASA.*

10.1.2. *Swifambo did not submit compliance documents. This should have immediately disqualified Swifambo. When this was pointed out to the then Chief Procurement Officer ("CPO") by the Bid Evaluation Committee ("the BEC"), the then CPO directed the members of the BEC to focus on the evaluation and not the compliance aspects of the process. On the directions of the then CPO Swifambo was*

therefore evaluated based on the technical capacity of Vossloh Espana when it did not have any agreement with Vossloh.

10.1.3. *The procurement was changed from a lease to an outright purchase and only Swifambo submitted a bid for an outright purchase; this meant that this process that was supposed to be competitive became a "one-horse race" from this point onwards.*

10.1.4. *One of the persons associated with Siyaya, Ms. Brenda Malongete is alleged to have had the bid documents in her possession and out of PRASA premises.*

10.1.5. *The investigation found that even on the "one horse race" Swifambo did not meet the threshold for technical capacity. For Swifambo to reach the threshold for technical capacity, someone manipulated the scores and added 10 points to Swifambo's score on the technical evaluation.*

10.1.6. *To the extent that any bid committee was advised that Swifambo's bid was compliant and that it had reached the threshold for technical capacity, this would have been a lie. The procurement process works in gates for the separation of powers. These gates were used in this case to hide crucial information that falls within the purview of other*

processes or committees. All that the perpetrators of this illegality had to do was to convince those officials that were involved in the compliance checks to ignore the non-compliance and to manipulate the scores for the technical evaluation; there was therefore no way that Swifambo would have lost the bid on price when it was the last tenderer standing."

10.2. My expectation is that the above allegations would have been shared with the members of the Board of Control ("the Board") of PRASA who I have implicated in the above affidavit. I therefore expect that the members of the Board who are currently accusing me of this transaction would share with the Commission information that is the basis of their accusations against me. This information would be:

10.2.1. Submissions that were made to the BAC in relation to this transaction – this is the document that will show how the members of the BAC would have failed in their duties, if the meeting sat;

10.2.2. An attendance register to show who was present at this meeting;

10.2.3. A recording of the meeting; and

10.2.4. A recommendation report by the members of the BAC, which will

be shared by e-mail for comments by the members of the BAC and finalised by them. This report goes to the Group CEO and the Group Chief Procurement for them to prepare a submission to the Finance, Capital Investment and Procurement Committee ("FCIP") a subcommittee of the Board that considers tender submissions before they are approved by the Board.

10.3. In my view, these documents would have my proverbial 'finger prints', be a solid chain of evidence and place me amidst the persons who made the recommendation to the Board. I am yet to see this evidence.

10.4. The documents that I should have in my possession and that I could not find after a diligent search on my laptop is the draft recommendation report and my comments to it. All that I could find is an invitation for me to attend a meeting of the BAC dated 11 July 2012 from Mr. Chris Mbatha. This is attached hereto marked **OMN2.** What is strange about this invitation is that there is no agenda of the proposed meeting and the invitation comes from Mr. Chris Mbatha (the then Group Chief Procurement Officer) and not from Mr. Donald Swanepoel, the secretary of the BAC. All other invitations to meetings of the BAC that precede this invitation are from Mr. Swanepoel as is evidenced in **OMN3.**

10.5. The accusation against me by the Board and Mr. Montana is not that I

received an invitation to a meeting of the BAC but that I failed to carry out my duties as a member of the BAC and I failed to advise the Commission that I was a member of the BAC that recommended the Swifambo transaction. The best that I can do for the Commission at this stage is to say that I have no recollection of this meeting and of having made this recommendation. If Mr. Montana and the Board have this evidence, they must present same so that I can deal with it.

10.6. So far, what I know to have been produced is an unsigned recommendation report and about which, Mr. Sandile July of Werksmans has stated that it cannot be relied upon. I do not know whether Mr. Montana, the Board and the current Group CEO of PRASA are placing reliance on this unsigned and very dubious recommendation report. I have also stated the absence of other documents and processes that will culminate in the finalization of the recommendation report. These are also critically important to support the allegations made against me. Absent these, I doubt that anyone would have a reason to accept the correctness of these allegations.

11. I have, above stated the persons that I view to have been key in the Swifambo transaction. I wish to remind the Commission of evidence that Ms. Bridgett Gasa (then Chairperson of the Finance Capital Investment and Procurement Committee of the Board of PRASA) raised concerns about concluding an agreement with Swifambo. This concern was raised in writing with Messrs Montana and Sfiso

Buthelezi (then Chairperson of the Board of PRASA). There is no evidence of this concern being addressed.

12. There is also evidence that the locomotive that was proposed by Swifambo was a locomotive that Vossloh Espana (Vossloh) called a Euro 3000 (with a height that is correct for South African requirements) and PRASA bought a Euro 4000 that was of a height that is not correct for the South African requirements. There is no evidence that any bid committees, including the Board approved this change. In a dispute resolution meeting that Mr. Dingiswayo and I attended on behalf of PRASA, we were advised by representatives of Vossloh that PRASA requested this change. I doubt that this change would have been made without the knowledge and/or approval and/or acquiescence of Mr. Montana. Ironically, this issue around the height of the locomotives opened the lid to reveal the corruption of the Swifambo transaction.

13. Mr. Montana would have been key to the following stages and decisions:

13.1. The purchase of locomotives for about R3,5 billion was not budgeted for by PRASA, I doubt that PRASA would have gone out on tender for this purchase that was not budgeted for without the knowledge and the approval of Mr. Montana;

13.2. Change of the procurement strategy from a lease to an outright sale would

not have been effected without the knowledge and/or support and/or approval of Mr. Montana. The Commission would have noted that even the company that was formed four months before this tender was issued and was 'anointed' to get this tender chose to call itself *"Rail Leasing"* as it was formed as a front to lease locomotives to PRASA. The Commission will also note that this company that called itself *"Rail Leasing"* was found by the courts to have been the only tenderer that was given a chance to offer an outright purchase of the locomotives.

13.3. The appointment of Siyaya Consulting Engineers (Pty) Limited (In Liquidation) ("Siyaya") and/or Ms. Malongete as technical advisers to the Bid Evaluation Committee ("BEC") would have been done by Mr. Montana.

13.4. Whilst on this matter of the involvement of Siyaya as technical advisers, I wish to bring the following to the attention of the Commission. When we discussed the increased of the contract price from R3,5 billion to about R5 billion, one of the issues that we raised with Ms. Malongete is the failure to have the obtaining of approval in terms of section 54 of the Public Finance Management Act as one of the conditions precedent of the main contract, Ms. Malongete informed us (Mr. Dingiswayo and I) that the signature version of the purchase agreement that she had drafted had this condition precedent, however when she received the signed agreement, she noted that this had been removed.

13.5. In the ordinary course, the submission of a recommendation to the FCIP would be written and presented by Mr. Montana and the then Group CPO, Mr. Chris Mbatha. The members of the BAC do not make this presentation to the FCIP. Mr. Montana therefore played another key role in this presentation to the FCIP.

14. The above is not intended to diminish the importance of the role of the BAC in the procurement process but to demonstrate that it cannot lie on Mr. Montana's mouth to say that the role of the BAC or a person alleged to have been a member of the BAC was "**at the heart**" of this transaction. As stated above, I have no recollection of a meeting of the BAC that I was part of and that made this recommendation.

15. There are two matters that I need to share with the Commission to show the role that was played by Mr. Montana in the Swifambo transaction.

16. The first is the exchange between Mr. Montana and the Chairperson of the Commission that preceded the above excerpt. This relates to the increase of the contract price from R3,5 billion to about R5 billion. Mr. Montana stated at the Commission that this happened before I was transferred to PRASA. The following are the facts:

16.1. Mr. Dingiswayo and I were asked to assist with this increase. To this end,

we held a meeting with Messrs Daniel Mthimkulu and Josephat Phungula (then Group Chief Procurement Officer of PRASA) when they explained what transaction was contemplated and what assistance was sought from us.

16.2. After this meeting, I phoned Mr. Piet Sebola (then Group Executive: Strategic Asset Development) to understand whether there was Board approval and a budget for this increase. If my memory serves me well, Mr. Sebola indicated that his department was still doing the calculations of the amount of this increase.

16.3. We (Mr. Dingiswayo and I) then met with Ms. Malongete as she had prepared a draft and wanted Group Legal Services to sign-off on the draft addendum. We asked Ms. Malongete a number of questions about this transaction and she did not have answers to some of the questions that we raised. We ended that meeting by saying that it would be best for her to provide whatever comfort was required by the persons who were to execute that proposed addendum in the same manner that she provided comfort on the signing of the main contract as well as the addenda that were concluded in the intervening period.

16.4. One of the things that caused us to adopt this stance was when Ms. Malongete told us that the execution copy of the main contract had, as a condition precedent, the approval of that transaction in terms of section 54

of the PFMA. She indicated that the signed agreement had this condition precedent deleted and she saw this after the signature of the contract. We therefore felt that we did not want to make input that may be deleted if found unpalatable and asked her to finalise the agreement as she saw fit. The reason for the requirement of the section 54 approval is simply because the transaction was not budgeted for. Mr. Montana should explain why a transaction of R3,5 billion which was not in the budget for was taken through the procurement process and signed by him without the requirement for a section 54 approval.

16.5. This shows that even Ms. Malongete knew that this transaction was not budgeted for. More importantly, the decision to delete this condition precedent from the signature version of the draft purchase agreement would not have happened without the knowledge and/or approval and/or acquiescence of Mr. Montana.

17. The second matter relates to a memorandum that contains a request made by Dr Mthimkulu (as he then styled himself) to Mr. Montana to increase the contract price of the Swifambo transaction by R330 million. This is annexed hereto as **OMN4**. This memorandum is dated 11 April 2014 and was approved by Mr. Montana on 11 April 2014.

17.1. The reasons stated by this memorandum for this increase are the following:

"PRASA and Swifambo have negotiated and finalized the specifications for both the Afro Diesel and the Afro Hybrid. During the negotiations for finalization of the specification, the PRASA team released (sic) that the systems that came with the Locomotives per the Swifambo proposal to PRASA were rudimentary and therefore needed to be upgraded to ensure that the Locomotives are fitted and assembled with the latest technology. Therefore it was agreed with Swifambo that the systems to the Locomotives will be upgraded at an additional costs to PRASA." sic

17.2. The financial implications of this request were said to be R335,000,000.00 (three hundred and thirty-five million Rand) including VAT and Forex. The systems sought to be improved were:

17.2.1. Control systems;

17.2.2. Electrical systems;

17.2.3. Traction system;

17.2.4. Airbrake system; and

17.2.5. Boggie system.

17.3. If one completely ignores the screaming irregularities of this request and its implications to the process that was supposed to ensure that PRASA purchases the best locomotives at the best price and that Siyaya was engaged

to advise on, one is shocked that this was approved on the same day by Mr. Montana. Mr. Montana has stated that when he was at PRASA, he did not ***"touch"*** anything above R100 million. There is no evidence of this being considered by any bid committee and by the Board.

18. My Transfer from Intersite to PRASA

18.1. I have stated in my replying affidavit to Mr. Montana's affidavit that I am not aware of any concerns that were raised by the Board relating to my performance. I also stated that Intersite had successive clean audits under my leadership and the Board of Intersite which was chaired by Mr. Montana, resolved to pay bonuses to employees of Intersite including I because of the good performance of Intersite. No other PRASA subsidiary or division knows of clean audits except Autopax or payment of performance bonuses. In fact, the payment of a bonus in the PRASA environment only happened when I was the Chief Executive Officer ("the CEO") of Intersite.

18.2. Seeing that Mr. Montana persisted with this allegation and downplayed the Board's vote of confidence evinced by the payments of performance bonuses to employees of Intersite, I decided to contact the Lead Independent Director of Intersite, Mr. Benny Boshielo and the former Company Secretary of Intersite, Ms. Fefe Sefara.

18.3. On Thursday, 22 April 2021 at 13h58, I sent the following message to Ms. Sefara:

"Hello my sis, I hope you are well. Are you aware of the Board of Intersite discussing my incompetence and them wanting to fire me because of my incompetence. Lucky seems to suggest that this was a discussion that happened at the Board and he rescued me. I always understood that the resolution was premised on the restructuring of Group EXCO because I remember in one meeting wanting to make it clear that this move has nothing to do with my performance but rather the restructuring"

18.4. Ms. Sefara responded with the following:

"Hello my dear sister. There was no such discussion during my tenure, When I left, you were still there, and he was threatening to remove us because of the advertising tender. The decision to remove you was taken after I had left. Why did he give you a big portfolio if you were incompetent"

18.5. I sent the following message to Mr. Boshielo at 14h03

"Hello Ntate Boshielo, I hope you are well. Sorry to worry you. I guess you know [that] Lucky has been giving at the State Capture one of the things he says is that the Board of Intersite wanted to fire me for non-performance

and he fought for me to save me. That is not what I understood because even when the resolution was communicated to me, I confirmed that I was moving not because of performance related issues but rather that the Group Board wanted to restructure Group EXCO and thus wanted me to assist in that regard. Do you recall if I was going to be fired because of non-performance"

18.6. Mr. Boshielo responded at 14h28 and said:

"No, that was never discussed"

18.7. Mr. Boshielo's response is curt, direct and unequivocal. As I stated in my replying affidavit, the portfolio that I was asked to look after was much bigger than Intersite as Ms. Sefara indicates. As I was advised that this affidavit is urgently required by the Commission, I could not obtain confirmatory affidavits from Mr. Boshielo and Ms. Sefara. I can provide the investigators of the Commission with the contact details of Mr. Boshielo and Ms. Sefara if confirmatory affidavits are required from them. I must also state that my transfer from Intersite to PRASA has nothing to do with the terms of reference of the Commission. I however believe that it is important to show the credibility of Mr. Montana as a witness.

18.8. Mr Montana states that I cried when he advised me that the Board of

Intersite wanted to terminate my contract for non-performance. My simple response to this is that once again this is a lie.

19. Strawberry Worx, Moodley and the Advertising Portfolio

19.1. PRASA issued a tender to issue a concession to the winning tenderer to flight billboards on PRASA's network and share the profits derived from this with PRASA. This was to change the strategy from leasing of space for structures that support billboards to PRASA sharing profits with the company exploiting PRASA's network for advertising on PRASA's network. After the appointment of the successful tenderer, PRASA decided that this contract would be entered into between the winning tenderer and Intersite (on behalf of PRASA). Umjanji Media was successful in this tender.

19.2. Umjanji, PRASA and Strawberry Worx entered into an agreement for Umjanji to cede some of its rights in the portfolio to Strawberry Worx. In my capacity as the then CEO of Intersite, I was asked to sign the agreement between Intersite and Strawberry Worx to effect the cession agreed to between Umjanji, PRASA and Strawberry Worx to give effect to the cession that was executed by PRASA.

19.3. At this stage, I did not know that Strawberry Worx was associated to Mr.

Roy Moodley and was meant to receive favourable treatment from Intersite; I treated them as I would treat any other counterparty. The following happened that changed my mind:

19.3.1. The Guarantee

19.3.1.1. The agreement between Intersite and Strawberry Worx contained a condition precedent to the effect that Strawberry Worx was obliged to issue a guarantee in favour of Intersite by a specified date.

19.3.1.2. When we reached the due date for the submission of the guarantee, I asked Mr. Mthandeni Mntungwa who was managing this agreement whether the guarantee had been issued and he advised me that Strawberry Worx had submitted cheques. I indicated to Mr. Mntungwa that I will proceed to cancel the contract for the failure furnish the guarantee.

19.3.1.3. After this I received a call from Mr. Montana indicating that he had been advised of my intentions and asked that I give Strawberry Worx more time. After some discussion, I agreed with Mr. Montana that I will not cancel the agreement but

that they must perform their obligations as soon as possible. I do not know how my intentions were conveyed to Mr. Montana as I did not tell him about this.

19.3.1.4. It appears that this guarantee was never obtained from Strawberry Worx and was never waived by Intersite and/or PRASA.

19.3.2. The Meeting between Intersite and Strawberry Worx

19.3.2.1. Mr. Tiro Holele advised me that he had been instructed by Mr. Montana to arrange a meeting between representatives of Strawberry Worx and I as they had some concerns that they wanted to discuss with me.

19.3.2.2. The representatives of Strawberry Worx who met with Mr. Holele and I at this meeting were Messrs Selwyn Moodley, Ashveer Dwarikapershadh and Reshan Maraj (Strawberry Worx's attorney). The representatives of Strawberry Worx accused me of siding with Umjanji and not running the advertising portfolio properly. I indicated to them that Intersite and I had nothing to do with their relationship with Umjanji as, according to us, this was an arms length

relationship between business people. That whatever goes wrong in that relationship should not have an impact on the performance of the parties.

19.3.2.3. This meeting soon degenerated as the volume of the voices started rising and it appeared to me that what was being presented by the representatives of Strawberry Worx were instructions to me. I told them that I report to the Board and I take my instructions from the Board.

19.3.2.4. Nothing was resolved at this meeting; however.

19.3.2.5. After this meeting, Mr. Holele indicated to me who the people in the meeting were. He informed me that Selwyn was Mr. Moodley's son and Ashveer was a relative of Mr. Moodley, a nephew, if my memory serves me well. Mr. Holele also informed me that Mr. Roy Moodley was a political heavyweight and was close to Mr. Montana; I do not believe that Mr. Holele was specific about the political standing of Mr. Roy Moodley.

19.3.3. The Approvals from Municipalities

19.3.3.1. The Agreements with the concessionaires and the cessionaries obliged them to seek the approval of municipalities before erecting structures on which billboards would be displayed where such billboards are public facing. Although Strawberry Worx signed the agreement with this obligation, they did not apply for municipal approval. When we asked why they did this, they stated that they were of the view that this was not necessary in terms of legal advise that they had obtained.

19.3.3.2. I arranged a meeting with Strawberry Worx and Umjanji to discuss this matter and asked them to bring their lawyers for this discussion and we brought our lawyers. After some deliberation, the meeting decided that Umjanji and Strawberry Worx would make applications for municipal approval before erecting structures as per their contracts with Intersite.

19.3.3.3. After this meeting, a Mr. Willem Krog (who went by the title 'Advocate') and was a representative of Strawberry Worx wrote an e-mail that was intended to have been sent to Umjanji and Strawberry Worx but included Jacob Rakgoathe, in error. This e-mail stated that I was *"stupid"*

and that this is the reason why the advertising portfolio should be moved from Intersite to PRASA.

19.3.3.4. It was therefore clear to us what Strawberry Worx thought of me and Intersite and that, although in the meeting, they agreed to comply with the agreement and seek municipality approvals, they had no intentions of seeking these approvals. In fact, over time, they simply ignored this requirement. There is currently a matter pending in the Kwazulu Natal Division of the High Court in terms of which the Ethekwini Municipality has applied for the removal of about 8 structures erected by Strawberry Worx.

19.3.4. The instruction to change lawyers from Hogan Lovells to BBM

19.3.4.1. The first time this issue came up was when Mr. Lindikaya Zide, then Group Executive: Legal & Compliance of PRASA indicated to me that Mr. Selwyn Moodley, Ashveer Dwarikapershadh and an attorney from BBM Attorneys came to his office unannounced and indicated to him that he was supposed to remove Hogan Lovells (under the able management of Mr. SJ Thema) and replace them with BBM Attorneys. Mr. Zide advised me that he indicated to them that

BBM Attorneys were not on the panel of PRASA and therefore could not be appointed by PRASA.

19.3.4.2. Shortly after Mr. Zide told me about this, during a time when Mr. Montana was on a short leave and Mr. Holele was the acting Group CEO, Mr. Holele asked to meet with us over lunch. As we were in Mr. Holele's car on our way to lunch, Mr. Montana phoned Mr. Holele and we heard him on the speaker asking Mr. Holele whether he (Mr. Holele) had instructed us to change the lawyers. Mr. Holele indicated to Mr. Montana that he was on his way to meet with us to discuss this.

19.3.4.3. At this discussion, Mr. Zide informed us about the above meeting and what he had stated to that meeting. We indicated to Mr. Holele that we would not be able to follow this instruction in the circumstances. Mr. Holele understood our view in this matter.

19.3.4.4. One of the things that happened after the raid that I refer to be was the removal of Hogan Lovells as PRASA's attorneys of record and the appointment of Ramushu Mashile Twala Attorneys. Not much progress was made in this matter after

it was moved from Hogan Lovells.

19.3.5. The raid by the *"officer of the Court"*

19.3.5.1. I have testified about this in my evidence at the Commission.

19.3.5.2. I found it very curious that Mr. Montana, who was not present when this raid happened that Ms. Marlini Naidoo was only there as someone who accompanied Ms. Hope Zinde. In my interaction of the day, the person who was more vocal was Ms. Naidoo even insinuating that she derived her authority to do what she was doing by virtue of her being an *"officer of the Court"*. Although Ms. Naidoo was making this claim for authority bizarrely, obviously Ms. Zinde could not lay claim to this authority.

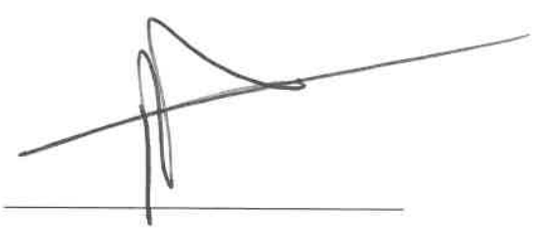
19.3.5.3. After the raid, the brief in relation to the review application and eviction applications was removed from Hogan Lovells and was given to Ramushu Mashile Twala ("RMT") and Maraj Attorneys (owned by Reshan Maraj who was at the first meeting between Strawberry Worx and I representing Strawberry Worx). Both RMT and Maraj Attorneys were not on PRASA's panel.

19.3.5.4. We attended a meeting with the new legal team of PRASA in early 2013. This meeting was attended by five counsel. Mr. Dingiswayo informs me that he made enquiries with his former manager Ms. Ntebo Nkoenyane about the need for 5 counsel representing PRASA after which he was excluded from the matter. This matter and other matters in the advertising portfolio that were handled by Group Legal Services were migrated to the office of the Group CEO and managed by Ms. Naidoo.

19.3.6. After the departure of Mr. Montana, Ms. Naidoo resigned from PRASA. Mr. Dingiswayo established that all the litigation that relate to the advertising portfolio was then handled by Maraj Attorneys including the review application.

DEPONENT

I certify that the above affidavit was signed and sworn to before me at ...Sandton..... this the ..30th..... day of April 2021 by the deponent after she declared that she knows and understands the contents of this affidavit, that she has no objection to taking the prescribed oath which she has taken in respect thereof is binding on her conscience, and that the contents of this affidavit are true and correct.



COMMISSIONER OF OATHS

Philladelphia Kedibone Mothupi
Commissioner of Oaths
Practising Attorney R.S.A.
12th Floor, The Forum
Sandton Square
No2 Maude street,Sandton

SS7-OMN-824

OMN1

prasa

Mr. Nkosinathi Khena
AGCEO
PRASA House
Hatfield

Dear Mr. Khena

Your respective letters to members of the Corporate Tender and Procurement Committee (CTPC) dated 01 December 2015, received on 3rd December 2015, regarding Swifambo has reference. The CTPC responds as follows:

- The contents of the letters are vague, and do not refer to the work of the adjudication committee (CTPC), but rather to the issues that were dealt with by the Bid Evaluation Committee.
- Paragraph 1.1 Page 43 referred to in your letter, is more in respect of the accounting misstatement of plant, property and equipment, and accordingly irrelevant to the work of the CTPC.

Further, the Swifambo matter is a subject of a forensic investigation and is also before Court, we request that any further engagement on the matter be confined to the forensic investigation order to avoid duplication and parallel processes.

Kind Regards,

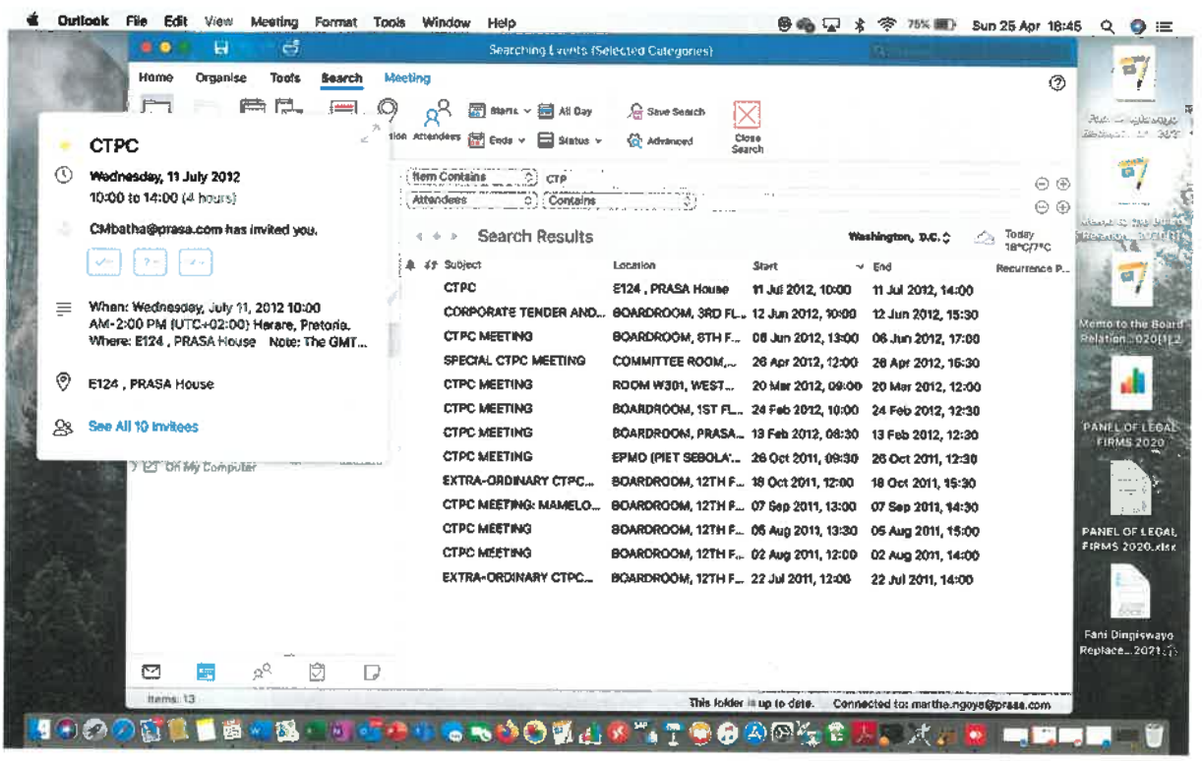
Tiro Holele _____ 7/12/2015
Maishe Bopape _____ 2015/12/07
Martha Ngoye _____ 7/12/2015
Chris Mbatha _____
Siphiwe Mathobela _____ 07-12-2015
Jerita Motshologane _____ 7/12/2015
DATE: 7/12/2015
C.C.: Rasheeque Zaman

Directors Dr P Molefe (Chairman), N Khena (Acting Group CEO), C Cele, X George, NS Kheswa, ZP Manase, L McMillan, C Manyungwana, MJ Mallala, N Mvenge, WS Steenkamp

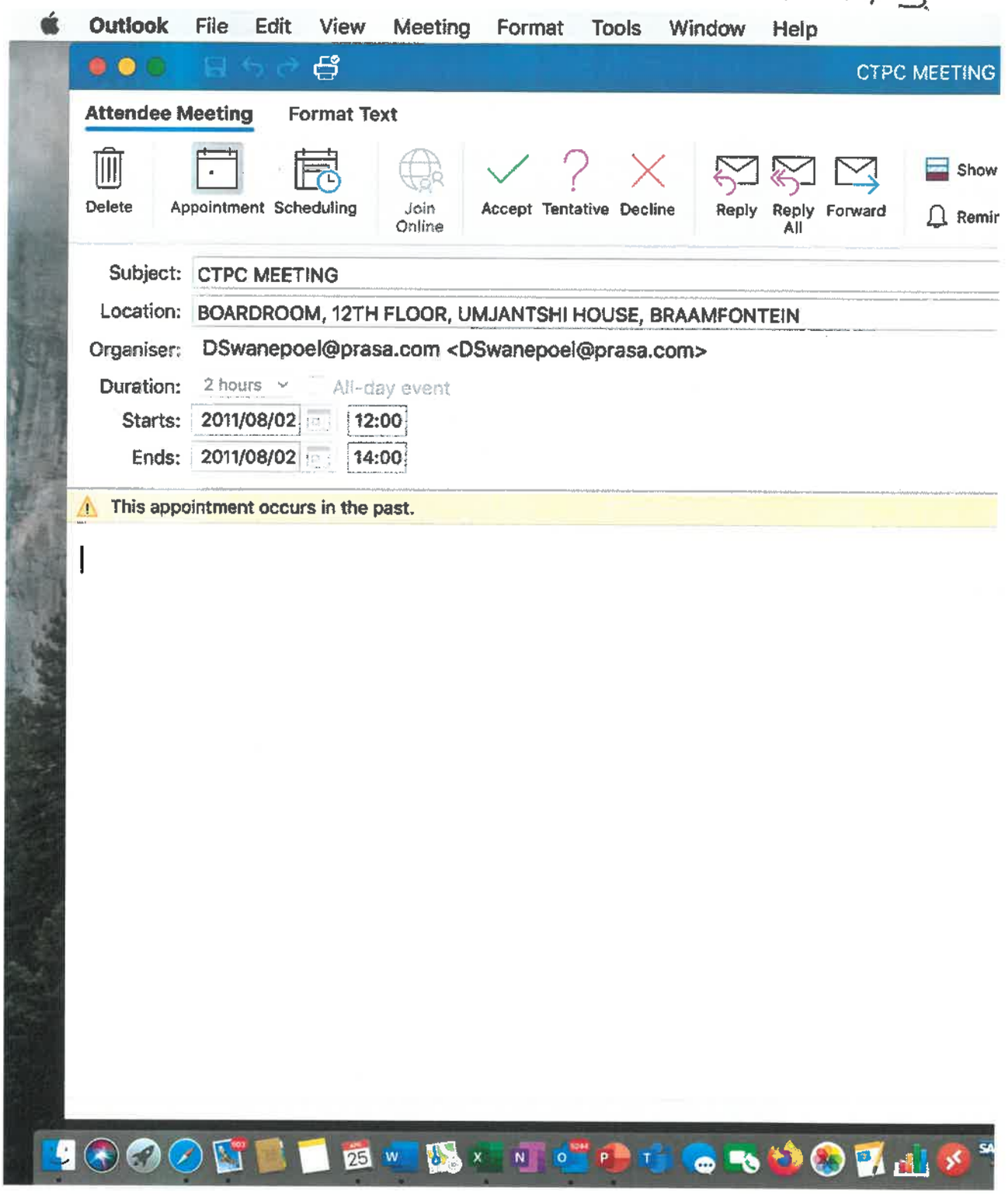
Company Secretary: L. Zide

OMN 2.

From: Martha Ngoye <malebethe.ngoye@gmail.com>
Date: 30 April 2021 at 13:55:13 SAST
To: MArtha Ngoye <malebethengoye@gmail.com>



OMN 3.


Outlook File Edit View Meeting Format Tools Window Help
CTPC MEETING
Attendee Meeting
Format Text
Delete
Appointment
Scheduling
Join Online
Accept
Tentative
Decline
Reply
Reply All
Forward
Show
Remir
Subject: CTPC MEETING
Location: BOARDROOM, 12TH FLOOR, UMJANTSHI HOUSE, BRAAMFONTEIN
Organiser: DSwanepoel@prasa.com <DSwanepoel@prasa.com>
Duration: 2 hours
All-day event
Starts: 2011/08/02 12:00
Ends: 2011/08/02 14:00
This appointment occurs in the past.

OMN 4
"FA77"

Be moved prasa

776

Memorandum

To: MR. TSHEPO LUCKY MONTANA
GROUP CHIEF EXECUTIVE OFFICER

From: DR. DANIEL MTIMKULU

Date: 11 April 2014

Subject: PURCHASE OF NEW LOCOMOTIVES CONTRACT VARIATION

1. Purpose

To request the GCEO, to approve the variation of the Sale and Purchase Agreement of the New Locomotives from Swifambo Rail Leasing (Pty) Limited by the inclusion of the following system for the New Locomotives:

- Control Systems
- Electrical System
- Traction System
- Airbrake System
- Boggie System

2. Background and Discussion

On 27 and 28 November 2011, PRASA issued a tender for procurement of Provision of 88 Diesel – Electric Locomotives for purposes of hauling and shunting long distance trains (Shosholoza Meyl). The tender advertisement was issued on the following newspaper publication: City Press, Pretoria News, The star, Cape Times and Natal Mercury.

On 9 December 2011, a compulsory briefing session was held and twenty six bidders attended. Attached is the copy of the attendance register marked Appendix 2.

On 9 March 2012, the tender closed. Prior to the cut off time PRASA received five bids. On 12 July 2012, the Bid Adjudication Committee of PRASA (CTPC) adjudicated and approved the recommendation of the Bid Evaluation Committee. The Board of PRASA approved the recommendation of the CTPC.

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In March 2013 PRASA signed a sale and Purchase Agreement with Swifambo Rail Leasing (Pty) Limited for the supply of 70 Diesel Electric Locomotives.

PRASA and Swifambo have negotiated and finalized the specifications for both the Afro Diesel and the Afro Hybrid. During the negotiations for finalization of the specification, the PRASA team released that the systems that came with the Locomotives per the Swifambo proposal to PRASA were rudimentary and therefore needed to be upgraded to ensure that the Locomotives are fitted and assembled with the latest technology. Therefore it was agreed with Swifambo that the systems to the Locomotives will be upgraded at an additional cost to PRASA. Attached is a copy of the cost for the upgrading of the Locomotives Systems marked "A"

The total cost of upgrading of the systems for both the Afro Diesel and Afro Hybrid which in total 70 units is R335 000 000.00 (Three Hundred and Thirty Five Million Rands, including VAT and Forex.

3. FINANCIAL IMPLICATIONS

The total cost of upgrading of the systems for both the Afro Diesel and Afro Hybrid which in total 70 units is R335 000 000.00 (Three Hundred and Thirty Five Million Rands) Including VAT and Forex.

BS

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4. RECOMMENDATIONS

It is recommended that the GCEO to approve the variation of the Sale and Purchase Agreement of the New Locomotives from Swifambo Rail Leasing (Pty) Limited by the inclusion of the following system for the New Locomotives:

- Control Systems
- Electrical System
- Traction System
- Airbrake System
- Boggie System

with the additional cost of is R335 000 000.00 (Three Hundred and Thirty Five Million Rands including VAT and Duty

REQUESTER	
DR DANIEL MTIMKULU HEAD: ENGINEERING SERVICES DATE: 11/04/2014	
RECOMMENDED ☑ NOT RECOMMENDED ☐	APPROVED ☑ NOT APPROVED ☐
DR JOSEPHAT PHUNGULA GROUP CHIEF PROCUREMENT OFFICER DATE: 11-04-2014	MR TSHEPO LUCKY MONTANA GROUP CHIEF EXECUTIVE OFFICER DATE: 11/04/2014

PS.

779.

SWIFAMBO

Reg. No.: 2010/007968/07

TAX INVOICE

Date: 03 April 2014

Client: Passenger Rail Agency South Africa
Department: Finance Department
Contract Name: Provision of Diesel-Electric Locomotives
Contract No: HO/SCM/223/11/2011
Address: PRASA House
1040 Burnette Street
Hatfield
Pretoria
VAT No: 4900 011 0612
Client Rep: Dr. D Mlimkulu

Swifambo Rail Leasing Proprietary Limited
VAT No: 4710283106
Company Registration No: 2010/007968/07
Contact: M Mashele
Invoice No: SRL006-001

QTY	DESCRIPTION	UNIT PRICE	TOTAL
1	Description: Provision of Diesel-Electric Locomotives		R294 129 879.26
	Milestone Payment and Additional Systems		
		TOTAL (VAT EXCL)	R294 129 879.26
		VAT (14%)	R41 178 183.10
		TOTAL (VAT INCL)	R335 308 062.36

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MFANIMPELA MOSES DINGISWAYO

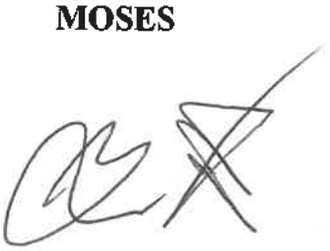
do hereby make oath and state that:

1. I am an adult male, admitted attorney of Mustang Close, Northriding, Randburg.

2. The facts to which I depose are within my personal knowledge and are, except where the context indicates otherwise or I expressly say so, to the best of my knowledge and belief both true and correct.

3. I have read the affidavit deposed to by **ONICA MARTHA NGOYE**. I confirm the correctness thereof insofar as it refers to me.

MFANIMPELA MOSES DINGISWAYO



I certify that the above signature is the true signature of the deponent who has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to at _____ on this the ____ day of _____2021 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.

_____

COMMISSIONER OF OATHS

FOR STATE CAPTURE COMMISSION PURPOSES ONLY

AFFIDAVIT ON THE PLIGHT OF WHISTLEBLOWERS

I, the undersigned,

ONICA MARTHA NGOYE

do hereby make oath and state that:

1 I am an adult female, admitted attorney and formerly employed as the Group Executive: Legal, Risk and Compliance by the Passenger Rail Agency of South Africa ("PRASA"). I am currently unemployed after my employment was cruelly and unlawfully terminated by PRASA on 29 January 2021.

2 The facts contained herein fall within my personal knowledge, unless the context indicates otherwise, and are to the best of my knowledge and belief both true and correct.

FOR STATE CAPTURE COMMISSION PURPOSES ONLY

Purpose

3 On 23 February 2021, I appeared at the Judicial Commission of Inquiry into Allegations of State, Capture, Corruption and Fraud in the Public Sector, including Organs of State ("the Commission") to give evidence on the regularity of the appointment of Werksmans Attorneys by the former Board of Control of PRASA to conduct a forensic investigation into a number of transactions.

4 I had mixed feelings about my appearance at the Commission as I believed that my unlawful dismissal was related to the work that I had been doing in fighting corruption and State Capture in PRASA. I therefore prepared a brief statement to share with the Commission in this regard. Before reading the entire statement, the Chairperson of the Commission asked me to reduce this statement into an affidavit, file it with the Commission so that the Commission may afford people that are implicated in my statement an opportunity to respond to my statement. I welcomed this as I am very keen to hear their version under oath. I have referred my unlawful dismissal to the Labour Court and, if I am reistated as I have requested from the Labour Court, I may have to work with these people.

5 This affidavit seeks to place the above statement under oath for the above purposes of the Commission.

Background

6 From the inception of the Commission, the Chairperson of the Commission has made an impassioned plea to people who are aware of instances of State Capture to come to the Commission and to share their information with the Commission. The people who will have direct evidence of State Capture are people that witnessed it closely; these people will fall in the following categories:

6.1 proponents of State Capture who directly benefitted from the capture ("the main actors");

6.2 persons who assisted the main actors knowingly and benefitted indirectly by being appointed to positions that they did not deserve, earning salaries that they did not deserve and/or being afforded other privileges that they did not deserve, like local and overseas trips ("the supporting acts");

6.3 persons who watched State Capture unfold before their eyes and did nothing about it or looked the other way ("the extras"); and

6.4 persons who took steps to fight State Capture – considered as the villains by the main actors;

7 According to my observation, the only people who have come and can come to the Commission in response to the plea of the Chairperson are those people that are regarded as villains by the main actors and the supporting acts. The overwhelming majority of these people are people who were pushed out of their jobs and have been rendered as lepers by the stance that they took against State Capture. Because capture is a collusion between the public sector and the private sector, both sectors regard these people as dangerous and refuse to touch them. These capable professionals who have refused to be silent about the cancer that is stealing the futures of our children have been rendered destitute and beggars.

My fight against State Capture

8 Before anyone knew about State Capture and throughout my career, I was regarded as a villain by different capturers that I interacted with over my career. I found this very strange for three reasons:

8.1 Nothing and no one prepares a professional to deal with people who are intent on breaking the law, cutting corners, having a dogged inclination on flouting procedure and breaking down all systems and institutions. Professionals are trained and prepared to comply with laws and to build and develop sustainable systems and institutions. All that conscientious professionals want is to see institutions grow and develop in a sustainable manner;

8.2 In a concerning number of instances, those that are supposed to provide oversight to ensure compliance with laws and building of sustainable systems and institutions appear to be the ones who should be stopped from destroying institutions and systems and contravening the law; and

8.3 In the case of public entities, it is expected that public entities would be exemplary in the complying with the laws and building systems and institutions that can support our nascent democracy. Most of the leaders of public entities are persons who sacrificed lives, limbs and livelihoods to fight for democracy, the rule of law and a just society. The expectation is therefore that compliance with the laws and the building of a capable state can be taken for granted and/or is not a matter that will require a fight or a debate.

9 When I first came to the Commission, it was after a number of attempts to unlawfully push me out of PRASA for spurious reasons had failed. I was still employed at PRASA and working hard with some of my colleagues to protect the interests of PRASA from enemies of PRASA both inside and outside of PRASA.



My unlawful dismissal

10 On the 29th January 2021, the Board of PRASA and the acting Group CEO of PRASA found a spurious reason to unlawfully push me out of PRASA. The approach that they took was to simply write a dismissal letter on the 29th January 2021. This dismissal was not preceded by any lawful process and the reason stated in the letter can only be described as false. A copy of this letter is attached hereto and marked **"OMN1"**.

11 The stratagem employed by the Board and the acting Group CEO is one that I have advised against throughout my career, one that I think is not only unlawful but is also cruel and reduces the employer to a bandit that takes unfair advantage of employees. It places the employee in a position that they are forced to use their own resources to fight against this injustice, whilst the perpetrators of the injustice use the resources of the State to maintain their unlawful act. This stratagem was, to my shock and horror, stated in a meeting that was full of executives of PRASA and of the Department of Transport. I believe that this meeting sets the scene for my dismissal letter.

11.1 On the evening of 24 February 2020, the Committee of Group Executives of PRASA ("Group EXCO") was summoned to a meeting to be held with the Director-General ("the DG") of the Department of Transport, Mr. Alec Moemi at 06h00 the next day (25 February 2020). The reason I say that

Group EXCO was summoned is because the invitation to this meeting stated that it was compulsory and that no excuses would be accepted.

11.2 Upon arrival at this meeting, the attendees were instructed to place all their electronic devices, cell phones and laptops outside the room where this meeting was to be held. This meeting was attended by the then administrator of PRASA, Mr. Mpondo, members of Group EXCO and senior officials from the Department of Transport.

11.3 After the removal of electronic devices from the room, the meeting started. Mr. Mpondo introduced the DG. The DG spoke in an unfriendly, aggressive, intimidating and threatening tone. No one else spoke in the meeting as everyone there appeared shocked. As soon as the meeting was over, I took notes of the things that I could remember from the address of the DG. The following is what I noted:

11.3.1 That Group EXCO was rogue and that it was not their place to question the legality of the appointment of an Administrator for PRASA by the Minister of Transport. I pause to state that I am not aware of any other person who was at that meeting and who questioned the legality of the appointment of the Administrator. In my case, I did not question the legality of the appointment, I advised that it was unlawful and how to cure the unlawfulness. I

doubt that an approach like the one of the DG in this meeting would recognise this nuance;

11.3.2 That the members of Group EXCO had been employed in PRASA for too long and they must go. I pause to state that the Minister of Transport, Mr. Fikile Mbalula ("the Minister") had stated that PRASA had a lot of 'old furniture' implying that this 'old furniture' must be removed;

11.3.3 That the Administrator should dismiss members of Group EXCO that were rogue without following any due process so that if these employees challenge their unlawful dismissals, they must do so with their own resources and from outside of PRASA;

11.3.4 That PRASA was well-resourced to out-litigate any employee challenging their unlawful dismissals and that the Administrator should employ the resources of PRASA to out-litigate any employee challenging their unlawful dismissals; and

11.3.5 That no individual employee will be able to succeed using their own personal resources against the resources of the state.

11.4 I must state that I had given Mr. Mpondo verbal advice at a meeting of Group EXCO around January 2020 relating to the unlawfulness of his appointment as an administrator of PRASA and, on *his* request, had reduced that advise to writing and submitted it to him on 6 February 2020 (two weeks before the above meeting of 25 February 2020). In the advice we (Mr. Dingiswayo (former General Manager: Group Legal Services) and I) stated that:

11.4.1 there was no law that permitted the Minister to appoint an administrator for PRASA – this opinion was confirmed by the Cape High Court on 25 August 2020 in a matter launched to challenge the lawfulness of the appointment of an administrator for PRASA;

11.4.2 any person who is aggrieved by any decision (good or bad) taken by the administrator could challenge such decision by challenging the lawfulness of the administrator and that this may delay a lot of critical decisions that seek to assist PRASA; and

11.4.3 to correct this, all that the Minister should do is appoint a minimum of three (3) people (one who is qualified to lead the Audit and Risk Committee of the Board and two with business expertise), ask the

Department of Transport, National Treasury and SALGA to each nominate one person for appointment to the Board.

11.5 It was therefore clear to me from this meeting that the opinion that I had co-written had rendered me a target of victimisation and, that this bizarre meeting has been called to dress me down, humiliate me and was an attempt to intimidate me. The following happened:

11.5.1 On 8 February 2020 (2 days after the opinion was shared with Mr. Mpondo), Mr. Mpondo gave me a written warning, dated 7 February 2020, for sending a letter that he had asked me to send; and

11.5.2 The other person who had assisted in writing this opinion (Mr. Dingiswayo) was unlawfully suspended by Mr. Mpondo on the 11th February 2020 (5 days after the opinion was shared with Mr. Mpondo) and reinstated without any disciplinary process in September 2020.

11.6 After this meeting Mr. Mpondo dismissed the Group Chief Finance Officer ("Group CFO") who had been in this position for about six (6) months. I am not aware of any lawful process that was followed before the Group CFO was dismissed. All that was announced by Mr. Mpondo was

the appointment of one of Mr. Mpondo's "technical advisors" as an acting Group CFO. This appointment was contrary to the policies of PRASA.

11.7 Mr. Mpondo took steps to dismiss the Group Chief Procurement Officer ("the Group CPO") that had also been in this position for about 6 months. The Group CPO elected to take Mr. Mpondo's attempt to dismiss her to the Labour Court and the Labour Court per Connie Prinsloo J (on 9 June 2020) and André van Niekerk J (on 13 July 2020), twice stopped Mr. Mpondo in his tracks. In these judgments, the court mulcted PRASA with costs. Had the court not come to the assistance of the Group CPO, she would probably be in the same position as the former Group CFO. At this stage, Ms. Mabija was in her position of Group Executive: Human Capital Management.

12 The actions of the Board and the Acting Group CEO are symptomatic of the counsel of the DG to Mr. Mpondo. This is because nothing prevented the Board from affording me a hearing before taking this drastic and patently unlawful decision; even if they had reason to believe that the termination was lawful. It appears to me that to the Board and the acting Group CEO, affording me a hearing had the inherent risk of placing a spotlight on the unlawfulness of their intended outcome. They could not afford this, so, the easy way was to state that they have conducted a review of my contract by themselves, they found a clause that is not

in my contract, and decided to dismiss me on the basis of that clause that is not in my contract.

13 The day after my unlawful dismissal, the Board in an act that reduced PRASA to an organisation suffering from an inexplicable bout of bitterness, launched a smear campaign against me. They issued a media release annexed hereto as **"OMN2"**, that says:

13.1 my contract lapsed a few years ago, that I was aware of this and used the instability of PRASA to hide this fact;

13.2 In my position as the Head of Legal, I was expected to have brought to the attention of PRASA that my contract had come to an end;

13.3 I unlawfully approved payment of R58 million to a company called SA Fence and Gate; and

13.4 My suspension by Mr. Montana in June 2015 was lawful.

14 The above are all not true and not in the public interest. All that they were meant to do was to defame me. The following are the facts:

14.1 My employment contract is for an indefinite period. I would therefore not bring something that does not exist to the attention of the Board;

14.2 I did not approve the payment of R58 million to SA Fence and Gate, what I did was to support a request to condone the irregular expenditure of R58 million in circumstances where I was informed that:

14.2.1 PRASA had received value for this irregular expenditure;

14.2.2 PRASA had already paid about R33 million of this amount and committed about R24 million of this amount; and

14.2.3 The person who caused PRASA to incur this irregular expenditure had been disciplined by PRASA and had been dismissed.

14.3 I therefore did not have any reason to refuse to support the request for condonation. This condonation request was later approved by the Board of PRASA in 2016. The condonation request that I supported and the Board approval are documents in the possession of and under the control of the Board and the acting Group CEO, yet it appears to have served their *mala*

fide purposes better not to divulge the true state of affairs. Divulging the true state of affairs would be inconsistent with what appears to be their intentions to defame me.

14.4 The other thing that is bizarre about this SA Fence and Gate matter is that, I had submitted two reports about a claim that PRASA had instituted against SA Fence and Gate and it appears that the Board and the acting Group CEO relied on lies that are peddled by the discredited Mr. Lucky Montana on twitter and not on these formal reports. When I submitted the two reports on the matter of SA Fence and Gate, I was not asked any questions about it by any member of the Board. That anyone approved a payment of R58 million was not in any reports that I submitted. On 10 February 2021 (a few days after the media release of 30 January 2021) PRASA was successful in the litigation that I had been formally reporting to the Board, the arbitrator in the matter published the following award, annexed hereto as **"OMN3"**:

14.4.1 SA Fence and Gates claim of R7,915,073.85 is dismissed;

14.4.2 SA Fence and Gates is ordered to pay the amount of R45,101,179.69 to PRASA; and

14.4.3 SA Fence and Gates is ordered to pay the costs of the arbitration.

14.5 The Board felt confident enough to also pronounce on the lawfulness of my suspension that happened more than 5 years before their appointment. They found that my suspension by Mr. Lucky Montana was lawful. Why the Board felt it necessary to enquire into this matter of the suspension of someone that they dismissed and what was placed before it to allow them to reach this opinion is unknown to me. As the subject of that suspension and as a lawyer, I know that my suspension by Mr. Montana was unlawful. The one person I know to have openly held this view is Mr. Montana himself; it is understandable that Mr. Montana would assert to hold this view because of his personal investment in it. But that the Board and acting Group CEO thought this was a matter to consider under the circumstances and made the finding that they arrived at beggars belief and betrays their *mala fides*.

14.6 Anyone who wishes to make common cause with Mr. Montana on employee relations issues is best advised to read the Public Protector's report entitled "Derailed". A reading of this report will show that Mr. Montana was found to have unlawfully suspended a lot of people and of using discipline in an selective way and to further maladministration. In fact, this point was made by me in a report that I submitted to the Board for their meeting of 28 Janaury 2021, the day before I was unlawfully dismissed by the Board.

14.7 I do not know whether the above is a coincidence or whether the Board and the Group CEO are making common cause with Mr. Montana on his hitherto lone campaign against me; I however find it instructive. The Board and the Group CEO are making common cause with someone against whom I and others have given evidence of suspected large scale corruption in court (in the Siyangena review application) and in this Commission. With respect, this is very unfortunate and makes the prospects of PRASA under this leadership, desperate.

15 The *mala fides* and abuse of power is shown by the fact that when an organisation like PRASA sends a statement like this to the media, some sections of the media itching to break a story about what looks like a clean-up campaign simply publish the untruths and defamatory material without affording the subjects of the story a right to comment. In any event, as a professional, I have neither the inclination nor the desire to be quoted in the news. This is exactly what happened. That Saturday evening there was a breaking news story published by the print and television media repeating aspects of the media release issued by the Board.



16 On 3 February 2021, the Board issued another statement annexed hereto as **"OMN4"**, in response to an article that was published by GroundUp and Daily Maverick. In this statement the Board states that:

16.1 I was not fired, my contract came to an end;

16.2 It is untrue that I saved PRASA billions of rands;

16.3 That I was a member of "the Bid Adjudication Committee in 2015" that recommended the Swifambo contract;

16.4 Werksmans was never appointed on the panel of lawyers of PRASA and, notwithstanding this, Werksmans was paid more than R300 million with the approval of the legal division led by me;

16.5 That the statements in 16.3 and 16.4 above are material facts that I should have divulged to the Commission.

17 The following are the facts:

17.1 My employment contract was for an indefinite period. Therefore terminating it in the manner that it was terminated by the Board and the acting Group CEO can only be an unlawful dismissal. What is curious is

that the acting Group CEO, who deposed to the answering affidavit in our Labour Court challenge, did not see her way clear repeating this under oath.

17.2 I believe that I played a part in saving PRASA billions of money by amongst others, leading the attempts to recover money from the liquidators of Swifambo (R2,6 billion), in deposing to the affidavit for the review and setting aside of the Siyangena contracts worth more than R5 billion and recovering R60 million that was unlawfully paid to Siyaya.

17.3 In annexure **"OMN5"**, PRASA's lawyers have opined, correctly in my view, that the document that shows the support of the Swifambo transaction by the BAC is unreliable because it is unsigned. In any event, I do not remember sitting in a meeting of the BAC that supported this transaction. That the Board believes that this transaction was approved in 2015 when the review application was launched betrays their haste and zeal to defame me. It also betrays the Board's ignorance of the real mischief of the Swifambo transaction. In my view, the following is the real mischief of the Swifambo transaction:

17.3.1 The mischief around the Swifambo matter was planned by persons associated to Siyaya and PRASA officials. Mr. Auswell Mashaba alleged that Mr. Makhensa Mabunda approached him to ask him to

be the face of Swifambo because he (Mr. Mabunda) had benefitted a lot from PRASA. Mr. Daniel Mthimkulu took the specifications of the Vossloh locomotives and placed that in a Request for Proposals that was issued by PRASA. Mr. Montana and, possibly the then Group Chief Procurement Officer ("the Group CPO"), Mr. Chris Mbatha, ensured that this multi-billion project that was not budgeted for was in the procurement plan of PRASA, that the rigged RFP was issued and the entire procurement process was run to the point of approval by the Board of PRASA that was led by Mr. Sfiso Buthelezi.

17.3.2 Swifambo did not submit compliance documents. This should have immediately disqualified Swifambo. When this was pointed out to the then Group CPO by the Bid Evaluation Committee ("the BEC"), the then Group CPO directed the members of the BEC to focus on the evaluation and not the compliance aspects of the process. On the directions of the then Group CPO Swifambo was therefore evaluated based on the technical capacity of Vossloh Espana when it did not have any agreement with Vossloh.

17.3.3 The procurement was changed from a lease to an outright purchase and only Swifambo submitted a bid for an outright purchase; this

meant that this process that was supposed to be competitive became a "one-horse race" from this point onwards.

17.3.4 One of the persons associated with Siyaya, Ms. Brenda Malongete is alleged to have had the bid documents in her possession and out of PRASA premises.

17.3.5 The investigation found that even on the "one horse race" Swifambo did not meet the threshold for technical capacity. For Swifambo to reach the threshold for technical capacity, the investigation found that for this threshold to be reached someone manipulated the scores and added 10 points to Swifambo's score on the technical evaluation without any narration for such 10 points.

17.3.6 To the extent that any bid committee was advised that Swifambo's bid was compliant and that it had reached the threshold for technical capacity, this would have been a lie. The procurement process works in gates for the separation of powers and checks and balances. These gates were abused in this case to hide crucial information that falls within the purview of other processes or committees. All that the perpetrators of this illegality had to do was to convince those officials that were involved in the compliance

checks to ignore the non-compliance, the BEC to ignore the non-compliance and to manipulate the scores for the technical evaluation; there was therefore no way that Swifambo would have lost the bid on price when it was the last tenderer standing.

17.4 On the request of the Board, I requested the finance department to provide me with a breakdown of the legal fees paid to different lawyers. This breakdown showed that Werksmans Attorneys was paid fees from as early as 2011, two years before I joined PRASA and did work throughout to date. I do not know how members of a non-executive Board managed to establish that Werksmans was never on PRASA's panel in the four months that they have been at PRASA. I had no reason to disbelieve those that informed me that Werksmans was on the panel of PRASA. This is the very first time that I hear someone say that Werksmans was never on the panel of PRASA.

17.5 Most of the amounts that were paid to Werksmans were approved by the different incumbents in the office of the Group CEO. The amounts paid to Werksmans for their work on the forensic investigation and the litigation that emanated from the forensic investigation were paid from the cost centre of the office of the Group CEO. The amount paid to Werksmans for the forensic investigation and the litigation that emanated from it is not R300 million as per the report from the Finance Department of PRASA

that I shared with the Board formally. Again, the figure of R300 million has only been peddled by Mr. Lucky Montana on twitter.

17.6 The allegation that I did not disclose material information to the Commission is also intended to potray me as someone that is dishonest. What is curious though is that I have not heard of any member of the Board deposing to an affidavit and sharing with the Commission the information that they deem material and that I am said to have withheld from the Commission. I hope that in their response, this is one of the things that the members of the Board will share with the Commission under oath.

18 In their press release of the 3rd February 2021, the Board also stated something that I found to be hard to believe: that Minister had appointed the Director-General to be a representative of the Department of Transport on the Board of PRASA. This statement had very short legs because in her answering affidavit to our Labour Court application, the acting Group CEO changed this by stating that on 5 January 2021 (a month before the issuance of the 3 February statement), the Minister appointed a Ms. Hlengiwe Ngwenya, the acting Chief Director of Rail Regulation to the Board as a representative of the Department of Transport. There was no explanation as to why on 3 February 2021 the Board did not know that Ms. Ngwenya was appointed on 5 January 2021 and not Mr. Alec Moemi. I must say that after the appointment of this Board, I attended most of the meetings of the

Board and the meetings of the Committees of the Board. I have never heard of Ms. Ngwenya being a member of the Board or heard of an apology from her.

Further Harrasment – Refusal to pay my Leave Pay

19 To add insult to injury, PRASA is sending me from pillar to post for me to get my leave pay:

19.1 On 15 February 2021 and to prepare for my life as an unemployed single mother, I wrote to the Assistant Manager: Payroll – HCM Corporate, Ms. Rika Retief to ask her what payments I should expect from PRASA at the end of the month. Instead of responding to me, Ms. Retief asked me to contact the acting Group Executive: Human Capital Management, a Ms. Nonhlanhla Kondowe and the acting Group CEO about this. Ms. Retief also stated that all she was computing was the amount I had forfeited from my January 2021 (an eleventh of my salary that is forfeited every month and paid in December).

19.2 I sent an e-mail to Ms. Kondowe and Ms. Mabija asking why they had instructed that my leave pay should not be computed and paid to me. This was on 19 February 2021.

19.3 On 25 February 2021, I learned from one of the other executives that were dismissed that they had received their leave pay. Later that day, I received an e-mail from Ms. Des le Roux, a Senior Manager: Employee Relations referring me to PRASA's lawyers. I do not know why this is the stance of PRASA and this stance is unlawful. I asked my lawyers to raise this matter with the lawyers of PRASA, to date, the lawyers of PRASA have not responded to my lawyer's letter raising this matter.

20 In my view, because I am a whistleblower, and an employee of PRASA, my employer has decided to dismiss me unlawfully, launch a smear campaign against me and refuse to pay me my dues. PRASA has thus subjected me to an occupational detriment which is prohibited in terms of the Protected Disclosure Act, 26 of 2000, as amended ("the Act").

21 I believe that the evidence I have given at the Commission qualifies as protected disclosure as defined in terms of the Act.

The Labour Court Challenges of the Dismissals

22 On 5 February 2021, I, together with Messrs. Nkosinathi Khena and Tiro Holele, launched an urgent application in the Labour Court challenging our unlawful dismissal by PRASA as per a decision taken by the acting Group CEO and the Board of PRASA. This urgent application was heard on 12 February 2021.

23 On 10 February 2021, Ms. Pearl Munthali launched an urgent application in the Labour Court challenging her unlawful dismissal by PRASA. This urgent application was heard on 18 February 2021.

24 On 24 February 2021, the Labour Court, per Tlhotlhalemaje J, inter alia, set aside the termination of Ms. Munthali's employment agreement with effect from the date of termination (29 January 2021). A copy of this judgment is attached hereto and marked **"OMN6"**. This judgment was reported in the news. I am not aware of any media release that PRASA issued in respect of this judgment and I was informed by Ms. Munthali that, as at the date of this affidavit, PRASA had not launched an appeal against this judgment.

25 On 2 March 2021, the Labour Court, per Baloyi AJ, inter alia, set aside the termination of our (Messrs. Khena, Holele and I) employment agreements with effect from the date of termination. A copy of this judgment is attached hereto and marked **"OMN7"**. On this day (2 March 2021), the Board of PRASA was appearing in Parliament before the Standing Committee of Public Accounts. I received a copy of the judgment from our lawyers just after midday. Shortly after this, the news of the judgment were in the media. Around 15h30 (almost 3 hours after I received the judgment), I received a media release issued by the Chairperson of the Board on behalf of the Board to the effect that PRASA will be appealing against this judgment and that the appeal will be filed *"before the end*

of business tomorrow, Wednesday, 03 March 2021". At 15h35 on 3 March 2021, our lawyers received the application for leave to appeal by e-mail from PRASA's lawyers.

Conclusion

26 The above is an anecdote of the experience of people who are fighting State Capture; those regarded as villians by the capturers. They are pushed out of employment, then state coffers are deployed to ensure that they stay out of employment. To ensure that no one else employs them, a smear campaign is launched and sustained using the names and the clout of state institutions.

27 The irony of ironies is that this gross injustice is perpetrated by leaders of organs of state and is against persons who wish to protect the name, integrity and funds of organs of state. The organs of state that are served by those that wish to protect their name, integrity and funds do not have any measures to protect them.

28 This is where I find myself. Unlawfully dismissed by PRASA, being smeared by PRASA and PRASA doing all to ensure that I am financially frustrated, including refusing to pay my leave pay. I have taken the matter of my unlawful dismissal to the labour court and will protect my rights with my own resources.

29 The persons that I believe should answer for the above are following:

29.1 **Mr. Leonard Ramatlakane**, the Chairperson of the Board;

29.2 **Ms. Thinavhuyo Mpye**, the Chairperson of the Audit and Risk Committee of the Board and a member of the Board;

29.3 **Mr. Smanga Sethene**, an advocate practicing as such and who appeared before the Commission representing Mr. Dukwana and is the Chairperson of the Human Capital Management and Remuneration Committee of the Board;

29.4 **Mr. Dinkwanyane Mohuba**, a member of the Board:

29.5 **Mr. Xolile George**, one of the longest serving members of the PRASA Board. Mr. George is a representative of SALGA and has been a member of successive Boards of PRASA, even interim Boards, from around 2012;

29.6 **Ms. Nosizwe Nokwe-Macamo**, one of the members of the Board;

29.7 **Mr. Matodzi Mukhuba**, one of the members of the Board;

29.8 **Mr. Themba Zulu**, a representative of National Treasury on the Board;

29.9 **Ms. Hlengiwe Ngwenya,** I believe that Ms. Ngwenya should shed light around her appointment as a representative of the Department of Transport. In particular, why this only came to light a month after the date of her appointment;

29.10 **Ms. Thandeka Mabija**, the acting Group CEO of PRASA, Ms. Mabija's position is the Group Executive: Human Capital Management, she is the author of my dismissal letter;

29.11 **Mr. Alec Moemi**, the Director-General of the Department of Transport.

30 What is of concern to me is that some of the above persons are members of other Boards of other public entities. I believe that the Board did not act in the interests of PRASA in this matter. I also believe that they have used the name of PRASA to peddle lies that were hitherto only peddled by Mr. Montana. If I am correct in this regard, I believe that a case may be made to look into their propriety for board appointment and see if they require some training and assistance before they take up any other appointment to a board position. Section 50 of the Public Finance Management Act imposes, amongst others, the following fiduciary duties on members of the Board:

(1) The accounting authority for a public entity must—

FOR STATE CAPTURE COMMISSION PURPOSES ONLY

(a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;

(b) act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;

(c) ...

(d) seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state.

(2) A member of an accounting authority ... may not—

(a) act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of this Act; or

(b) ...

DEPONENT

I certify that the above affidavit was signed and sworn to before me at Sandton this the 4th day of March 2021 by the deponent after she declared that she knows and understands the contents of this affidavit, that she has no objection to taking the prescribed oath which she has taken in respect thereof is binding on her conscience, and that the contents of this affidavit are true and correct.

COMMISSIONER OF OATHS

Philladelphia Kedibone Mothupi
Commissioner of Oaths
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"OMN 1"

prasa
PASSENGER RAIL AGENCY OF SOUTH AFRICA

Umjantshi House
30 Wolmarans Str.
BRAAMFONTEIN
2001

Private Bag X101
Braamfontein, 2107
T +2711 013 1667

www.prasa.com

Dear Ms Ngoye
SAP Number: 20101356

29 January 2020

Re: Termination of Employment

1. You will recall that on 13 January 2021, the Chairperson of HCM & REMCO requested employment contracts of all executives, including yours. In response to the said request, you indicated by way of an email dated 13 January 2021, that there is no contract signed between yourself and PRASA on your current position.

2. Having perused PRASA's records, the only contract of employment PRASA has with you relates to your previous role as Chief Executive Officer: Intersite.

3. For your current position, only the letter of transfer [transferring you from Intersite to Group Executive: Legal, Risk and Compliance] dated 22 August 2014, could be found. For ease of reference, I attach the said letter as annexure **"A"**.

4. According to the letter, your transfer was to commence on 1 September 2014 and the other conditions of service were not amended by the said letter.

5. In the circumstances, your stay at PRASA has exceeded the normal five years fixed-term contract extended to all executives. In your current position, PRASA relies on you for issues concerning legal, risk and compliance and you out to have brough this administrative defect to the attention of PRASA.

6. Consequently, having considered the documents referred to above, the employment contract between PRASA and yourself is hereby terminated with immediate effect.

7. Having said that, PRASA hereby informs you of its intention to approach court for necessary relief against you in respect of various matters including the unauthorised and unlawful approval of R 58 153 296.72 without requisite authority.

Directors L. Ramatlakane (Chairman), Adv. S. Sethene, M. Mukhuba, DK. Mohuba, X. George, N. Nokwe-Macamo, TN. Mpye, T. Zulu

Acting Group CEO
T. Mabija

Group Company Secretary
S. Dlamini

8. You are to return with immediate effect any PRASA property that is in your custody.

Yours Sincerely,

Ms Thandeka Mabija
Acting Group Chief Executive
Passenger Rail Agency of South Africa

20101356

prasa

PRASA HOUSE
1040 Burnett Street
Hatfield
Pretoria

Private Bag X101
Braamfontein, 2017
T +27 12 748 7000

Ms Martha Ratsiane
Chief Executive Officer: Intersite
SAP No: 20101356

Dear Martha

INTERNAL TRANSFER

We are pleased to advise that you have been transferred from the position of Chief Executive Officer: Intersite to that of Group Executive: Legal, Risk and Compliance with effect from 01 September 2014. This transfer is due to operational requirements and restructuring within the organisation. You will report directly to the Group Chief Executive Officer.

Please note that this is a lateral transfer and all other terms and conditions not amended by this transfer shall remain unchanged.

We wish to congratulate you on this appointment and wish that you may receive the necessary strength to cope with challenges that lie ahead and that you will continue to contribute significantly towards the achievements of PRASA's goals.

Yours sincerely

TSHEPO LUCKY MONTANA
GROUP CHIEF EXECUTIVE OFFICE
DATE: 22 August 2014

Directors SN Buthelezi (Chairman), TL Montana (Group CEO), T Gcabashe, X George, M Moore, N Msenge, M Salanje, M Vilane

Company Secretary: L Zide

prasa

This offer is only valid for 2 working days from the date of receipt by the applicant, where after it will automatically and without prior notice, expire, unless you respond to the offer within the specified period.

Please be reminded that all communication to you with regard to your package is **strictly confidential**

ACCEPTANCE OF TRANSFER:

Ms Martha Ratsiane

INTERNAL TRANSFER

I, Martha Ngoye hereby ~~accept~~/ not accept the transfer from the position of Chief Executive Officer: Intersite to that of Group Executive: Legal, Risk and Compliance: on the basis that it is a lateral transfer. I do however accept that I am transferred but not laterally PRASA and I will resume duty on _____ 2014.

Signed at HATFIELD this 8 day of SEPTEMBER 2014.

Signature: M Ngoye

I had discussed my salary review with the GCEO and have indicated same to him

M Ngoye

"OMN2"

Media Statement

To: All Media
Date: 30 January 2021
Embargo: For Immediate Release

PRASA Terminates Contracts of Executives

PRASA Board of Control has embarked on the review of contracts of executives and other senior managers. Pursuant to the review process, it transpired upon analysis of employment contracts of executives that some of them (executives) ought to have left PRASA years ago. All executives at PRASA are employed for a period not exceeding 5 years with no expectation for extension of the employment contract. The Board also observed that the executives have been aware at all material times that their employment contracts were for five-year period and not more. However, it appears the executives capitalized on the instability at the Board level culminating in their extended and unlawful stay at PRASA. On 29 January 2021, PRASA has terminated the employment contracts of the following executives with immediate effect:

Ms. Martha Ngoye, Group Executive: Legal, Risk and Compliance was initially employed in 2012 as CEO of Intersite, one of PRASA's subsidiaries. Effective from 1 September 2015, she was transferred to her current position. Ordinarily, Ms. Ngoye's stay at PRASA ought to have terminated on 31 August 2020. PRASA has also resolved to institute legal proceedings against Ms Ngoye for unlawfully approving payment of R58m to SA Fence & Gate when she had no authority to do so.

Mr. Nkosinathi Khena, Chief Operations Office reinstated the SA Fence and Gate's contract knowing of the company's breach (SA Fence & Gate) which breach was also brought to his attention by National Treasury in a letter dated 21 April 2016. An amount of R25m was paid to the said company without requisite authority and/or approval. Mr. Khena was at the time Acting-Group Chief Executive Officer and his unlawful conduct caused PRASA to incur financial loss. Further, Mr. Khena reinstated Ms. Ngoye, who at the time was lawfully suspended by Mr. Lucky Montana (Group CEO as the time) for unlawful approval of R58m to SA Fence and Gate. PRASA will institute legal proceedings against Mr. Khena for financial loss it suffered due to unlawful conduct of Mr. Khena. Mr. Khena has been on suspension and his employment contract was terminated with immediate effect as of 29 January 2021. Mr. Khena's role in unlawfully appointing Werksman firm of attorneys will also receive priority.

Ms. Peart Munthali, Chief Executive Officer of PRASA Foundation has been on suspension for alleged misconduct. Upon perusal of records, it transpired that Ms. Munthali's contract ought to have been terminated upon the expiry of a five-year term.

Consistent with the recommendations from the Auditor General, this Board will ensure that systems are put in place at PRASA and the core business of running passenger rail is restored. The Auditor General in its report on PRASA noted that there was no culture of consequence management. The Board has assured the AG and Minister of Transport that consequence management would be one of the priorities implemented to clean up PRASA. The Acting Group Chief Executive Officer, Ms. Thandeka Mabija will appoint firms of attorneys to specifically deal with consequence management at PRASA. This process will proceed without delay and should be concluded expeditiously.

Ends

Issued By:
PRASA Board of Control Mr Leonard Ramatlakane

STAY SAFE
PROTECT SOUTH AFRICA
TOGETHER WE CAN BEAT THE CORONAVIRUS

"OMN 3"

IN THE AD HOC ARBITRATION

Between

SA FENCE & GATE INVESTMENT HOLDINGS (PTY) LIMITED CLAIMANT

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA RESPONDENT

FINAL AWARD

A. INTRODUCTION

1. The claimant is SA Fence and Gate Investment Holdings (Pty) Limited ("**SAFIH**") and the respondent is Passenger Rail Agency of South Africa ("**PRASA**"). The parties shall, henceforth, be referred to with the appellations SAFIH and PRASA, respectively.

2. At the pre-arbitration meeting of 26 March 2019, the parties confirmed that a valid arbitration agreement, within the meaning ascribed to those words in section 1 of the Arbitration Act, 42 of 1965, is extant.

3. The scope of this reference has been determined by the Arbitrator' s partial award published on 17 August 2019, to include the both the main claim and the counterclaim.

4. In terms of the main claim, SAFIH seeks payment in the amount of R7 915 073,85, representing a disputed set-off by PRASA against the last payment of R67 697073.85 to SAFIH ("**the main claim**").

5. The main claim turns on the proper interpretation of sub-clauses 6.1 and 6.3 of the consent award published by PMM Lane SC on 6 December 2018 (**"the Lane Award"**).[1]

6. In terms sub-clause 6.1 thereof, SAFIH undertook to deliver materials it held off-site, which materials must accord with the BTKM report dated 18 October 2017 ("**the 18 October**

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[1] Pleadings Bundle (PB), p.8.

Report") and must have a cumulative value of R67 697 028.81 ("**the Lane Amount**").[2] Sub-clause 6.3 provides, in its turn, that should there be a shortfall in the materials stored off-site, the value of the shortfall shall be determined "**as per the BTKM report dated 28 October 2017**."[3]

7. PRASA denies SAFIH 's entitlement to the claimed amount and avers that it was "**entitled to deduct the value of the shortfall materials in the amount of R 7 915 073.85 from the settlement amount ...**"[4]

8. PRASA 's claim in reconvention is for the return of the amount of R45 101 179.69 allegedly overpaid, and thus recoverable, for the provision of lighting.

9. SAFIH raised, inter alia, the following defences against the counterclaim:

   9.1. That the procurement, storage, and installation of lighting does not form part of the contract entered into between the parties; and

   9.2. That the BTKM assessment and the verification report relied upon is inaccurate and incorrect.

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[2] Transcript, p.3, lines 5-7.

[3] Transcript, p.3, 9 – 12; PB, p.9.

[4] PB, p.33, para 13.1.

10. In what follows, I deal, firstly, with the evidence adduced in regard to both the main claim and the counterclaim, and thereafter, with the analysis of these claims, separately.

B. THE EVIDENCE - MAIN CLAIM AND THE COUNTERCLAIM

(i) Introduction

11. As stated, SAFIH claims an amount of R7 915 073.85 representing the amount of the disputed set-off of the value of the shortfall of materials stored off-site, against the settlement amount of R67 697073.85 payable to SAFIH.

12. The Lane Award was published on 6 December 2018. Clause 6 thereof provides that:

> "**6.1 Upon payment and by no later than 15 February 2019, the claimant shall deliver to the respondent all materials stored offsite by the claimant, which materials shall accord with the BTKM report dated 18 October 2017 and shall have a cumulative value of R67 697 012.95... Delivery shall be made to Umjantshi House ...With not less than 24 hours' notice to the respondent and the respondent shall advise the name and contact details of a person with whom delivery must be arranged.**

6.2 The delivery of the materials shall be coordinated by a representative of the Respondent and a representative of the Claimant and properly indexed and signed off by both parties.

6.3 Should there be a shortfall in the materials stored off-site, the value of the shortfall shall be determined as per the BTKM report dated 18 October 2017."

13. A dispute arose about the interpretation of clause 6 of the Lane Award. More specifically, the dispute is about whether the Lane amount was to be calculated with reference, only, to annex B to the statement of claim, captioned: **"VERIFICATION- EXECUTIVE SUMMARY, VERIFICATION WORKS FOR THE FENCING, PROJECT EXECUTED IN EIGHT DEPOTS PRASA - REV 1, 18- Oct- 17" ("the Executive Summary")** or with reference, also, to the associated schedules.

14. SAFIH's pleaded case is that the Lane amount was to be calculated with reference to the Executive Summary, only, whereas PRASA contends that it was to be calculated with reference to the 18 October Report, together with its associated schedules.

15. It is not in dispute that SAFIH tendered materials with a cumulative value of R67 697 012.95 to PRASA. It is also not in dispute that PRASA retained an amount of R7 915 073.85 from the last payment to SAFIH, representing the value of the alleged shortfall in the materials stored off-site.



16. The crisp issue on which the main claim turns is whether paragraph 6.1 of the Lane Award, properly construed, requires SAFIH to provide any materials (to the cumulative value of R67 697 012.95) or whether SAFIH is required to provide materials to the value of R67 697 012.95, which accord with the 18 October Report and its associated schedules.

17. PRASA 's claim in reconvention is for payment in the amount of R45 101 179.69 being an amount allegedly overpaid; and thus recoverable, for the provision of lighting.

18. SAFIH raised, inter alia, the following defences against the counterclaim:

18.1. That the procurement, storage, and installation of lighting does not form part of the contract entered into between the parties; and

18.2. That the BTKM assessment and the verification report relied upon is inaccurate and incorrect.

(ii) SAFIH's Evidence

19. It was agreed by the parties, and determined by the Arbitrator, that witnesses' statements be delivered in advance of the arbitral evidentiary hearing.

20. Consequently, SAFIH delivered witnesses' statements of four witnesses but urged the Arbitrator to disregard the witness' statement of Mr. George Els. Thus, the evidence of three witnesses, namely, Messrs. Kersagan Reddy ("**Mr. Reddy**"); Leon Wolmarans ("**Mr. Wolmarans**") and Geoffrey Edward Greyling ("**Mr. Greyling**") was adduced by SAFIH.

21. Mr Reddy was the first to testify on behalf of SAFIH. He confirmed his three witness' statements hitherto delivered, under oath. The nub of Mr. Reddy's evidence in chief (including that contained in his witness' statements) was that:

21.1. He is a Director at SA Security Solutions and Technologies Group of Companies.

21.2. SAFIH agreed to settle on the terms set out in the Lane Award based on the Executive Summary only, to the exclusion of the associated schedules.[5]

21.3. PRASA unilaterally applied a set-off against the settlement amount based on the Final Report of BTKM, dated 25 January 2019 ("**the Final Report**").[6]

21.4. He compiled a settlement report[7] to highlight the discrepancies he had found in the reports sent to SAFIH by PRASA.[8]

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[5] SAF&G Witnesses Statements Bundle, p.4,para 9.

[6] SAF&G Witnesses Statements Bundle, p.5,para 13.

[7] SAF&G Witnesses Statements Bundle, p.126.

[8] Transcript, p. 11, line 9-13.



21.5. During the stock count, it transpired that SAFIH had more field network switches, by way of example, than were required for the project. Consequently, certain of these were removed to arrive at the settlement value of R67 697 012.95, set out in the Lane Award.[9]

21.6. He was not present when the parties agreed the content of the Lane Award. [10]

22. Under cross-examination, the following emerged:

22.1. His Lordship Mr. Justice Ranchod had ordered PRASA to appoint an independent engineer and consultant (or verifier), as contemplated in the agreement, to **"do all things necessary to consider and approve, or reject, as the case may be, the various charges for labour as claimed by [SAFIH] in terms of payment certificate 17a**".

22.2. Pursuant to the above, PRASA appointed BTKM, as the independent verifier, and SAFIH accepted the said appointment.[11]

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[9] Transcript, p. 16 &17, line 23-21.

[10] Transcript, p. 17, line 22-25.

[11] Transcript, p.120, line 1-5.

22.3. Subsequently BTKM rendered, *inter alia*, three verification reports, dated 15 September, 16 October, and 18 October 2017. SAFIH relied on the Executive Summary, to the exclusion of its schedules, on the computation of the Lane amount.[12]

22.4. The Lane amount was derived from the 18 October Report, being representative of the off-site materials verified by BTKM. SAFIH and PRASA agreed that when SAFIH hands off-site materials over to PRASA, it must ensure that the materials accord with the 18 October Report.[13]

22.5. The Lane amount is made up of the cumulative value of the verified off-site value in respect of the eight (8) depots, being the subject-matter of the agreement between the parties. By way of example, the value of the verified off-site materials in respect of the Braamfontein depot is R 16 397 549.20, excluding VAT.

22.6. The schedule to the Executive Summary dealing with Braamfontein demonstrates, with reference to specific items of materials, how the amount of R 16 397 549.20 verified off-site materials was arrived at. Mr. Reddy, however, maintained that the verification of Braamfontein was flawed because when the counting was done, none of the stock had been separated into different sites.[14]

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[12] Transcript, p.125, line 1-6.

[13] Transcript, p.135, line 16-22.

[14] Transcript, p.149 at 150.

22.7. The Executive Summary[15] sets out the verified off-site materials per depot.

22.8. According to Mr. Reddy, since the 18 October Report had no schedules attached to it, no detail was provided as to how the Lane amount was to be determined.[16]

22.9. However, Mr. Reddy conceded that the first 9 pages of the 18 October Report make clear that it is nothing more than a summary. [17]

22.10. The Executive Summary expressly states that "**The included Financial Verification and associated schedules are representative of the [verification] process ...in terms of the revised verification of the scope of work completed and payments made up to and including Payment Certificate 21a Revision 1 (Fencing) and 20b (Lighting).**"[18]

22.11. Mr. Reddy contends that clause 6.1 of the Lane Award contemplates SAFIH giving over to PRASA materials to the value of the Lane Award "**in relation to items that are required for the project itself**". He testified, in this regard, metaphorically that:

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[15] At page 98.

[16] Transcript, p.160, line 1-5; 22-25.

[17] Transcript, p.163, line 8 -24.

[18] PRASA Witness Statement Bundle, p.94.

"we wouldn't provide a toaster; it would be things that we are aware ... are required ... and ... were purchased for the project itself." [19]

22.12. According to him, SAFIH could give PRASA any materials to the cumulative value of the Lane Award, which accord with the Bill of Quantities.[20] He went on to state, again metaphorically, in this regard that: **"We could not provide a toaster because a toaster was not in the Bill of Quantities."**[21]

22.13. SAFIH finds the 18 October Report objectionable, even though it had been amended based on SAFIH's input. Mr. Reddy contends that not all the input provided by SAFIH were incorporated in the 18 October Report.[22]

22.14. Yet, despite the alleged objectionable character of the 18 October Report, SAFIH was content to settle the delay damages claim based thereupon, on 6 December 2018, hence the Lane Award.[23]

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[19] Transcript, p.186, line 16 -20.

[20] Transcript, p.188, line 17 -25.

[21] Transcript, p.189, line 16 -18.

[22] Transcript, p.235&236.

[23] Transcript, p.237,line 1 -7.

22.15. Mr. Reddy was unable to explain the anomaly of SAFIH obtaining a consent award based on a report whose content it was challenging. In this regard, he testified that Mr. Leon Wolmarans, who had attended the arbitration, would be better placed to explain this anomaly.

22.16. It also emerged during the cross-examination of Mr. Reddy that the Statement of Claim does not challenge the correctness of the 18 October Report. All it does, is take issue with the reliance by PRASA on the schedules associated therewith without having availed them prior to 4 December 2018.[24]

22.17. Mr. Reddy referred the tribunal to annex 9 of the PRASA settlement report dated 28 February 2018 where it is stated that the quantum referred to in the verification report needed to be jointly verified and agreed upon, which joint verification had not occurred as at the date of the arbitration.[25] This was the high watermark of his challenge to the numbers contained in the 18 October Report, this despite SAFIH having agreed thereto and the Lane Award having been based thereupon.

23. During his re-examination, Mr Reddy testified that he was not able to testify on the legality or otherwise of the approval of the extension of scope of the contract to include the lighting component.

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[24] PB, p.4, para 17.

[25] Transcript, p.278, 1-9.

24. The next witness to testify on behalf of SAFIH was Mr. Leon Wolmarans (**"Mr. Wolmarans"**). Mr. Wolmarans had, similarly, delivered a witness' statement in advance of the arbitral evidentiary hearing as per the procedural order hitherto published. In terms thereof:

24.1. He is SAFIH 's Operations Manager with 15 years' experience in civil engineering.

24.2. He was not involved in the lighting scope of the works.

24.3. He attended numerous verification inspections with BTKM representatives for each of the depots except the East London depot.

24.4. After each inspection, he compiled agreed quantities and emailed same to BTKM.

24.5. SAFIH disputed BTKM's 5 September 2017 report, provided comments thereupon and BTKM amended its report, accordingly.

24.6. The purpose of the reports dated 16 and 18 October 2017, respectively, was to settle what work would be required to complete the project and not to verify the materials on and off site.[26]

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[26] SAF&G Witness statements Bundle, p.134, para11 and 12.

24.7. SAFIH was not given the full reports dated 16 and 18 October 2017, respectively. Had that occurred, SAFIH would have disputed the values of the materials off-site.

24.8. He attended the handover inspection on 23 January 2019 to count, verify and hand over the off-site materials to the Lane amount value. There, SAFIH presented schedules to BTKM and PRASA of all the materials in SAFIH storeroom and SAFIH was instructed by PRASA to remove materials from the schedule.

24.9. Materials off site were counted, agreed, and verified by SAFIH and PRASA to the Lane amount.[27]

24.10. Subsequently, the accuracy of the above was challenged. Further, there was a challenge as BTKM failed to consider materials procured after Payment Certificate 21a Revision 1.

25. Mr. Wolmarans confirmed the correctness of the content of his witness' statement under oath and that he was involved in the conclusion of the settlement agreement which led to the Lane Award.[28] He testified that SAFIH agreed to settle on the Lane amount because it

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[27] Ibid.

[28] Transcript, p.294,line 20 -25.

knew that it had stock to hand to the value of the Lane amount. [29] Further, SAFIH had not seen the associated schedules and sought to have the agreement cancelled.

26. Under cross- examination, Mr. Wolmarans confirmed that:

26.1. SAFIH commented on BTKM's prior reports.

26.2. The 18 October Report contained the comments furnished by SAFIH to BTKM.

26.3. The Lane amount was agreed to by SAFIH as SAFIH had the equivalent number of materials in hand.[30]

26.4. SAFIH settled on the Lane amount, based on the 18 October Report and not on the Bill of Quantities value.[31] In this regard Mr. Wolmarans 's evidence contradicts Mr. Reddy's.

27. There was no re-examination of Mr. Wolmarans.

28. The next witness to testify Mr. Greyling.

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[29] Transcript, p.295,line 1 -18.

[30] Transcript, p.308-309, line 25 -1.

[31] Transcript, p.311,line 16 -18.

29. His evidence was confined to the counterclaim. He, similarly, confirmed his witness' statement under oath and proceeded to clarify and/ or highlight certain of its content.

30. He testified that he remembers a certain meeting of 4 September 2014, also referred to as the kick-off meeting.

31. According to his recollection, PRASA had signed off on the perimeter lighting procurement project and SAFIH had paid Top 6 for the lights, in consequence.

32. Top 6, in its turn, did not pay the full amount of the procurement of the lights BEKA. The lights so purchased landed up in a storage facility as SAFIH was disinclined to take responsibility for the storage fees as, according to it, PRASA ought to have taken the lights to its stores.

33. Under cross-examination Mr Greyling was taxed on the contractual arrangement between SAFIH, Top 6 and PRASA; and a certain settlement agreement concluded by BEKA and Top 6, to which PRASA was no party.

34. Mr. Greyling testified that PRASA was no party to either agreement. In essence, Mr. Greyling conceded that there was no privity of contract as between PRASA and the allegedly nominated sub-contractor. [32]

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[32] PRASA Witness 's statement Bundle, p113, Annex SW 21.

35. Additionally, Mr. Greyling confirmed annex **"SW16"**, dated 1 October 2014, in terms of which the procurement of lights was to be excluded from the extension of scope and the price adjustment of R256 958 290.17.

(iii) PRASA's Evidence

36. PRASA delivered four witness' statements of Messrs Hanif Moosa (**"Mr. Moosa"**), Johannes Swart **("Mr. Swart")**, Mavhungu Muhanganei (**"Ms. Muhanganei"**) and of Ms. Martha Ngoyi (**"Ms. Ngonyi"**).

37. First to testify was Ms. Muhanganei. She confirmed the content of her witness statement under oath.[33] In it she states that:

37.1. On 25 March 2013, PRASA and SAFIH entered into a contract for the provision and installation of a security fence at PRASA's deports nationally.

37.2. In terms of the contract, the initial completion date for the woks under the contract was 31 March 2014. However, this date was extended from time to time due to compensable and non-compensable events which have since been resolved between the parties.

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[33] PRASA Witness Statements Bundle, p.163 -172.

37.3. The initial scope of work was for SAFIH to deliver an Integrated Security Management Solution ("**ISMS**") for PRASA.

37.4. After the commencement of the works, the parties discussed an increase in the scope of work to include installation of better steel mesh panels as well as switching from a fibre detection system to a kinetic detection system and to include the provision of lighting.

37.5. However, on 26 May 2014, the Acting Executive Manager of PRASA issued an instruction that no additional work should be executed which would bring the value of the works above the amount of R 209 874 559.79.

37.6. On 20 August 2014, PRASA revised the contract amount from R 209 874 559.79 to R 256 958 290.17 in line with the approved additional scope of work.

37.7. Consequently, SAFIH submitted a revised Bill of Quantities ("**BoQ**"), annex "**MM7**" to the witness statement, reflecting the terms of the variation order in terms whereof the contract price was increased to R 256 958 290.17.

37.8. Subsequently, and on 1 October 2014, PRASA issued a notice to proceed with the implementation of the contract in terms of the change in the scope of work referred to above. It was, however, stated that the lighting component, which was reflected in the revised BoQ, were not to be procured as the terms of their procurement were still under discussion.

37.9. On 21 January 2015, the Depot Modernisation Program Executive Manager authorised the purchase and installation of lights at an estimated cost of R58 153 296.72.

37.10. The procurement and installation of lights was approved by PRASA 's supply chain management and ratified by the Acting Group CEO on 20 January 2015. This decision was also ratified by the steering committee of the Board of Control on 17 December 2015.

37.11. The authorisation to purchase and install lights constituted an order for additions, modifications, and extras, alternatively, an amendment in terms of clause 15.11 of the contract and, thus, amounted to a tacit variation in terms of clause 31 of the contract.

37.12. The provision of lights was approved under the contract and formed part thereof.

37.13. A dispute having arisen between the parties, an application was brought to the High Court of South Africa by SAFIH which culminated in the appointment of an independent verifier in the name of Bham Tayob Khan & Matunda Quantity Surveyors (**"BTKM"**).

38. Under cross-examination, the following emerged:

38.1. In terms of the contract there should have been an engineer and a consultant appointed to assist with the execution of the contract, but those entities whenever

appointed. The first time that a similar type skill entity was appointed was considerably later when BTKM was appointed.[34]

38.2. She did not recall the meeting which took place on 4 September 2014.[35]

38.3. As at the date of the meeting of 4 September 2014, PRASA had already paid for a portion of the lighting component of the project.

38.4. The condonement recommendation report signed by the Acting Group CEO on 20 January 2015 and the certified extracts of the steering committee minutes, constitute the approval by PRASA for the lighting component of the project. [36]

38.5. The steering committee potentially acted under delegated authority, but she could not say for certain as she had no supporting documentation to that effect in her possession.

38.6. Mr. Lebaka was subjected to a disciplinary inquiry at which he was found guilty of, and dismissed for, irregularly committing PRASA to work falling outside the scope

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[34] Transcript, p.347, 16-25.

[35] Transcript, p.348, 8 -9.

[36] Transcript, p.350, 12-21; PRASA Witness Statements Bundle, p.497 - 503.

of R209 million contract and of unauthorised expenditure in March 2013, in respect of the procurement of lights.[37]

39. During re-examination, Ms. Muhanganei testified that:

39.1. The group CEO had delegated authority of up to R 100 000 000.00, at the time.

39.2. Prior to the condonement referred to above, the transaction was unauthorised.

39.3. She has no communication, in her possession, in terms of which SAFIH informed PRASA that it believed that the extension of scope was unauthorised.

39.4. It would not have been possible for PRASA to effect payment if the transaction were unlawful.

40. The next witness to testify for PRASA was Mr. Moosa who, similarly, confirmed the content of his witness statement under oath. He testified, in chief, as follows:

40.1. BTKM was appointed to perform a verification of works and material on each of the PRASA depots. Pursuant thereto, BTKM calculated the value of the work that had been performed, materials on site and materials off site. BTKM then performed a

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[37] Transcript, p.358, 1 -25.

reconciliation with the payments that had been made at that point in time in order to establish whether any payment was due to SAFIH.

40.2. Payment Certificates 21a Revision 1 and 20b were used as the base for the verification process, although not totally relied upon, as the verification was an independent physical count of what had been done.

40.3. In regard to the reports A, B and C on exhibit A, the initial report (A) was tabled for discussion. Certain comments made by PRASA that BTKM was unable to verify. Then they issued the second report (B), on items that they were unable to verify and the third version (C) came out after those items were re-looked at and incorporated. [38]

40.4. Certificates 21a Rev 1 and 20b were used, during the verification process, as reference documents.

40.5. The value of work that was verified was R84 001 582.27 on 5 September 2017 as per report A on Exhibit A.

40.6. On 16 October 2017 the value of the work was verified at R 92 875 026.60, as per report B on Exhibit A.

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[38] Transcript, p.376 -377.

40.7. On 18 October 2017, the value of the verified work stayed the same, as per report C on Exhibit A.

40.8. The same logic obtains in regard to the value of verified materials off site. In terms of report A, the verified value was R 68 003 012.92. In terms of report B, the verified value was R 67 697 012.95 and the value remained the same in respect of report C.

40.9. The adjustment from R 68 003 012.92 to R 67 697 012.95 came about as a sequel to the process of engagement with SAFIH about verifying the numbers.

40.10. The first nine pages of the 18 October Report contain a summary of verified works and amounts recoverable.[39] It fixes the value of verified off site materials at R67 697 012.95. The rest of the 18 October Report[40] sets out the calculation behind those numbers.[41]

40.11. In regard to the lighting component of the contract, R 1 644 406.00 is the verified actual value of the work performed at the Wolmerton depot, which amounts to R1 932 849.01 inclusive of escalation. PRASA had paid R47 034 028.70 against the

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[39] PRASA Witness' Statements Bundle, p. 96.

[40] PRASA Witness' Statements Bundle, p.104 - 149.

[41] Transcript, p.384, 5-7.

lighting component hence, R47 034 028.70 less R1 932 849.01 yields the recoverable amount of R45 101 179.69.[42]

40.12. The letter of 4 December 2018[43] was a confirmation of the value of materials on and off site that was incorporated into the 18 October Report, and it was a confirmation that these are the items that needed to be recovered from SAFIH. [44]

41. During cross-examination, the following emerged:

41.1. Mr. Moosa disagreed with the proposition that even as at March 2018 there was no agreement on the numbers that BTKM had put up.[45] He testified that he had explained the differences between the three versions of the report, followed by a discussion and, ultimately, agreement among the parties as to what had to be included and what had to be excluded. He testified, in this regard, that: **"[t]hose were the agreed numbers that were included in the report of the 18th of October 2017."**

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[42] Transcript, p.387, 23-25.

[43] PB, p.22.

[44] Transcript, p.388, 20 and further.

[45] Transcript, p.392, 21 and further.

41.2. There was no declaration, as there ought to have been in a proper case, that some of the materials would be arriving post the verification date of June 2017.[46]

41.3. Mr. Moosa was not sure as to whether the lighting component of the project was part of the contract concluded between the parties.[47]

41.4. In regard to the change in the verified value of work from R84 001 582.27 to R92 875 026.60[48], Mr. Moosa testified that that was not as a result of a miscalculation but as a result of items that had been unverifiable at the time, that typically being items such as trenching, items buried underground, in terms of which there was no way of establishing whether they had, in fact, been physically executed or not. PRASA, subsequently, provided guidance on what it had approved, and hence the change in value between the two reports.

41.5. There were three unverifiable items, being the PC sums, the sleeves of 54 000, and the acceleration costs for Wolmerton totalling the amount of R22 257 657.18.

41.6. The materials that had been stored off site were not so stored with reference to a particular PRASA depot, but were stored together.

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[46] Transcript, p.395, 5-14.

[47] Transcript, p.396,9-15.

[48] PRASA Witness' Statements Bundle, p. 6, para 18.

41.7. BTKM's objective was to count and to report. Mr. Moosa testified that he did not have personal knowledge of taking out materials so as to meet the R67 million threshold.

41.8. Mr. Moosa disagreed with the proposition, as postulated in Mr. Reddy's settlement report, that certain items, by way of example, BoQ item number 5.5.01, were reduced by mutual agreement between BTKM, PRASA and SAFIH **"because the stock counted on the 23rd of Jan 2019 had a higher value than the agreed value of the Arbitration Award"** [49]

42. There was no re-examination.

43. PRASA elected not to call Mr Swart.

44. The next witness to testify for PRASA was Ms. Onica Martha Ngoye ("**Ms. Ngoye**"). She testified in relation to annex **"MM10"** that it was submitted by the Chief Procurement Officer of PRASA requesting approval from the CEO, on the transaction pertaining to the National Fencing and Security Project, of the condonement of certain aspects thereof.

45. Ms. Ngoye approved the condonement in the total amount of R58 153 296.72 (VAT inclusive).

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[49] SA&FG Documents Bundle, Bundle 1,p138, BoQ Item 5.5.01.

C. ANALYSIS OF THE MAIN CLAIM

46. The primary question facing this tribunal, in regard to the main claim, is what is the proper interpretation of clause 6 of the Lane Award.

47. In particular, this tribunal is called upon to interpret the following words in the Lane Award **"...SAFIH shall deliver to Prasa all materials stored off site by SAFIH, which materials shall accord with the BTKM report dated 18 October 2017 and shall have a cumulative value of R67 697 012.95."**

48. In **KPMG Chartered Accountants (SA) v Securefin Ltd 2009 (4) SA 399 (SCA) at para 39**, the SCA held as follows:

> **"[39] First, the integration (or parol evidence) rule remains part of our law. However, it is frequently ignored by practitioners and seldom enforced by trial courts. If a document was intended to provide a complete memorial of a jural act, extrinsic evidence may not contradict, add to or modify its meaning ... . Second, interpretation is a matter of law and not of fact and, accordingly, interpretation is a matter for the court and not for witnesses ... . Third, the rules about admissibility of evidence in this regard do not depend on the nature of the document, whether statute, contract or patent ... . Fourth, to the extent that evidence may be admissible to contextualise the document (since 'context is everything') to establish its factual matrix or purpose or for purposes of identification, 'one must use it as conservatively as possible' ... . The time has arrived for us to accept that**

there is no merit in trying to distinguish between 'background circumstances' and 'surrounding circumstances' ..."

49. Subsequent to the judgment in KPMG, Wallis JA re-stated the principles for the interpretation of contracts and documents in **Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) paras [17]-[18]** and **in Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk 2014 (2) SA 494 (SCA) para 12.**

50. In **Bothma-Batho**, the SCA held that the approach to interpretation of contracts which was long followed and set out in **Coopers & Lybrand and Others v Bryant 1995 (3) SA 761 (A) at 768A-E,** is **"no longer consistent with the approach to interpretation now adopted by South African courts in relation to contracts or other documents ...".**

51. The Court reiterated a passage from the **Endumeni judgment** which it stated reflected developments in regard to contractual interpretation as set out in, *inter alia*, **KMPG**. The following passage from **Endumeni** was quoted with approval:

"[18] ... [t]he present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to

the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. ... The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or business-like for the words actually used. To do so ... (i)n a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself',... read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."

52. On the ordinary interpretation, the materials stored off site which are to be returned by SAFIH had to meet the following two requirements:

52.1. They had to accord with the 18 October Report; and

52.2. They had to have an accumulative value of R67 697 012.95 ("**the Lane amount**").

53. Ms. Pillay SC submitted that the ordinary interpretation set out above is fully consistent with PRASA's position adopted in this arbitration, namely, that SAFIH cannot tender any random materials and then claim to have complied with the Lane Award.

54. Ms. Pillay SC argued that what SAFIH was obliged to do was to provide materials which accord with the 18 October Report and which had a accumulative value of R67 697 012.95. I, respectfully, agree with these submissions.

55. PRASA maintains, further, that the interpretation advanced by SAFIH is completely untenable for the following reasons:

55.1. The first nine pages are explicitly referred to as the "**executive summary**";

55.2. It only accommodates the second requirement set out in the clause 6.1 of the Lane Award, namely that the materials should amount to the Lane amount, leaving out of consideration the requirement that the said materials ought also to accord with the 18 October Report. In other words, SAFIH was not entitled to furnish any material to the Lane amount value, such material had also to accord with the 18 October Report and its associated schedules;

55.3. It overlooks the fact that the Executive Summary incorporates and summarises the schedules;



55.4. It disregards the fact that the Executive Summary breaks down the materials according to the various depots. It therefore incorporates the particularisation of materials; and

55.5. It makes no commercial sense as delivering any materials as long as the cumulative value of the materials is the Lane Amount is unbusinesslike and lacks in business efficacy.

56. I respectfully agree with the above.

57. Furthermore and as a matter of law, a compromise or settlement (*transactio*), being a contract the purpose of which is to put an end to litigation, is a complete defence to a claim based on the original claim and it has the force of *res judicata*. [50] It is thus legally incompetent to unscramble the compromise proverbial egg except upon a showing of fraud or mistake provided the error vitiated true consent. [51]

58. The delay damages claim was compromised. It is that compromise that resulted in the Lane Award. The Lane Award has the effect of *res judicata*. It is legally incompetent to challenge its terms at this stage.

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[50] Gollach & Gomperts (1967) (Pty) Ltd v Universal Mills & Produce Co (Pty) Ltd 1978 (1) SA 914 (A).

[51] Rowe v Rowe 1997 (4) SA 106 (SCA).

59. The Lane Award sets out the two requirements referred to above. Those requirement had to be satisfied by SAFIH. Issues of the furnishing materials in accordance with the BoQ and of the inaccuracy of the 2018 October Report are simply irrelevant.

60. During December 2018, BTKM was requested by PRASA to confirm the material off site that BTKM had verified in its 18 October Report. BTKM acceded to the request and furnished a letter confirming the verification of material as recorded in the 18 October Report and attaching the supporting quantity schedules to the 18 October Report. [52]

61. The quantities of material measured and counted during this verification process were confirmed with SAFIH and agreed upon resulting in BTKM dispatching an email to that effect on 25 January 2019.[53]

62. At the conclusion of the exercise, BTKM noted that there were quantity discrepancies which included the under supply of numerous items to the value of R 7,915,073.85.[54]

63. Based on the above, it must follow that the material material stored offsite by the SAFIH and delivered to PRASA had a shortfall of R 7,915,073.85 which fell to be treated in accordance with the provisions of clause 6.3 of the Lane Award.

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[52] PRASA Witness' Statement Bundle,p.8, para. 21.

[53] Ibid.

[54] PRASA Witness' Statement Bundle,p.155, para.3.

64. I, accordingly, find that PRASA was entitled to apply the shortfall set-off to the last payment in the amount of R 7,915,073.85.

65. Accordingly, the main claim is dismissed with costs.

D. ANALYSIS – THE COUNTERCLAIM

66. In respect of the counterclaim, it is not in dispute that PRASA paid for the lighting in the amount of R 47 034 028.70. It is also not in dispute that SAFIH only delivered and installed lights in the amount of R 1 932 849.01. PRASA claims repayment of the overpaid amount of R45 101 179.69.

67. SAFIH raised three preliminary points in respect of the counterclaim:

67.1. First, Lack of jurisdiction;

67.2. Second, Prescription and

67.3. Third, Lack of authority.

68. I deal with these, in turn, before turning to the merits of the counterclaim.



(i) Lack of Jurisdiction

69. The contention advanced by SAFIH is that since the lighting provision did not form part of the contract between SAFIH and PRASA for the installation of security fencing, BTKM had no authority to verify the lighting provision and in that regard BTKM had exceeded its mandate.

70. PRASA maintains that a variation order was issued under the main contract which extended the scope of work to include lighting, and that this is corroborated by certain invoices issued by SAFIH using the reference of the main contract.

71. PRASA maintains, further, that lighting provision was never subject to a distinct procurement process or contractual arrangement since it was dealt with as a variation to the main contract.

72. I am satisfied, on the totality of the evidence before me, that lighting was a component of the main contract for the installation of security fencing.

73. Accordingly, this preliminary point must fail.

(ii) Prescription

74. SAFIH contends that since the facts relating to the counterclaim were known to PRASA by 11 September 2014, a period in excess of three years prior to the reference, the counterclaim has prescribed.

75. PRASA disputes the above for the following reasons:

75.1. The counterclaim is based on overpaid amounts as verified by BTKM in its 18 October Report.

75.2. The full facts relating to the counterclaim only became apparent to PRASA from 18 October 2017.

76. I am satisfied that the counterclaim is not extinguished by prescription as the facts and circumstances upon which it is based reasonably came to the knowledge of PRASA on 18 October 2017.

77. The counterclaim, thus, fully accrued on 18 October 2017[55] since the right of action, in sense of the transpiration of every fact necessary to sustain a cause of action, accrued to PRASA on that date.

78. Accordingly, this preliminary point must fail.

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[55] Primavera Construction SA v Government, North-West Province, and Another 2003 (3) SA 579 (B).

(iii) Lack of Authority

79. SAFIH contends that since the procurement of lighting was not authorised by the Board of PRASA, the agreement to procure and install lighting is void *ab initio* and of no force and effect.

80. PRASA contends, inter alia, that the procurement and installation of lighting was condoned by both the Acting Group Chief Executive Officer and the Steering Committee of PRASA. Under the applicable delegation of authority framework, the Group CEO was duly authorised to approve the condonement.

81. The approval of the lighting component is an administrative decision. It remains valid until set aside by a Court of competent jurisdiction.

82. This tribunal has no powers of review. The condonement must, thus, be given effect to.

83. Accordingly, this preliminary point, also, falls properly to be dismissed.

84. That then takes us to the merits of the counterclaim, that being the issue to which I now turn.

(iv) The Counterclaim

85. It is common cause that PRASA overpaid SAFIH in respect of the lighting component of the agreement to the tune of R 45 101 179.69.

86. SAFIH's main defence is that it was instructed by PRASA to appoint Top 6 as a nominated sub-contractor for the provision of lighting and that it paid the amount claimed to Top 6 in respect thereof.

87. PRASA denies the above and contends that, in any event, since there is no privity of contract as between PRASA and Top 6, PRASA's remedy lies directly against SAFIH and SAFIH's remedy, if any, lies against Top 6.

88. In terms of clause 32.1 of the contract, any nominated specialist and other sub- contractor shall be regarded as having been employed by SAFIH as a sub- contractor.

89. In terms of clause 32.2, every nominated sub-contractor shall enter into a sub-contract with SAFIH which shall provide, among others, that such nominated sub-contractor shall undertake the same obligations to SAFIH in respect of the sub-contract as those by which SAFIH is bound under the contract.

90. Significantly, clause 32.7 provides that:

> " **The exercise by PRASA of the right to nominate a sub-contractor shall not render PRASA in any way liable to such nominated sub-contractor and, except as provided for in clause 28.6 hereof, no privity of contract between PRASA and any nominated sub-contractor shall be created thereby."**

91. Clause 28.6 is not applicable *in casu* as it regulates certain obligations that are expressly stipulated to continue "**after the issue of the final certificate**". The contract never reached the final certificate milestone.

92. On the totality of the evidence before me, SAFIH has failed to show that PRASA, in the exercise of its contractual the right to nominate a sub-contractor, nominated Top 6.

93. Even if SAFIH were to show that PRASA had done so, which has not been demonstrated on the evidence, such an exercise of that right would not have resulted in privity of contract between PRASA and such a nominated sub-contractor.

94. It follows that the alleged nomination of a sub-contractor by PRASA is not a valid defence to PRASA 's counterclaim.

95. SAFIH also raised non-enrichment defence. In this regard SAFIH contends that it was not enriched in the amount claimed since it paid the amount received *indebite*, to Top 6.

96. As a matter of law, a defendant who, like SAFIH, disposed of the thing may rely on the disposal as evidence of non-enrichment but such a defendant must, in addition, allege and prove that the disposal was *bona fide*. [56]

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[56] Le Riche v Hamman 1946 AD 648 and Van Zyl v Serfontein 1992 (2) SA 450 (C).



97. Further, a party who receives money or goods, knowing such money or goods to be *indebite*, cannot deal therewith as if he were the owner thereof.[57]

98. SAFIH ought properly to have known that payment in the claimed amount was *indebite*. Its disposal of the funds can hardly be said to have been *bona fide* since, firstly, there was no written sub-contract in place as required under the main contract and, secondly, the lighting purportedly paid for had not been delivered to PRASA a fact of which SAFIH ought reasonably to have been aware.

99. Accordingly, the non-enrichment defence falls properly to be dismissed.

100. In the result, PRASA is entitled to payment in the overpaid amount of R 45 101 179.69.

101. In regard to the costs of the arbitration, there is no reason in act or in law to hold that that the costs should not follow the event. Accordingly, SAFIH is ordered to pay the costs of the arbitration.

D. FINAL AWARD

102. In the result the following award is published:

102.1. SAFIH 's claim of R7 915 073.85 is dismissed.

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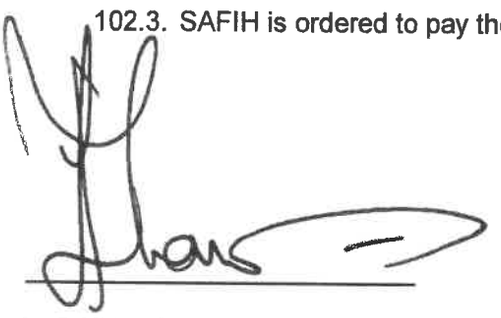
[57] African Diamond Exporters (Pty) Ltd v Barclays Bank International Ltd 1978 (3) SA 699 (A).

102.2. SAFIH is ordered to pay the amount of R 45 101 179.69 to PRASA.

102.3. SAFIH is ordered to pay the costs of this arbitration.



L. G NKOSI-THOMAS SC

ARBITRATOR

SANDTON

10 FEBRUARY 2021



"OMN 4"

Media Statement

To: All Media
Date: 03 February 2021
Embargo: For Immediate Release

PRASA NOTES THE INACURACIES IN THE ARTICLE PUBLISHED BY GROUNDUP ENTITLED "Executive who saved PRASA billions has been fired"

It is regrettable that the article by GroundUp penned by one James Stent, contains factual inaccuracies and falsehoods intentionally peddled to discredit the decisions of the Board. It is untrue that Ms. Ngoye was fired, her contract came to an end. Like other executives in a similar situation.

It is untrue that Ms. Ngoye saved PRASA billions of rands. It is also factually incorrect that Ms. Ngoye was ever cleared by PRASA for unlawfully approving R 58m that was advanced to the SA Fence and Gate when she had no requisite authority to do so. Further, there was never a consequence management process to ensure Ms. Ngoye is subjected to a disciplinary hearing for her to be cleared. GroundUp cannot furnish the public with evidence of any internal disciplinary hearing outcome whereat Ms. Ngoye was cleared by anyone externally or internally for unlawfully approving R58m to SA Fence and Gate. There was no rational basis in law or fact for Ms. Ngoye to have escaped being disciplined for contravening the provisions of the PFMA.

The facts are that, Ms. Ngoye was a member of the Bid Adjudication Committee in 2015 that recommended the Swifambo's bid which amounted to billions of financial loss to PRASA. In respect of Werksman, the law firm was never registered on PRASA's database of suppliers when it was appointed. Neither was Werksman on the legal panel of PRASA.

The Auditor General has found that Werksman's appointment to render legal services at PRASA was irregular and incompliant with the supply chain management processes. Werksman was paid more than R300m with the approval of the legal division led by Ms. Ngoye. In 2016/17 the Auditor General when evaluating PRASA established that Werksman was paid R130m and such payment was not compliant with relevant SCM regulations and it was an irregular expenditure.

The Board has also established that all these material facts set out above were never disclosed by Ms. Ngoye during her testimony at the State Capture Commission. The State Capture Commission was not informed that in fact Ms. Ngoye recommended the appointment of Swifambo when she was a member of the Bid Adjudication Committee. It is unknown to the Board why such material facts were deliberately omitted or concealed by Ms. Ngoye to the Deputy Chief Justice and to GroundUp itself.

We call on GroundUp to manage the veracity of what it deems to be facts and not fiction before they publish an article riddled with falsehoods. Director General has been appointed by the Minister of Transport to sit in the PRASA Board. The current Board was appointed by the Minister of Transport consistent with the provisions of the Legal Succession Act and it includes officials from government departments such as the National Treasury, the National Transport and SALGA.

Ends

Issued By:
Chairperson of PRASA on behalf of the Board

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"OMN5"

WERKSMANS
ATTORNEYS

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9 October 2019

Dear Mr Dingiswayo

ALLEGATIONS OF MISCONDUCT IN THE APPOINTMENT OF SWIFAMBO RAIL LEASING PROPRIETARY LIMITED

INTRODUCTION

1 We have been requested to conduct an inquiry into whether there is a basis upon which to institute disciplinary action against the employees of the Passenger Rail Agency of South Africa ("**PRASA**") involved in the process of awarding of the contract to provide locomotives to Swifambo Rail Leasing Proprietary Limited ("**Swifambo**").

2 This inquiry is made consequent upon the High Court's finding that the appointment of Swifambo was plagued with fraud, corruption and procurement irregularities. Whilst the Court does not make particular findings in respect of individuals to be subjected to disciplinary process, the Court held as follows –

> "*25.4 PRASA has provided a good reason why the evidence was not given by the particular persons or the persons who created the document. The evidence is merely derived from contemporaneous documents and PRASA's official records. Molefe's statement under oath is entirely satisfactory and has stated that the documents for part of PRASA's official records. They were provided to him by independent investigators and the veracity of those documents can be tested by an examination of the documents that were annexed to the founding and replying affidavits.*"

3 Accordingly, this inquiry is based on an examination of the papers which were before the Court in the above application followed up by consultations with the employees who were involved in the process of appointing Swifambo. What follows in a conspectus of our preliminary findings.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham C Andropoulos JKOF Antunes DA Arteiro T Bata LM Becker JD Behr AR Berman NMN Bhengu Z Blieden HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Driman D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes S July J Kallmeyer A Kenny R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso MPC Manaka JE Meiring H Michael SM Moerane C Moraitis PM Mosebo KO Motshwane NPA Motsiri A Ngidi JJ Niemand BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman S Sinden DE Singo JA Smit JS Smit BM Sono CI Stevens PO Steyn J Stockwell JG Theron PW Tindle SA Tom JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Wegierski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies

BACKGROUND

4 In 2015, Werksmans was instructed by PRASA to conduct an investigation into the lawfulness of the process followed by PRASA in awarding Swifambo a contract for the provision of Diesel/Electrical and/or Diesel – Electric Locomotives under tender number HO/SCM/223/11/2011 ("the tender").

5 The Werksmans investigation uncovered, *inter alia*, that –

5.1 PRASA's procurement processes were not followed in the appointment of Swifambo;

5.2 Swifambo did not meet the specification set out in the tender;

5.3 there were elements of fraud in the appointment of Swifambo; and

5.4 the appointment of Swifambo was unlawful and was not compliant with the Public Finance Management Act 1 of 1999 ("PFMA").

6 Consequent on the findings of the Werksmans investigation, PRASA launched an application to review and set aside the appointment of Swifambo. The matter came before Francis J who handed down judgement on 3 July 2017, setting aside the appointment of Swifmabo.

INQUIRY INTO ALLEGATIONS OF MISCONDUCT

7 PRASA has a supply chain management policy that applies to all of its business units, all levels and types of procurement. It is incumbent on PRASA's employee's to adhere to its procurement policies at all times.

8 Whilst some employees are implicated for their active participation in the appointment of Swifambo, in that they acted fraudulently or with impropriety, other employees are implicated for their passive participation, in that they were members of the committees which were and/or ought to have been involved in making the decision to appoint Swifambo.

9 It is against the adherence to PRASA's procurement policies, including compliance with the PFMA, that we assess the employee's conduct to ascertain misconduct.

PRASA's Procurement Process

10 The procurement process is initiated by an employee or authorised business unit of PRASA ("the end-user"), requiring goods or services and requests the involvement of supply chain management ("SCM") for the acquisition of the said goods or services.

11 SCM is responsible for the management and coordination of the SCM function, including the initiation and preparation of request for proposals ("RFP") from prospective service providers, initiation and management of the Cross Functional Sourcing Committee ("CFSC") and bid committees. The Chief Procurement Officer ("CPO") is ultimately responsible for the overall SCM function, the implementation of SCM policies and procedures.

12 Once the procurement process has been initiated by an end-user, the CPO, in consultation with the end-user, appoints members of the CFSC. The CFSC is responsible for designing and checking bid specifications, compiling bid documents, facilitating the allocation of evaluations criteria and weighting, evaluating of all bids against the criteria stipulated in the bid document, ensuring all bids comply with policies, procedures and regulations and maintaining records to ensure the existence of an audit trail.

13 Thereafter, the proposals from bidders are evaluated by the Bid Evaluation Committee ("BEC"). The BEC evaluates and scores bidders against the criteria stipulated in the bid documents and ascertains which bidder best meets the needs described in bid documents.

14 Following the BEC process, the Bid Adjudication Committee ("BAC") and/or the Corporate Tender and Procurement Committee ("CTPC"), which we are given to understand are made up of the same members, consider the procedure followed by committees and persons involved in the procurement process and makes a recommendation to the Finance, Capital Investment and Procurement Committee ("FCIP") regarding the preferred bidder.

15 The FCIP is a sub-committee of PRASA's Board of Control and approves recommendations, within its delegated authority, made to it in respect of bids.

Bid Committees

16 The bid committees in question are the BEC, BAC/CTPC and the FCIP. Although PRASA's procurement policy requires that the bid specifications should be designed by the CFSC, this was not done in this bid, as all the specifications for the tender we authored by Mr Daniel Mtimkulu. The bid specifications are attached hereto marked "A".

The BEC

17 The CPO, Chris Mbatha, established the BEC on 22 March 2012. Its members consisted of –

17.1 Ntombeziningi Shezi (chairperson);

17.2 Thabo Mahlobogwane;

17.3 Peter Stow;

17.4 Benedict Khumalo;

17.5 Jabulani Nkosi; and

17.6 Jospeh Magoro.

18 From the documents provided, the BEC convened on two dates, namely, 27 March 2012 and 23 June 2012. Pursuant to the meeting of 23 June 2012, the BEC compiled a report stating that a compliance check had been undertaken with the assistance of SCM. The BEC recommended that Swifambo be appointed as the preferred bidder. A copy of the BEC minutes of 27 March 2012 and the BEC report is attached hereto marked "B" and "C" respectfully. Whether or not the BEC actually met, is a matter still to be determined.

19 According to the BEC minutes at annexure B, it is recorded that the BEC objected to procurement process followed. Furthermore, it would also seem that the calculations made by the BEC to find Swifambo as the preferred bidder had been manipulated in favour Swifmabo.

20 To the extent that the BEC was indeed convened and recommended Swifambo as the preferred bidder, the BEC failed to discharge its duties in terms of PRASA's SCM policy.

The BAC/CTPC

21 Whilst a distinction is drawn in the papers between the BAC and the CTPC, we are given to understand, from our consultations, that the BAC and CTPC are the same committee, alternatively, that they have the same members performing the same function. This is

corroborated by the document, entitled "Bid Adjudication Report" which suggests that they are the same committee, stating, "*[o]n 12 July 2012, the Bid Adjudication Committee of PRASA (CTPC) adjudicated and approved the recommendation of the Bid Evaluation Committee.*" The BAC report is attached hereto marked "D".

22 The BAC/CTPC's members include –

22.1 Tiro Holele (chairperson);

22.2 Chris Mbatha;

22.3 Sphiwe Mathobela;

22.4 Jerita Mothshologane;

22.5 Maishe Bopape;

22.6 Martha Ngoye;

22.7 Ntombeziningi Shezi; and

22.8 Sydney Khuzwayo.

23 From the minutes provided, it would seem that the CTPC convened on 11 July 2012 and resolved to recommend Swifambo as the preferred bidder. The CTPC minutes are attached hereto marked "E". It is rather curious that the document at annexure E is neither signed, nor does it record the deliberations of the committee. The document simply records the committee's resolution. It would have been expected that the minutes of a meeting termed "*extra-ordinary meeting*" would record the exceptional nature of the particular meeting and record the deliberations around such meeting.

24 What is further curious is that the BAC report, at annexure D, is that –

24.1 the BAC report is dated 23 June 2012, whereas the report itself records that the BAC/CTPC sat on 12 July 2012. It is imposibble that the BAC report, being the report of the CTPC, would predate the actual sitting of the BAC/CTPC;

24.2 the minutes of the BAC record that the BAC/CTPC sat on 11 June 2012 to consider the bids, whereas the BAC report records that's the BAC/CTPC sat on 12 June 2012. It seems improbable that the same committee would record having had the same meeting on two different dates;

24.3 the words "Bid Evaluation Report" appear at the footer of the document. When compared against the BEC report, at annexure C, both the BEC and BAC reports are surprisingly similar; and

24.4 the BAC report is not signed.

25 We are advised, in our consultations with the members of the BAC/CTPC, that the BAC/CTPC never convened to consider the bids and that the above meetings were never had.

26 In light of the above, the authenticity of the documents at annexure D and E are questionable.

27 In any event, there is no reference to an "out-right" purchase of locomotives in the BAC report. Furthermore, the recommendations made by the BAC, to the extent that such recommendations

were actually made, was for the appointment of Swifambo as the preferred for the dual and E3000 locomotives. There is accordingly a parity between the recommendations made by the BAC/CTPC and the decision ultimately taken in respect of Swifambo.

The FCIP

28 According to the founding affidavit in the abovementioned application, the FCIP convened on 19 July 2019 and that its members included –

28.1 Bridgette Gasa;

28.2 Lucky Montana;

28.3 Xolile George;

28.4 Ntebo Nkoenyane; and

28.5 Mawethu Vilana.

29 We have not been provided with documentation to corroborate this, however, we have scheduled the necessary consultations to verify this aspect of our inquiry.

The GCEO's Recommendation report

30 Attached hereto marked "F" is the GCEO's recommendations for the appointment of Swifambo as the preferred bidder. This report bears the same curiosities as those identified in the BAC report.

31 There is no basis whatsoever for the inclusion of this report in the consideration of the appointment of Swifambo. PRASA's procurement policy makes no provision for the GCEO to make recommendations in respect of a bid of the value awarded to Swifambo. In the premises, this is contrary to PRASA's procurement policies.

CONCLUSION

32 We confirm that we are at an advanced stage of our inquiry. We have considered the documents contained in the abovementioned court application and are in the process of finalising consultations with individuals who participated in the appointment of Swifambo.

33 We consider this process of utmost importance as the outcome of this process will provide clarity on whether or not, given the documents which are intended to be used in the contemplated disciplinary process, PRASA can sustain allegations of misconduct against those employee's involved in the appointment of Swifambo.

34 It is our preliminary view that there are grounds upon which to level and sustain allegations of misconduct against certain employee's for their involvement in the appointment of PRASA.

Yours faithfully

Werksmans Inc.

"A" "FA34"

File Ref	PRASA-RAIL: Locomotive Specification				prasa
Creation Date	2011-02-10		Last Edit Date	02/10/2011 1:16	
Doc No. &		Author	Dr D. Mtimkulu	Page 1 of 7	

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Locomotive Specification

Locomotive	**BASIC CHARACTERISTICS**
Date	**November 2011**

The purpose of this specification and user requirement covers all PRASA-RAIL operational area's.

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REQUEST FOR EXPRESSION OF INTEREST (RFEI)

ELECTRIC, DIESEL-ELECTRIC, AND/OR DISEL LOCOMOTIVES

1.0 General

The Passenger Rail Agency of South Africa (PRASA) is desirous to lease locomotives for the:

- haulage of passenger trains on various national routes operated by the PRASA divisions in the various regions.
- shunting of Metrorail rolling stock repair depots. (Cape Town, Johannesburg, Pretoria, and Durban). These shunting locomotives will further be utilized for sectional occupations and movement of permanent way/electrical OHTE supply materials on Metrorail lines, special tasks as well as emergency and abnormal situations.

2.0 Business requirement

Currently PRASA leases locomotives for shunt operations in the depots and has a shortfall on this operational requirement as well as on the requirements for passenger train haulage.

3.0 Main and Alternative Offers

Interested parties are invited to submit their interest on any one of the following offers, individually or in combination.

However, documents should be presented to clearly differentiate between the different alternatives so as to prevent any confusion.

Interested parties should clearly indicate their supply strategy, estimated timelines with respect to the making available of the said locomotives.

4.0 Locomotive Types

The current established shortfalls for main line passenger train haulage are as follows:

Hybrid Diesel-electric 25kV ac locomotives: 88

Note: In the event a strong feasibility of offer for the hybrid Diesel – 25kV ac locomotives more competitively compared with the 3kV DC and 25kV ac locomotives, preference would be given to the hybrid Diesel – 25kV ac

The current established shortfalls for shunting requirements will also be covered by 88 loco's

4.1 Offer:

The PRASA will lease and operate the locomotives with its own operating crews

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4.2 **Alternative 1:**

To provide locomotives on a 5 year, renewable, lease. The nominal costs associated with the items below shall be indicated

- Full maintenance program
- Full overhaul program if applicable
- Insurance (excl passenger related liability)
- Dry Rate (excluding diesel and lubrication)
- Board and lodge for any maintenance technical crews
- Monthly and annual lease costs must include costs such as and not limited to:
  - Full maintenance program
  - Full overhaul program

4.3 **Alternative 2:**

To provide locomotives on a 15 Year lease with an option of buying. The nominal costs associated with the items below shall be indicated

- Partial maintenance program
- Full overhaul program if applicable
- Insurance (excl passenger related liability)
- Dry Rate (excluding diesel and lubrication)
- Board and lodge for any maintenance technical crews
- Monthly and annual lease costs must include costs such as and not limited to:
  - Full maintenance program
  - Full overhaul program

5.0 Operations

PRASA will accept responsibility for the safe operations of the locomotives whilst under its control. This will include train compilation and shunting, train movement and train control, and staging.

6.0 Personnel

Locomotive Personnel

- PRASA will provide all the train drivers and train assistants.
- PRASA may require training of train drivers and or assistants. Proposals are invited to be included on the scope, duration and cost of training from the interested parties in the context of the complexity of the offered equipment.

7.0 Submission requirements of RFEI

- Closing date: dd/mm/yy
- Address: SCM address and responsible person.

Delivery: By hand In suitable containers, secured, addressed to The Chief Procurement Officer, PRASA, Pvt Bag X101, Braamfontein, 2017, and with the Company's identification clearly indicated. If more than one container is used, they should be marked in range (1 of 3, 2 of 3 and 3 of 3). Queries: All queries shall be directed to:

By Post:

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The Group Chief Procurement Officer, PRASA, Pvt Bag X101, uMjantshi House, 2017
Or by e-mail cmbatha@prasa.com

8.0 Evaluation process.

The various submissions will be scrutinized and a pre qualification process may be followed where the elimination of less suitable submissions will be done. PRASA may thereafter only continue with the preferred suppliers through a tender process with more detailed user requirements.

9.0 General Vehicle Performance Parameters

9.1 Power Rating, Line Speeds and Hours of use

The starting tractive effort requirements are of the order of 305 kN for mainline passenger haulage, and of the order of 750hp – 1000hp for shunting operations.

Current maximum operating line speeds are >100 Km/hr. Locomotives for main line passenger trains may be in use for more than 72 hours Availability: 100% during operational requirements, with Mean Distance Between Failures of not less than 100,00Km

9.2 Shunt locos: Submissions are welcomed should 88 Hybrid Diesel-25 KV ac not be available

Nominal shunted loads: 800 metric tones, unbraked on level gradient

Maximum shunt speed in shunt yards: 8 Km/hr

Maximum line speed: 60 Km/hr

Ability to drive from either end of shunt loco – as an option

Hours in use per day: 6 hours – 18 hrs

Availability: 100% during operational requirements, with Mean Distance Between

Failures of not less than 100,00Km

9.3 Diesel-electric locomotives: Submissions are welcomed should 88 Hybrid Diesel-25 KV ac not be available

Offers are required for diesel-electric locomotives with an option of auxiliary power of 110 VDC instead of the current standard 72 VDC. Comments are also required on the provision of both 72 VDC and 110 VDC.

Availability: 100% during operational requirements, with Mean Distance Between Failures of not less than 100,00Km

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9.4 Environmental Conditions

The fleet must be able to operate under a range of ambient conditions likely to be encountered within the South African climate, including all forms of precipitation including severe driving rain and snow without reduced performance. Ambient temperature range external is -10°C to +45°C (40°C in the shade).Relative humidity of 10% - 95%.

The fleet must be able to withstand any effects caused by the extremely severe electric storms which occur in South Africa and withstand any effects caused by ice, severe dust, and iron particle laden wind conditions. Coastal areas are humid, salty, and have extremely corrosive conditions. Inland areas are dry, dusty, and have very windy conditions. Winds up to 80 km/h, with gusts 120 km/h, occasionally 250 km/h are expected. The fleet must be able to operate between 0m and 1800m above sea level.

9.5 Signalling and Telecommunications Interference

Electromagnetic interference with the signalling and communications systems must comply with all requirements of: SPOORNET Infrastructure (Signals) Specification - Electromagnetic Computability Between Railway Signal Equipment and Motorised Vehicles on Metro Lines (CSE-1174-008 Category E42).

9.6 Traction Power Supply

a) 3 kV DC power supply.

Under voltage 1850 V DC
Minimum continuous line voltage 2100 V DC
Nominal line voltage 3000 V DC
Maximum continuous line voltage 3600 V DC
Regeneration limit 3750 V DC
Maximum short time line voltage 3900 V DC
System over voltage 4000 V DC
Maximum observed transient voltage 4200 V DC
Continuous rating of sub-station HSCB 2,000A
HSCB tripping times for local and remote faults 40 – 100ms
HSCB rate of current rise trip 200 – 1,500 A/ms
Impulse (1.2/50 micro seconds impulse) withstand level +130 to -140kV
Power frequency withstand level 40kV
Regenerative braking accepted currents are 1,000 to 2,000A on certain routes only.

b) Diesel - 25 kV , 50 Hz ac Traction Power Supply

Continuous rating: 20 MVA
Two (2) hour rating: 1.5 X Continuous rating
Half hour rating: 2 X Continuous rating
Continuous Output current: 800 A
Nominal output voltage:25,000 V
No load voltage: 25,000 V
Bus bar voltage range in traction: 19 kV – 27.5 kV (the locomotive could experience 17 kV to 30 kV)

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9.7 Noise Levels

Noise levels outside the rolling stock does not exceed 80 dBA at platform level under any conditions and at any service speed.

9.8 Additional Mechanical Data Couplers

Standard AAR approved coupling system shall be used. The coupling system shall be compatible, interface freely with and be safe for application with the SASKOP MS –type coupling system as used on mainline passenger and metro(sub-urban) passenger coaches. (refer to drawing CME 68/10719-478).

The uncoupling mechanism shall be configured such that a shunter overseeing the coupling/uncoupling does not have to enter the area between the locomotive and any adjoining vehicle during the process.

Coupler height above rail top:

Nominal 889mm (range 880 – 895mm) – Locomotive coupler height must allow easy coupling with all types of rolling stock with the following coupler ranges:

- Mainline passenger coaches: 865 – 910mm
- Metro (sub-urban) passenger coaches: 865 – 915mm
- Freight wagons: empty 845 – 910mm; laden 825 – 910mm

Vehicle Loading Gauge:

Refer to drawings BE 83-252, BE 82 -12 and BE 82 -11.

9.9 Track

- Gauge: 1065mm, +5mm, -3mm
- Nominal radius of sharpest curve: 120m
- Gauge widening on 120m curve: 20mm
- Sharpest turnout: 1 in 7
-

Grade changes on sharpest parabolic vertical curve: rate of 240mm/20m/20m in depots and 150mm/20m/20m in yards and 40mm/20m/20m in running lines Super elevation of outer rail on 120m radius curve: 90mm at 50Km/hr max Maximum rate of change of super elevation into and out of a curve: 1in 500 Axle Load: Maximum 20 tonne.

BASIC CHARACTERISTICS

Locomotive:

Axle arrangement Bo'Bo'

Track gauge 1065 mm

Locomotive weight 88 Tons per EN15528)

Maximum speed Up to 200km/h

Nominal UIC Power 2.250 kW

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Brake system UIC Electroneum.

Structure Monocoque

Number of cabs 2

Starting tractive effort 305 kN

Minimum curve 150 m

Fuel tank > 5.000 l

Multiple traction 3 units (27 pines)

Diesel Engine

Manufacturer EMD

Model 12N-710-G3C-IIIA

UIC Power 2.454 kW

Cylinder number V 12 (45°)

Bore and Stroke 230,19 mm x 279,4 mm

Engine speed 904 rpm

Electric Transmission

Main generator TA12

Companion Generator CA9E.

Traction motors 1TB2624FM (AC)

Dynamic Brake 150 KN

"B" "FA47"

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SUPPLY CHAIN MANAGEMENT
BID EVALUATION MEETING DIESEL ELECTRIC LOCOMOTIVES
27 MARCH 2012
THE MEETING PLACE, PRASAHOUSE, EAST WING, ROOM 101, HATFIELD, PRETORIA

MINUTES OF MEETING

1. OPENING:

1.1	**Welcome:** Senior Procurement Manager Miss Ntombeziningi Shezi opened the meeting and Welcomed everybody present.	NS

	Attendance register	**Index**
	Ntombeziningi Shezi	NS
	Benedict Khumalo	BK
	Thabo Mahlobogwane	TM
	Jabulani Nkosi	JN
	Peter Stow	PS
	Joseph Magoro	JM

1.2	**Apologies/Absent:** Jerita Motshologane	JM

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2	DETERMINATION OF AGENDA	
2.1	First set and second set of Minutes would form the agenda on items standing.	ALL
3.	*First Set was not adopted because there were no minutes generated.*	

ITEMS	DESCRIPTION	RESOLUTION	RESPONSIBLE PERSON	
3.1.	**PURPOSE OF THE MEETING.** • NS outlined the purpose of the meeting to everybody in that, the objective was to try and find the best possible bidder. • Secondly the bidder' submissions must talk to the specification as given.	✓ ✓ All members were to satisfy themselves in terms of compliance for all submitted bids.	• SCM & the Team	
	ISSUES OF COMPLIANCE • Joseph was asked if SCM did compliance check on the tenders,he responded positively however he also brought it to the attention of the team that, Brenda, the consultant has not finished as yet to do hers, unfortunately at the time of starting the evaluation she was not finished as yet, she will do hers later.	✓ Members were not happy about rather poor compliance checking from SCM instead decided to work together to check and verify compliance in accordance with the given criteria to satisfy themselves.	Bid Committee Chairperson ruled in favour of the committee.	
	• Some errors were highlighted during compliance checking and members felt like some tenders were or should not have been allowed to cross-over to evaluation stage.	✓ They unanimously agreed to continue to evaluate all and would later make an impartial decision collectively.		
	• Compliance checklist by the consultant was given to the			

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	committee at the last meeting of the May 2012.(see	✓CRM consortium and RRL Grindrod were to be disqualified immediately for both failure to submit the compliance documents as well as placing compliance documents in envelope 2 in case of RRL Grindrod. ✓**HARVDAP** ✓Form D not signed ✓Briefing atteneded by someone different (Dr Katsouras) ✓Tax clearance certificate in file ✓Copies of directors in file. ✓BBBEE certificate in file ✓**SWIFAMBO RAIL LEASING** ✓Form D signed and in file ✓Company registration documents (MAFORI's,not Swifambo) ✓Tax clearance certificate, that of Mafori, expires on the 23/02/2013. ✓BBBEE certificate, Mafori's.	TBA (chairperson) **THELO INVESTMENT** • Form D signed • *Company registration documents in* file • Tax clearance certificate in file • BBBEE certificate in file **GE SOUTH AFRICA** • Form D signed and in file • Company registration documents in file • *Tax Clearance certificate* • BBBEE certificate in file **RRL GRINDROD.** • Form D not signed(attended briefing though) • Company registration documents in file. • Tax clearance certificate in file • Copies of directors not in file. • BBBEE certificate
	Files were scrutinised		

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	The RFP Bidders are requested to submit proposals for two options 1. Five year renewable lease with full maintenance program. 2. Ten year lease with a full transfer of ownership thereafter. POINTS TO LOOK FOR. • LOCOMOTIVES WITH BOTH DUAL ABILITIES TO USE DIESEL AND ELECTRIC WITH RELATIVE EASE. • DUAL CABS BECAUSE ONE CAB IS ONLY GOOD FOR SHANTING PURPOSES IN THE YARD. • MAXIMUM SPEED OF AT LEAST 100KM TO NEGOTIATE • EASE OF MAINTANABILITY ,(that is components change out) • BE ABLE TO NEGOTIATE	✓HYBRID ✓3KV DIESEL ✓1.RRL GRINDROD ✓2.SWIFAMBO ✓(whom gave us also an option of euro-diesel for both Coco and Bobo versions)	25 KV DIESEL NOT A SINGLE COMPANY COMPLIED. SCM	

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	MINIMUM RADIUS OF AT LEAST 120M OF SHARPEST CURVE. • MIMINUM LOISE LEVEL OF 80 DECIBELS. • VACUUM & AIR BRAKING SYSTEM. • POWER TOGUE OUTPUT ACCORDING TO SPEC. (Emd) Engine ideal.		PS	
	THE EVALUATION STAGE RRL GRINDROD • Upon perusal of their file and response, they do not specify or describe at any point as to whatever is applicable over here could be used over there? • I think we can still score them because other solutions are compatible with the spec. Remember the sheet that which we use to score on , is for both Hybrid and Diesel only. Remember the sheet covers for both , therefore I would rule lets move on. Solution . Single Cab is a Thee (3) and two Cabs is a five (5).		TM NS	

	If is a one Cab score to be given would be less because is only good for Shunting but could not be ideal for mainline. One cab Diesel only would be equal to three (3).		TM	
	✓ Single Curve ✓ The spec requires minimum radius of 120m ability to negotiate on the sharpest curve and they offer 80 which is better and thus qualifies for five. ✓ They offer four units in multiple , which is five, loco weight. ✓ Auxillary generator = 74 v Ac = 3			
	✓ They offer E type engine which Is a AAR, = five (5) ✓ Noise level which is 82 decibels and almost 80 decibels at required level =5	74v is standard for all locomotives and RRL they give us 220 is five (5)	PS	
	• Iam just concerned about the fact that they do not give us exactly what we want nor either going extra mile in trying tto convince us that they have a solution for us.		TM	
	• Maintanability That is ease of engine			

	components change out, they do not speak much about it =1 • Operability Cab layout DIESEL LOCOMOTIVES 16 cylinder EMD engine and main generator they offer EMD AR 100 14 Ac and we are looking for TAR. They quoted for full maintenance for five years and all insurance included/ (exclude diesel) but includes all maintenance material (vat exclusive) SWIFAMBO RAIL LEASING. • On their dual loco's , we looking for it's ability to negotiate a minimum of 120m on curve and they offer above. • Both coaches can operate under 3kv of which in addition Swifambo can offer these on both the Coco – Diesel –dual & Bobo – Diesel –dual • Maintenability They both did well Maintenance plan Gave us a detailed plan as against others.			

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	Financial			

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6.	GENERAL:			
	NONE			ALL
13.	CLOSURE:			
	NS thanked everybody for being present at the meeting and advised that we must reconvene again soon.			NS

14.	DATE OF NEXT MEETING:	
	TBA	NS

SS7-OMN-929

"C" 375 FA48"

BID EVALUATION REPORT

FOR

PROVISION OF DIESEL –ELECTRIC LOCOMOTIVES

TENDER NUMBER: HO/SCM/223/11/2011

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PROVISION OF DIESEL-ELECTRIC LOCOMOTIVES	prasa PASSENGER RAIL AGENCY OF SOUTH AFRICA

BID EVALUATION REPORT

Chairperson of the BEC Recommend / not recommended	Signature: Date:

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PROVISION OF DIESEL-ELECTRIC LOCOMOTIVES	prasa PASSENGER RAIL AGENCY OF SOUTH AFRICA

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5. EVALUATIONS 8
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PJ

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LIST OF APPENDICES

Appendix 1: Technical Evaluation Sheet

Appendix 2: Briefing Session Attendance Register

Appendix 3: Compliance Assessment Sheet

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PROVISION OF DIESEL-ELECTRIC LOCOMOTIVES

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1. Background and Introduction

On 27 and 28 November 2011, PRASA issued a tender for procurement of Provision of Diesel –Electric Locomotives. The tender advertisement was issued on the following newspaper publication: City Press, Pretoria News, The star, Cape Times and Natal Mercury.

On 9 December 2011, a compulsory briefing session was held and twenty six bidders attended. Attached is the copy of the attendance register marked Appendix 2.

On 9 March 2012, the tender closed. Prior to the cut off time PRASA received five bids.

2. Purpose of the Report

The purpose of this report is to:

- Outline the process followed by the Bid Evaluation Committee;
- Outline the rules of the Bid Evaluation Committee;
- Discuss the outcomes of the evaluation process; and
- Make a recommendation to the Bid Adjudication Committee.

3. Constitution of the Bid Evaluation Committee

On 22 March 2012, the Chief Procurement Officer appointed the Bid Evaluation Committee. The Bid Evaluation Committee is constituted and appointed in accordance with the Procurement Policy of PRASA.

On 27 March 2012, the Bid Evaluation Committee started with the evaluation process. The Bid Evaluation Committee adopted the following rules and processes for the evaluation:

- The Bid Evaluation Committee will evaluate on Individual scoring;
- All bid evaluation members shall form a quorum at all times and the chairperson shall be part of the quorum;
- The proceedings of the Bid Evaluation Committee shall be recorded;
- All Bid Evaluation Committee members shall sign the confidentiality and conflict of Interest undertaking; and
- All Bid Evaluation Committee members shall keep the proceedings of the Bid Evaluation Committee confidential at all times.

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PROVISION OF DIESEL-ELECTRIC LOCOMOTIVES	prasa PASSENGER RAIL AGENCY OF SOUTH AFRICA

3.1 The following are the members of the Bid Evaluation Committee:

Name	Position	Department
Ntombeziningi Shezi	Chairperson	*SCM PRASA-CRES*
Thabo Mahlobogwane	Member	PRASA Rail
Peter Stow	Member	PRASA Rail
Benedict Khumalo	Member	PRASA-CORP Legal
Jabulani Nkosi	Member	PRASA-CORP ICT
Joseph Magoro	Member	SCM PRASA-CORP

3.2 The following parties in alphabetical order submitted tenders by the closing date:

Bidder Full Name	Abbreviated Name
Harvdap	Harvdap
GE South Africa Technology	GE
RRL Grindrod	RRL
Mafori Financing t/a Swifambo Rail Leasing	Mafori / t/a Swifambo
Thelo Rolling Stock Leasing	Thelo
CRM Consortium	CRM

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3.3 Evaluation criteria

The evaluation criteria as set out in the RFP were as follows:

Evaluation criteria	Weighting
Technical	50%
Pricing	40%
BEE	10%
Bank Rating	**Compliance**
Security Screening	**Compliance**
TOTAL	**100%**

3.4 Bid Evaluation Process

The following is the bid evaluation process as stipulated in the Request for Proposals:

LEVEL	DESCRIPTION
Verify completeness	The Bid is checked for completeness and whether all required documentation, certificates; verify completeness warranties and other Bid requirements and formalities have been complied with. Incomplete Bids will be disqualified.
Verify compliance	The Bids are checked to verify that the essential RFP requirements have been met.
Detailed Evaluation of Technical	Detailed analysis of Bids to determine whether the Bidder is capable of delivering the Project in terms of business and technical requirements. Bidders must achieve at least 70% within the technical evaluation.
BBBEE	Evaluate BBBEE Evaluation
Price Evaluation	Bidders will be evaluated on price offered.
Scoring	Scoring of Bids using the Evaluation Criteria.
Recommendation	Recommendation of the Bid Evaluation Outcome

The bid evaluation process that was followed was based on the process as stipulated in the Request for Proposals.

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4. SCOPE OF WORK

The scope of work for this tender is:

Provision of locomotives on lease basis for the haulage of passenger trains on various national routes operated by the PRASA and shunting of Metrorail rolling stock repair depots.

The following type of locomotives are required:

- 88 Hybrid Diesel-electric 25kV ac locomotives;
- Note: In the event a strong feasibility of offer for the hybrid Diesel – 25kV ac locomotives more competitively compared with the 3kV DC and 25kV ac locomotives, preference would be given to the hybrid Diesel – 25kV ac.

Option 1

To provide locomotives on a 5 year, renewable, lease.

Option 2

To provide locomotives on a 15 Year lease with an option of buying.

5. EVALUATIONS

5.1 Completeness

The bids that were received were checked for completeness. Of the six bids that were submitted five are complete and one was incomplete. The incomplete bid is from CRM Consortium which only submitted company profiles without a tender submission and tender forms.

5.2 Pre-qualification Process (Compliance)

The compliance assessment was undertaken for the bids received. The compliance assessment was undertaken with the assistance of the Supply Chain Management Official. The table below indicates the outcome of the compliance assessment:

Bidder Name	Compliant	Non Compliant
Harvdap	X	

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PROVISION OF DIESEL-ELECTRIC LOCOMOTIVES	prasa PASSENGER RAIL AGENCY OF SOUTH AFRICA

GE South Africa Technology	X	
RRL Grindrod	X	
Mafori Financing t/a Swifambo Rail Leasing	X	
Thelo Rolling Stock Leasing	X	
CRM Consortium		X
Harvdap	X	

5.3 Technical Evaluation

The Request for Proposals stipulated that bidders must achieve a minimum of 70% threshold of the technical component to proceed to the BBBEE and Financial evaluation. The threshold was set at 70% threshold to ensure that the bidder who is successful in this tender is able to deliver the Locomotives required.

The bidders that met the compliance requirements were evaluated. The technical component of the Request for Proposals accounts for 50 points out of 100 points. Thus the table below indicates the weighted scores that bidders achieved on technical evaluation which is 50 points(these figures are rounded off to the nearest hundred):

Bidder	Weighted Score	Percentage
Harvdap	20.5	41%
GE South Africa Technology	29	58%
RRL Grindrod	27	54%
Mafori Financing t/a Swifambo Rail Leasing	35	70%
Thelo Rolling Stock Leasing	25	50%

The detailed breakdown of the technical evaluation is in Appendix 1.

5.4 BBBEE Evaluation

The following table indicates the BBBEE scores awarded to the bidders based on 10 points, thus the weighted scores are:

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PROVISION OF DIESEL-ELECTRIC LOCOMOTIVES

prasa
PASSENGER RAIL AGENCY OF SOUTH AFRICA

BEE EVALUATION: DIESEL ELECTRIC LOCOMOTIVES - 10 POINTS

Tenderers	B-BBEE Levels	Weighting	% Difference	B-BBEE Scores	Black Shareholding	Black Equity Score	Total Score
Harvdap Investment Solutions (Pty) Ltd.	Level 4	10	35%	6.5	26.0%	2.6	**9.1**
GE South Africa Technologies (Pty) Ltd.	Level 3	10	25%	7.5	25.1%	2.5	**10.0**
Mafori Finance Vryhedi t/a Swifambo Rail Leasing	Level 4	10	35%	6.5	50.0%	5.0	**11.5**
Thelo Rolling Stock Leasing (Pty) Ltd.	Level 4	10	35%	6.5	0.0%	0.0	**6.5**
RRL Grindrod South Africa	Level 1	10	0%	10.0	51.8%	5.2	**15.2**
		0	0%	0.0	0.0%	0.0	**0.0**
		0	0%	0.0	0.0%	0.0	**0.0**
		0	0%	0.0	0.0%	0.0	**0.0**
		0	0%	0.0	0.0%	0.0	**0.0**

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5.5 **Price Evaluation**

The price/financial evaluation were undertaken based on the following formula as Issued with the RFP:

$$PS = 40\ [\ 1-(PT-Pmin)\ ]$$

$$\overline{\qquad\qquad}$$

$$Pmin$$

The financial evaluation was only done for the Bidder who achieved 70% technical threshold which is Mafori Financing t/a Swifambo Rail Leasing.

BIDDER	WEIGHTED SCORE
Mafori Financing t/a Swifambo Rail Leasing	40

The following is the detailed discussion on the financial proposal of Mafori Financing t/a Swifambo Rail Leasing:

Swifambo Rail Leasing ("SRLI")

SRL has provided a comprehensive proposal including the purchase price of the locomotives as well as the anticipated maintenance costs over a 15 year period. They have provided three different options and each is detailed below.

The following are SRL's offers:

[redacted]	USD
Cost per locomotive	4 642 550
Cost for 88 locomotives	408 544 382
Estimated maintenance cost over 15 years	226 265 701

[redacted]	USD
Cost per locomotive	5 308 410

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Cost for 88 locomotives	467 140 039
Estimated maintenance cost over 15 years	171 507 667

Dual Hitec	USD
Cost per locomotive	5 591 712
Cost for 88 locomotives	492 070 630
Estimated maintenance cost over 15 years	186 141 886

5.6 Combined Scores

Finally, all the different components of evaluation that is Technical, BBBEE and Financial were added together. The combined points achieved by the bidders for the evaluation are as follows:

BIDDER	Technical	BBBEE	Financial	Total Point	Rankings
Mafori Financing t/a Swifambo Rail Leasing	35	6.5	40	81.5	1

6. Recommendation of the Bid Evaluation Committee

The Bid Evaluation Committee has undertaken the evaluation process in accordance with the process as stipulated in the Request for Proposals and is satisfied that the process was fair, just and equitable and thus in accordance with section 217 of the Constitution of the Republic of South Africa and the PRASA Procurement Policy.

The Bid Evaluation Committee having discharged its duties in accordance with the authority and powers granted to it by the Chief Procurement Officer makes the following recommendation to the Bid Adjudication Committee:

6.1 Mafori Financing t/a Swifambo Rail Leasing be appointed as a preferred bidder;

6.2 the CPO appoint a negotiation team to enter into negotiations with Swifambo Rail Leasing and if the negotiations are successful the negotiated agreement

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be submitted to the GCEO for recommendation to the (FCP) Board of PRASA; and

6.3 that if the decision of the Bid Evaluation Committee is irregular, incorrect and/or flawed the Bid Adjudication Committee makes a decision that it deems fit, fair and just.

Ntombeziningi Shezi

Chairperson of the Bid Evaluation Committee

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COMPLIANCE ASSESSMENT LOCOMOTIVES

Bids Received

1. Harvdap Investment Solution (Pty) Ltd
2. Thelo Rolling Stock Leasing (Pty) Ltd
3. CRM Consortium
4. RRL Grindrod
5. GE South Africa
6. Swifabo Rail Leasing (Pty) ltd

ITEM	Harvadap	Thelo Rolling Stock	CRM Consortiuma	RRL Grindrod	GE South Africa	Swifambo
TAX CLEARANCE	Yes	Yes	No	Yes	Yes	Yes
BRIEFING SESSION ATTENDANCE	Yes	Yes	No	Yes	Yes	Yes
BBBEEE CERTIFICATE	Yes	Yes	No	Yes	Yes	Yes
TENDER FORMS COMPLETE AND SIGNED	Yes	Yes	No	Yes	Yes	Yes

CRM Consortium has not submitted its compliance documents they must be disqualified.

RRL Grindrod must be disqualified for placing their compliance documents in envelop 2

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BEE EVALUATION: DIESEL ELECTRIC LOCOMOTIVES - 20 POINTS (10 B-BBEE Levels + 10 Black Equity)							
Tenderers	B-BBEE Levels	Weighting	% Difference	B-BBEE Scores	Black Shareholding	Black Equity Score	Total Score
Harvdap Investment Solutions (Pty) Ltd.	Level 4	10	35%	6.5	26.0%	2.6	9.1
GE South Africa Technologies (Pty) Ltd.	Level 3	10	25%	7.5	25.1%	2.5	10.0
Mafori Finance Vryhedi t/a Swifambo Rail Leas	Level 4	10	35%	6.5	50.0%	5.0	11.5
Thelo Rolling Stock Leasing (Pty) Ltd.	Level 4	10	35%	6.5	0.0%	0.0	6.5
RRL Grindrod South Africa	Level 1	10	0%	10.0	51.8%	5.2	15.2
		0	0%	0.0	0.0%	0.0	0.0
		0	0%	0.0	0.0%	0.0	0.0
		0	0%	0.0	0.0%	0.0	0.0
		0	0%	0.0	0.0%	0.0	0.0

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PROVISION OF DIESEL -ELECTRIC LOCOMOTIVES TENDER NUMBER HO/SCM/223/11/2011	WEIGHTS	Harvdap Investment Solutions (Pty) Ltd	GE South Africa Technologies	RRL Grindrod	Swifambo Rail Leasing	Thelo Rolling Stock Leasing
Technical Evaluation / Locomotives Request for Proposal						
GENERAL REQUIREMENTS	5	2	8.4	3.2	8.8	4
Previous Experience 3 letters	3	5	25	4	25	5
Demostrate Finanacial Capability	2	5	17	12	19	15
GENERAL VEHICLE PERFORMANCE	5	11.4	12.2	7.2	15	11.4
Traction effort 305KN for Main Line Passenger	2	25	25	20	25	25
Achieve Speed 120KM>	1	17	25	12	25	25
100% availability during operational requirements with Mean Distance Between Failures not less than 120,00Km	2	15	11	4	25	7
BASIC CHARACTERISTICS : LOCOMOTIVES	10	26.4	36.8	38.4	41.6	36.8
Track gauge 1065 mm	1	15	20	20	25	20
Brake system - Airbrake	1	15	20	20	25	20
Brake system - Vaccum	1	15	20	20	25	20
Number of cabs	1	9	12	12	23	12
Nominal Radius of shrpest curve 120m	1	15	18	20	13	20
Fuel Tank > 5.000 L	1	15	20	20	25	20
Multiple traction - minimum 3 units	1	9	14	20	17	12
Locomotive weight 88 Tons per EN 15528	1	15	20	20	25	20
An option of auxiliary power of 110 VDC	1	9	20	20	5	20
Standard AAR approved coupling system to be used	1	15	20	20	25	20
Environment	5	4	8.8	10.4	4.6	11
Noise Levels not exceed 80 dBA	2	12	4	12	5	5
		0	0	0	0	0
Demonstrate that it will operate in South African Climate Conditions	2	4	20	20	9	25
		0	0	0	0	0
Operate between om and 1800m	1	4	20	20	9	25
Signalling and Telecommunication Interference						
Comply with all requirements of TFR Infrastructure (Signals) Specification		2				

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Traction Power Supply DC	15	0	0	17.6	17.6	0
3kV diesel-electric	1	0	0	20	20	0
Under voltage 1850 V DC	1	0	0	4	4	0
Minimum continuous line voltage 2100 V DC	1	0	0	4	4	0
Nominal line voltage 3000 V DC	1	0	0	16	16	0
Maximum continuous line voltage 3600 V DC	1	0	0	4	4	0
Regeneration limit 3750 V DC	1	0	0	4	4	0
Maximum short time line voltage 3900 V DC	1	0	0	4	4	0
System over voltage 4000 V DC	1	0	0	4	4	0
Maximum observed transient voltage 4200 V DC	1	0	0	4	4	0
Continuous rating of sub-station HSCB 2,000A	1	0	0	4	4	0
HSCB tripping times for local and remote faults 40 – 100ms	1	0	0	4	4	0
HSCB rate of current rise trip 200 – 1,500 A/ms	1	0	0	4	4	0
Impulse (1.2/50 micro seconds impulse) withstand level +130 to -140kV	1	0	0	4	4	0
Power frequency withstand level 40kV	1	0	0	4	4	0
Regenerative braking accepted currents are 1,000 to 2,000A on certain routes only	1	0	0	4	4	0
MAINTENABILITY	5	14.4	17.4	16.8	16.8	8.6
ease of component change out	1	5	25	20	5	25
availability of spares	1	25	25	20	20	4
Driver and assistant training	1	5	7	20	14	4
provision of maintenance plan	1	12	5	4	20	5
Technical support	1	25	25	20	25	5
OPERATION	5	21	23	16.4	19	18.6
driver cab layout/operator ergonomics	1	23	25	20	15	25
driver display unit functionality	2	25	25	20	25	25
driver cab option	1	19	17	12	25	17
event recorder	1	18	25	20	25	25
DIESEL ENGINE	15	5	6	10.8	11	7.2
Manufactures EMD	1	15	4	20	25	3
Model 12N-710-G3C-IIA	1	3	4	4	25	3
UIC Power 2.454 KW	3	15	16	4	25	11
		0	0	1	10	0
Cylinder number V 12	1	9	20	4	17	15
Bore and Stroke 230,19 mm x 279,4 mm	1	3	20	4	25	15
Engine speed 904 rpm	2	3	20	4	25	15
Main generator TA12	1	3	3	4	25	2
Companion Generator CA9E	1	3	4	4	25	3
Traction motors 1TB2624FM (AC)	1	3	12	4	5	9
Dynamic Brake 150 KN	2	3	20	20	25	15
Traction effort 750hp - 1000hp for shunting operations	1	15	20	20	25	15
Diesel	50	90.2	130.6	109	156.2	111.4
Hybrid	50	75.2	102	108	122.4	90.2

45.1 65.3 54.5 55.7
37.6 51 54 45.1

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PROVISION OF DIESEL -ELECTRIC LOCOMOTIVES TENDER NUMBER HO/SCM/223/11/2011	WEIGHTS	Harvdap Investment Solutions (Pty) Ltd	GE South Africa Technologies	RRL Grindrod	Swifambo Rail Leasing	Thelo Rolling Stock Leasing
Technical Evaluation Locomotives [illegible]						
GENERAL REQUIREMENTS	5	2	8.4	3.2	8.8	4
Previous Experience 3 letters	3	5	25	4	25	5
Demostrate Finanacial Capability	2	5	17	12	19	15
GENERAL VEHICLE PERFORMANCE	5	11.4	12.2	7.2	15	11.4
Traction effort 305KN for Main Line Passenger	2	25	25	20	25	25
Achieve Speed 120KM>	1	17	25	12	25	25
100% availability during operational requirements with Mean Distance Between Failures not less than 120,00Km	2	15	11	4	25	7
BASIC CHARACTERISTICS : LOCOMOTIVES	10	26.4	36.8	38.4	41.6	36.8
TracK gauge 1065 mm	1	15	20	20	25	20
Brake system - Airbrake	1	15	20	20	25	20
Brake system - Vaccum	1	15	20	20	25	20
Number of cabs	1	9	12	12	23	12
Nominal Radius of shrpest curve 120m	1	15	18	20	13	20
Fuel Tank > 5.000 L	1	15	20	20	25	20
Multiple traction - minimum 3 units	1	9	14	20	17	12
Locomotive weight 88 Tons per EN 15528	1	15	20	20	25	20
An option of auxiliary power of 110 VDC	1	9	20	20	5	20
Standard AAR approved coupling system to be used	1	15	20	20	25	20
Environment	5	4	8.8	10.4	4.6	11
Noise Levels not exceed 80 dBA	2	12	4	12	5	5
		0	0	0	0	0
Demonstrate that it will operate in South African Climate Conditions	2	4	20	20	9	25
		0	0	0	0	0
Operate between om and 1800m	1	4	20	20	9	25
Signalling and Telecommunication Interference						
Comply with all requirements of TFR Infrastructure (Signals) Specification		2				

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Traction Power Supply DC	15	0	0	17.6	17.6	0
3kV diesel-electric	1	0	0	20	20	0
Under voltage 1850 V DC	1	0	0	4	4	0
Minimum continuous line voltage 2100 V DC	1	0	0	4	4	0
Nominal line voltage 3000 V DC	1	0	0	16	16	0
Maximum continuous line voltage 3600 V DC	1	0	0	4	4	0
Regeneration limit 3750 V DC	1	0	0	4	4	0
Maximum short time line voltage 3900 V DC	1	0	0	4	4	0
System over voltage 4000 V DC	1	0	0	4	4	0
Maximum observed transient voltage 4200 V DC	1	0	0	4	4	0
Continuous rating of sub-station HSCB 2,000A	1	0	0	4	4	0
HSCB tripping times for local and remote faults 40 – 100ms	1	0	0	4	4	0
HSCB rate of current rise trip 200 – 1,500 A/ms	1	0	0	4	4	0
Impulse (1.2/50 micro seconds impulse) withstand level +130 to -140kV	1	0	0	4	4	0
Power frequency withstand level 40kV	1	0	0	4	4	0
Regenerative braking accepted currents are 1,000 to 2,000A on certain routes only	1	0	0	4	4	0
MAINTENABILITY	5	14.4	17.4	16.8	16.8	8.6
ease of component change out	1	5	25	20	5	25
availability of spares	1	25	25	20	20	4
Driver and assistant training	1	5	7	20	14	4
provision of maintenance plan	1	12	5	4	20	5
Technical support	1	25	25	20	25	5
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
driver cab layout/operator ergonomics	1	23	25	20	15	25
driver display unit functionality	2	25	25	20	25	25
driver cab option	1	19	17	12	25	17
event recorder	1	18	25	20	25	25
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Manufactures EMD	1	15	4	20	25	3
Model 12N-710-G3C-IIIA	1	3	4	4	25	3
UIC Power 2.454 KW	3	15	16	4	25	11
		0	0	1	10	0
Cylinder number V 12	1	9	20	4	17	15
Bore and Stroke 230,19 mm x 279,4 mm	1	3	20	4	25	15
Engine speed 904 rpm	2	3	20	4	25	15
Main generator TA12	1	3	3	4	25	2
Companion Generator CA9E	1	3	4	4	25	3
Traction motors 1TB2624FM (AC)	1	3	12	4	5	9
Dynamic Brake 150 KN	2	3	20	20	25	15
Traction effort 750hp - 1000hp for shunting operations	1	15	20	20	25	15
Diesel	50	90.2	130.6	109	156.2	111.4
Hybrid	50	75.2	102	108	122.4	90.2

45.1	65.3	54.5	[illegible]	55.7
37.6	51	54	[illegible]	45.1

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PROVISION OF DIESEL-ELECTRIC LOCOMOTIVES

prasa
PASSENGER RAIL AGENCY OF SOUTH AFRICA

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BID ADJUDICATION REPORT

FOR

PROVISION OF DIESEL –ELECTRIC LOCOMOTIVES

TENDER NUMBER: HO/SCM/223/11/2011

PROVISION OF DIESEL-ELECTRIC LOCOMOTIVES	prasa PASSENGER RAIL AGENCY OF SOUTH AFRICA

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BID ADJUDICATION REPORT	
Chairperson of the BAC Recommend / not recommended	Signature:_____ Date:

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CONTENT

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LIST OF APPENDICES

Appendix 1: Technical Evaluation Sheet

Appendix 2: Briefing Session Attendance Register

Appendix 3: Compliance Assessment Sheet

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1. Background and Introduction

On 27 and 28 November 2011, PRASA issued a tender for procurement of Provision of Diesel –Electric Locomotives. The tender advertisement was issued on the following newspaper publication: City Press, Pretoria News, The star, Cape Times and Natal Mercury.

On 9 December 2011, a compulsory briefing session was held and twenty six bidders attended. Attached is the copy of the attendance register marked Appendix 2.

On 9 March 2012, the tender closed. Prior to the cut off time PRASA received five bids.

On 12 July 2012, the Bid Adjudication Committee of PRASA (CTPC) adjudicated and approved the recommendation of the Bid Evaluation Committee.

2. Purpose of the Report

The purpose of this report is to:

- Outline the process followed by the Bid Adjudication and Evaluation Committees;
- Outline the rules of the Bid Evaluation Committee;
- Discuss the outcomes of the evaluation process; and
- Make a recommendation to the GCEO.

3. Constitution of the Bid Evaluation Committee

On 22 March 2012, the Chief Procurement Officer appointed the Bid Evaluation Committee. The Bid Evaluation Committee is constituted and appointed in accordance with the Procurement Policy of PRASA.

On 27 March 2012, the Bid Evaluation Committee started with the evaluation process. The Bid Evaluation Committee adopted the following rules and processes for the evaluation:

- The Bid Evaluation Committee will evaluate on individual scoring;
- All bid evaluation members shall form a quorum at all times and the chairperson shall be part of the quorum;
- The proceedings of the Bid Evaluation Committee shall be recorded;
- All Bid Evaluation Committee members shall sign the confidentiality and conflict of Interest undertaking; and
- All Bid Evaluation Committee members shall keep the proceedings of the Bid Evaluation Committee confidential at all times.

3.1 The following are the members of the Bid Evaluation Committee: 444

Name	Position	Department
Ntombeziningi Shezi	Chairperson	*SCM PRASA-CRES*
Thabo Mahlobogwane	Member	PRASA Rail
Peter Stow	Member	PRASA Rail
Benedict Khumalo	Member	PRASA-CORP Legal
Jabulani Nkosi	Member	PRASA-CORP ICT
Joseph Magoro	Member	SCM PRASA-CORP

3.2 The following parties in alphabetical order submitted tenders by the closing date:

Bidder Full Name	Abbreviated Name
Harvdap	Harvdap
GE South Africa Technology	GE
RRL Grindrod	RRL
Mafori Financing t/a Swifambo Rail Leasing	Mafori / t/a Swifambo
Thelo Rolling Stock Leasing	Thelo
CRM Consortium	CRM

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3.3 Evaluation criteria

The evaluation criteria as set out in the RFP were as follows:

Evaluation criteria	Weighting
Technical	50%
Pricing	40%
BEE	10%
Bank Rating	**Compliance**
Security Screening	**Compliance**
TOTAL	**100%**

3.4 Bid Evaluation Process

The following is the bid evaluation process as stipulated in the Request for Proposals:

LEVEL	DESCRIPTION
Verify completeness	The Bid is checked for completeness and whether all required documentation, certificates; verify completeness warranties and other Bid requirements and formalities have been complied with. Incomplete Bids will be disqualified.
Verify compliance	The Bids are checked to verify that the essential RFP requirements have been met.
Detailed Evaluation of Technical	Detailed analysis of Bids to determine whether the Bidder is capable of delivering the Project in terms of business and technical requirements. Bidders must achieve at least 70% within the technical evaluation.
BBBEE	Evaluate BBBEE Evaluation
Price Evaluation	Bidders will be evaluated on price offered.
Scoring	Scoring of Bids using the Evaluation Criteria.
Recommendation	Recommendation of the Bid Evaluation Outcome

The bid evaluation process that was followed was based on the process as stipulated in the Request for Proposals.

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4. SCOPE OF WORK

The scope of work for this tender is:

Provision of locomotives on lease basis for the haulage of passenger trains on various national routes operated by the PRASA and shunting of Metrorail rolling stock repair depots.

The following type of locomotives are required:

- 88 Hybrid Diesel-electric 25kV ac locomotives;
- Note: In the event a strong feasibility of offer for the hybrid Diesel – 25kV ac locomotives more competitively compared with the 3kV DC and 25kV ac locomotives, preference would be given to the hybrid Diesel – 25kV ac.

Option 1

To provide locomotives on a 5 year, renewable, lease.

Option 2

To provide locomotives on a 15 Year lease with an option of buying.

5. EVALUATIONS

5.1 Completeness

The bids that were received were checked for completeness. Of the six bids that were submitted five are complete and one was incomplete. The incomplete bid is from CRM Consortium which only submitted company profiles without a tender submission and tender forms.

5.2 Pre-qualification Process (Compliance)

The compliance assessment was undertaken for the bids received. The compliance assessment was undertaken with the assistance of the Supply Chain Management Official. The table below indicates the outcome of the compliance assessment:

Bidder Name	Compliant	Non Compliant
Harvdap	X	

GE South Africa Technology	X	
RRL Grindrod	X	
Mafori Financing t/a Swifambo Rail Leasing	X	
Thelo Rolling Stock Leasing	X	
CRM Consortium		X
Harvdap	X	

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5.3 Technical Evaluation

The Request for Proposals stipulated that bidders must achieve a minimum of 70% threshold of the technical component to proceed to the BBBEE and Financial evaluation. The threshold was set at 70% threshold to ensure that the bidder who is successful in this tender is able to deliver the Locomotives required.

The bidders that met the compliance requirements were evaluated. The technical component of the Request for Proposals accounts for 50 points out of 100 points. Thus the table below indicates the weighted scores that bidders achieved on technical evaluation which is 50 points(these figures are rounded off to the nearest hundred):

Bidder	Weighted Score	Percentage
Harvdap	20.5	41%
GE South Africa Technology	29	58%
RRL Grindrod	27	54%
Mafori Financing t/a Swifambo Rail Leasing	35	70%
Thelo Rolling Stock Leasing	25	50%

Scores for the Diesel Option

Bidder	Weighted Score	Percentage
Harvdap	22.5	45.1%

GE South Africa Technology	32.65	65,3%
RRL Grindrod	27.5	54.5%
Mafori Financing t/a Swifambo Rail Leasing	39.05	78.1%
Thelo Rolling Stock Leasing	27.85	55.7%

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Scores for the Dual Option

Bidder	Weighted Score	Percentage
Harvdap	18.8	37.6%
GE South Africa Technology	25.5	51%
RRL Grindrod	27	54%
Mafori Financing t/a Swifambo Rail Leasing	30.6	61.2%
Thelo Rolling Stock Leasing	22.5	45.1%

The detailed breakdown of the technical evaluation is in Appendix 1.

5.4 Discussion on Bidders

Swifambo Rail Leasing

Mafori Financing (Pty) Ltd trading as Swifambo Rail Leasing is a wholly owned subsidiary of Swifambo Holding which has the following shareholders:

- Auswell Mashaba
- Identity Capital Partners (Pty) Ltd
- Thintamakhosima Empowerment Trust
- Hadassah Mining House (Pty) Ltd

The Technical Partner of Swifambo Leasing is Vossio Espana a locomotive manufacturing and supplying company that has been in operation since 1897. Vossio is an international European company that employs approximately 4900 employees.

GE South Africa Technologies

GE South Africa Technologies in conjunction with General Electric and Transnet Rail Engineering have partnered in submission of this proposal to PRASA.

The bidder is GE South Africa Technologies (Pty) Ltd registration number 2008017142/07. GE South Africa Technologies is owned by Mineworkers Investment Company (Pty) Ltd and owned GE an American Company.

Harvdap Investment Solutions (Pty) Ltd

Harvdap Investment Solutions (Pty) Ltd is owned by Virtual Investment Group Ltd (74%) and Dap Holdings (pty0 Ltd (26).

The Technical Partner of Harvdap is National Railway Equipment Company (NREC). The NREC was established in 1980 and is a Canadian Company.

5.5 BBBEE Evaluation

The following table indicates the BBBEE scores awarded to the bidders based on 10 points, thus the weighted scores are:

BEE EVALUATION: DIESEL ELECTRIC LOCOMOTIVES - 10 POINTS

Tenderers	B-BBEE Levels	Weighting	% Difference	B-BBEE Scores	Black Shareholding	Black Equity Score	Total Score
Harvdap Investment Solutions (Pty) Ltd.	Level 4	10	35%	3.5	26.0%	2.6	9.1
GE South Africa Technologies (Pty) Ltd.	Level 3	10	25%	4.0	25.1%	2.5	10.0
Mafori Finance Vryhedi t/a Swifambo Rail Leasing	Level 4	10	35%	3.5	50.0%	5.0	14.5
Thelo Rolling Stock Leasing (Pty) Ltd.	Level 4	10	35%	3.5	0.0%	0.0	6.5
RRL Grindrod South Africa	Level 1	10	0%	10.0	51.8%	5.2	15.2
		0	0%	0.0	0.0%	0.0	0.0
		0	0%	0.0	0.0%	0.0	0.0
		0	0%	0.0	0.0%	0.0	0.0
		0	0%	0.0	0.0%	0.0	0.0

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5.6 Price Evaluation

The price/financial evaluation were undertaken based on the following formula as issued with the RFP:

$$PS = 40\ [\ 1-(PT-Pmin)\ ]$$

$$\frac{}{Pmin}$$

The financial evaluation was only done for the Bidder who achieved 70% technical threshold which is Mafori Financing t/a Swifambo Rail Leasing.

BIDDER	WEIGHTED SCORE
Mafori Financing t/a Swifambo Rail Leasing	40

The following is the detailed discussion on the financial proposal of Mafori Financing t/a Swifambo Rail Leasing:

Swifambo Rail Leasing ("SRLI")

SRL has provided a comprehensive proposal including the purchase price of the locomotives as well as the anticipated maintenance costs over a 15 year period. They have provided three different options and each is detailed below.

The following are SRL's offers:

Cost per locomotive	4 642 550
Cost for 88 locomotives	408 544 382
Estimated maintenance cost over 15 years	226 265 701

Cost per locomotive	5 308 410

Cost for 88 locomotives	467 140 039
Estimated maintenance cost over 15 years	171 507 667

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Cost per locomotive	5 591 712
Cost for 88 locomotives	492 070 630
Estimated maintenance cost over 15 years	186 141 886

5.7 Combined Scores

Finally, all the different components of evaluation that is Technical, BBBEE and Financial were added together. The combined points achieved by the bidders for the evaluation are as follows:

BIDDER	Technical	BBBEE	Financial	Total Point	Rankings
Mafori Financing t/a Swifambo Rail Leasing	35	6.5	40	81.5	1

5.8 Considerations

It must be noted that in accordance with the RFP only one bidder has been considered for financial evaluation as they achieved the 70% threshold.

The Bid Adjudication Committee has considered the report of the Bid Evaluation Committee which recommends that Swifambo Rail Leasing be appointed as the preferred bidder for the entire scope of work for this tender.

The Bid Adjudication Committee has also considered the financial submission of all the Bidders. After careful consideration of the financial submissions of GE and Harvdap for the diesel locomotives which makes up 70% of the 88 Locomotives required by PRASA Rail. It is clear that the price of GE and Harvdap on the diesel locomotives is 50% less than that of Swifambo Rail Leasing. The following is the price of GE and Harvdap on the diesel locomotives:

Cost per locomotive	3 150 000
Cost for 88 locomotives	277 200 000
Estimated maintenance cost over 15 years	225 992 617

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Harvdap

Cost per locomotive	3 000 000
Cost for 88 locomotives	264 000 0000
Estimated maintenance cost over 15 years	Not detail included

6. Recommendation of the Bid Adjudication Committee

The Bid Adjudication Committee having discharged its duties in accordance with the authority and powers granted to it by the Procurement Policy of PRASA makes the following recommendation to the Board of PRASA:

6.1 Mafori Financing t/a Swifambo Rail Leasing be appointed as a preferred bidder for the dual and the E300 Locomotives;

6.2 The appointment of Mafori Financing t/a Swifambo Rail Leasing be based on outright purchase option;

6.3 the CPO appoint a negotiation team to enter into negotiations with Swifambo Rail Leasing and if the negotiations are successful the negotiated agreement be submitted to the GCEO for recommendation to the Board of PRASA;

6.4 PRASA enter into negotiations with GE and Harvdap on the diesel locomotives and negotiations are successful one of them be appointed to supply diesel locomotives; and

6.5 that if the decisions of the Bid Evaluation and Adjudication Committees are irregular, incorrect and/or flawed the GCEO makes a decision that it deems fit, fair and just.

Tiro Holele

Chairperson of the Bid Adjudication Committee

7. Appendix 1

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PROVISION OF DIESEL -ELECTRIC LOCOMOTIVES TENDER NUMBER HO/SCM/223/11/2011	WEIGHTS	Harvdap Investment Solutions (Pty) Ltd	GE South Africa Technologies	RRL Grindrod	Swifambo Rail Leasing	Thelo Rolling Stock Leasing
GENERAL REQUIREMENTS	5	2	8.6	9.2	5.8	4.6
Previous Experience 3 letters	3	5	25	4	25	5
Demostrate Finanacial Capability	2	5	17	12	19	15
GENERAL VEHICLE PERFORMANCE	5	11.4	12.8	7.2	15	11.4
Traction effort 305KN for Main Line Passenger	2	25	25	20	25	25
Achieve Speed 120KM>	1	17	25	12	25	25
100% availability during operational requirements with Mean Distance Between Failures not less than 120,00Km	2	15	11	4	25	7
BASIC CHARACTERISTICS - LOCOMOTIVES	10	26.4	36.8	38.4	41.6	36.8
Track gauge 1065 mm	1	15	20	20	25	20
Brake system – Airbrake	1	15	20	20	25	20
Brake system – Vaccum	1	15	20	20	25	20
Number of cabs	1	9	12	12	23	12
Nominal Radius of shrpest curve 120m	1	15	18	20	13	20
Fuel Tank > 5.000 L	1	15	20	20	25	20
Multiple traction - minimum 3 units	1	9	14	20	17	12
Locomotive weight 88 Tons per EN 15528	1	15	20	20	25	20
An option of auxilliary power of 110 VDC	1	9	20	20	5	20
Standard AAR approved coupling system to be used	1	15	20	20	25	20
Environment	5	4	5.8	10.4	4.6	11
Noise Levels not exceed 80 dBA	2	12	4	12	5	5
		0	0	0	0	0
Demonstrate that it will operate in South African Climate Conditions	2	4	20	20	9	25
		0	0	0	0	0
Operate between om and 1800m	1	4	20	20	9	25
Signalling and Telecommunication interference	1					
Comply with all requirements of TFR Infrastructure (Signals) Specification		2				
Traction Power Supply DC	15	0	0	17.6	17.6	0
3kV diesel-electric	1	0	0	20	20	0

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Under voltage 1850 V DC	1	0	0	4	4	0
Minimum continuous line voltage 2100 V DC	1	0	0	4	4	0
Nominal line voltage 3000 V DC	1	0	0	16	16	0
Maximum continuous line voltage 3600 V DC	1	0	0	4	4	0
Regeneration limit 3750 V DC	1	0	0	4	4	0
Maximum short time line voltage 3900 V DC	1	0	0	4	4	0
System over voltage 4000 V DC	1	0	0	4	4	0
Maximum observed transient voltage 4200 V DC	1	0	0	4	4	0
Continuous rating of sub-station HSCB 2,000A	1	0	0	4	4	0
HSCB tripping times for local and remote faults 40 – 100ms	1	0	0	4	4	0
HSCB rate of current rise trip 200 – 1,500 A/ms	1	0	0	4	4	0
Impulse (1.2/50 micro seconds impulse) withstand level +130 to -140kV	1	0	0	4	4	0
Power frequency withstand level 40kV	1	0	0	4	4	0
Regenerative braking accepted currents are 1,000 to 2,000A on certain routes only	1	0	0	4	4	0
MAINTENABILITY	5	14.4	17.4	16.8	16.8	8.6
ease of component change out	1	5	25	20	5	25
availability of spares	1	25	25	20	20	4
Driver and assistant training	1	5	7	20	14	4
provision of maintenance plan	1	12	5	4	20	5
Technical support	1	25	25	20	25	5
driver cab layout/operator ergonomics	1	23	25	20	15	25
driver display unit functionality	2	25	25	20	25	25
driver cab option	1	19	17	12	25	17
event recorder	1	18	25	20	25	25
Manufactures EMD	1	15	4	20	25	3
Model 12N-710-G3C-IIIA	1	3	4	4	25	3
UIC Power 2.454 KW	3	15	16	4	25	11
		0	0	1	10	0
Cylinder number V 12	1	9	20	4	17	15
Bore and Stroke 230,19 mm x 279,4 mm	1	3	20	4	25	15
Engine speed 904 rpm	2	3	20	4	25	15
Main generator TA12	1	3	3	4	25	2
Companion Generator CA9E	1	3	4	4	25	3
Traction motors 1TB2624FM (AC)	1	3	12	4	5	9
Dynamic Brake 150 KN	2	3	20	20	25	15
Traction effort 750hp - 1000hp for shunting operations	1	15	20	20	25	15
Diesel	50	90.2	130.6	109	156.2	111.4
Hybrid	50	75.2	102	108	122.4	90.2
		45.1	65.3	54.5	78.1	55.7

		37.6	51	54	61.2	45.1

"E" "FA63"

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

CORPORATE TENDER & PROCUREMENT COMMITTEE (CTPC)

EXTRA-ORDINARY MEETING: 10h00, 11 JULY 2012

ROOM E124, EAST WING, PRASA HOUSE

1040 BURNET STREET , HATFIELD

MINUTES OF MEETING

..... *DATE:* .....

CHAIRMAN: CTPC

..... *DATE:* .....

SECRETARY: CTPC

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

CORPORATE TENDER & PROCUREMENT COMMITTEE (CTPC)

ITEM NUMBER: 6	**RESOLUTION MINUTE NUMBER: HQ/PROC/CTPC 013/100 OF 11 JULY 2012**
TENDER HO/SCM/223/11/2012: PROVISION OF DIESEL-ELECTRIC LOCOMOTIVES.	
ITEM BEFORE THE CTPC FOR:	CONSIDERATION
NATURE OF ITEM BEFORE THE CTPC:	NEW BUSINESS
VALUE OF THE ITEM:	TO BE NEGOTIATED
% BEE EQUITY:	NOT INDICATED IN THE SUBMISSION
NAME/S OF TENDERER/CONTRACTOR/S:	MAFORI FINANCING, t/a SWIFAMBO RAIL LEASING
CONTRACT/DELIVERY PERIOD:	AS PER THE OUTCOME OF THE NEGOTIATIONS

COMMENTS / REMARKS /CONDITIONS BY THE CTPC:
Dr Mthimkhulu, CEO, PRASA Technical presented the item and responded to questions raised by members of the Committee.

RESOLUTION TAKEN BY THE CTPC:
Concurred with the recommendation that:

(A) Mafori Financing t/a Swifambo Rail Leasing be appointed as a preferred bidder; and

(B) The GCEO appoint a negotiations team to negotiate with Swifambo Rail Leasing and if the negotiations are successful the negotiated agreement be submitted to the GCEO for recommendation to the (FCP) Board of PRASA.

..... **SIGNATURE: CHAIRPERSON**	**DATE:** .....

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PASSENGER RAIL AGENCY OF SOUTH AFRICA

PROCEDURAL:

1. WELCOME / APOLOGIES:

RESOLUTION MINUTE: HQ/PROC/CTPC 008/100 OF 11 JULY 2012

1.1 OPENING & WELCOME:

1.1.1 Chairman opened the meeting and welcomed everyone present.

1.2 PRESENT AT MEETING:

		Index:
Tiro Holele	Chairman	TH
Chris Mbatha	Member	CM
Siphiwe Mathobela	Member	SM
Jerita Mothshologane	Member	JM
Maishe Bopape	Member	MB
Martha Ngoye	Member	MN
Ntombeziningi Shezi	Member	NS
Sidney Khuzwayo	Secretary	SK

1.2.1 **APOLOGIES/ABSENT:**
Kabelo Mantsane

1.2.2 **PRESENTATION/S:**
Justin Mnkandla, Sales and Marketing: Item 2
Siyaya DB Consulting Engineers: Items 3 and 4.
Dr Mthimkhulu, CEO, PRASA Technical: Item 6.
Sidney Khuzwayo, SCM: Item 7.

1.2.3 **UBUNTU:**
None.

1.2.4 **CONSTITUTION OF A QUORUM:**

The required quorum being present, the Chairman declared the meeting duly constituted and opened.

1.3 DECLARATION OF INTEREST:

Declaration of Interest / Confidentiality of Information
Signed declarations by members present were handed over to the Secretary. Members of the CTPC also declared verbally that they have no interest in or relationship with any of the tenderers/suppliers/agents/ entities who have tendered/ quoted in the agenda items as tabled at the meeting of 11 July 2012.

"OMN 6"

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: J 143/21

In the matter between:

NQOBILE PEARL MUNTHALI **Applicant**

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA) **Respondent**

Heard: **18 February 2021 (*via* Zoom)**

Delivered: **This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour Court's website and released to SAFLII. The date and time for the hand-down is deemed to be on 24 February 2021 at 18:00**

JUDGMENT

TLHOTLHALEMAJE, J

Introduction:

[1] The applicant approached this Court to obtain urgent relief declaring her employment contract with the respondent (PRASA) as remaining extant, and further ordering PRASA to comply with the terms of that agreement by retrospectively reinstating her in its employ.

Background:

[2] To the extent that at the core of PRASA's opposition to this application is that it is not urgent, the following salient facts are relevant;

LABOUR COURT

2.1 A contract of employment was concluded between the applicant and PRASA on 15 May 2009 effective from 1 April 2009. The applicant was employed as Chief Information Officer in Business Information Management. That contract was for an indefinite period, subject to the normal rules pertaining to termination, *viz*, resignation, death, retirement, dismissal for misconduct, capacity or operational requirements.

2.2 The applicant averred that between January 2012 and January 2021, she occupied various other senior and acting executive positions, including Group Chief Risk Officer; Group Executive: Business Development; Group Executive: Human Capital Management (HCM); Group Executive: Chief Information Officer, and CEO of PRASA Development Foundation. PRASA however disputed that she had occupied the positions of Group Chief Risk Officer and that of Group Executive Business Development. Nothing however turns on these disputed facts.

2.3 On 11 June 2019 the applicant was placed on precautionary suspension with full pay and benefits on the grounds of allegations of misconduct. Until 31 January 2021 when the applicant's services were terminated, she had not been called to an internal disciplinary enquiry to answer to any allegations of misconduct against her.

2.4 In June 2020, attempts were made by PRASA to engage the applicant in a potential retrenchment exercise, but those attempts appeared to have gone nowhere.

2.5 In July 2020, PRASA required the applicant to testify in internal disciplinary proceedings against another employee. The applicant had agreed after PRASA had in a letter dated 31 July 2020, agreed to uplift her suspension with effect from 4 August 2020. It was however agreed that she would be placed on 'special leave' pending attempts at amicably finding a solution to the dispute between the parties, or the finalisation of a retrenchment process to be initiated.

LABOUR COURT

2.6 On 30 January 2021, PRASA had released a press statement, announcing a decision to terminate the applicant's contract of employment, together with those of two other executive employees. The substance of the public announcement was *inter alia*;

(a) That the executives had overstayed their five year terms at PRASA, as all executives should not have exceeded that period in their positions;

(b) The applicant was on suspension for alleged misconduct, and her contract of employment ought to have been terminated upon the expiry of a five-year term.

2.7 The basis upon which it was contended that the applicant had exceeded her five year term was clause 8 of PRASA's Recruitment and Selection Policy of 2018[1], which it was contended was in accordance with its clause 2, applicable to all employees at PRASA, including its divisions and subsidiaries. In the alternative, PRASA contended that the termination was based on the provisions of clauses 9.12.2 of the Recruitment and Selection Policy of 2020[2], which came into effect on 18 March 2020, and which was also applicable to all permanent and fixed term employees in all of PRASA's divisions and subsidiaries.

2.8 PRASA in these proceedings further justified the termination on the basis that the clause 15 of the applicant's contract of employment of 2009 provided that the contract was subject to its conditions of service, policies and procedures (as revised from time to time) that serve to regulate the employment relations. In this regard, it was submitted that at the time of termination, the applicant had since August 2014, *de facto* occupied the position of Chief Executive Officer: PRASA Development

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[1] Which provides:
'Appointments to Senior Management, General management and Executive positions must be fixed on a fixed term contract for a period not exceeding five years and may be renewable'

[2] Which provide;
'Appointment of Executive Positions, i.e., Group Chief Executive, Chief Financial Officer, Chief Executive Officer of a division or subsidiary and any other Group Executive positions shall be made on the basis of fixed term contracts for a period not exceeding five years at a time'

LABOUR COURT

Foundation, and that since no contract was signed, the terms and conditions of the contract insofar as the duration was concerned, was for a fixed term of five years, making the provisions of the 2018 and 2020 Policies applicable.

2.9 The applicant contends that the press release was widely publicised in the media. She averred that she only became aware of the termination of her contract upon receiving a 'WhatsApp' message from her colleague in PRASA on the day it was announced, who had allegedly further informed her that the termination of her contract was trending on social media.

2.10 A letter dated 29 January 2021 confirming the termination of the contract of employment was only sent to the applicant on 1 February 2021, after she had contacted the Head of Employee Relations at PRASA, Mr Le Roux, to enquire about the termination of her contract having been announced in the public media. In the letter, PRASA stated that the basis of the immediate termination was that;

(a) The applicant's only employment contract on record was the one dated 31 July 2009;

(b) There was no signed employment contract on record in respect of the position she had occupied at the time of termination;

(c) Her employment had exceeded the normal five years fixed term contracts extended to all executives.

2.11 The applicant responded to the letter of termination through her attorneys of record on 5 February 2021, in which other than contesting the basis of the termination, she had demanded confirmation of her reinstatement by no later than 17h00 on 8 February 2021, failing which the Court would be approached on an urgent basis.

2.12 The short response from PRASA's attorneys of record on 9 February 2021 was that they would accept service on its behalf. The

LABOUR COURT

urgent application was then launched on 10 February 2021 and filed the following day.

[3] In opposing the application, PRASA's two principal contentions are that the application does not deserve the urgent attention of this Court, and that on the facts, there was no breach of contract.

Urgency:

[4] The Court enjoys a discretion in according a matter urgency. In the exercise of its discretion, the Court will examine whether the applicant has in the founding papers, set out the circumstances which justifies that the application be heard as one of urgency, and the basis upon which it is said that substantial redress would not be obtained at a hearing in due course. Whether the applicant will be able to obtain substantial redress in due course is dependent on the facts and particular circumstances of each case[3].

[5] Of equal importance is that urgent relief will be denied in circumstances where the applicant has failed to act with the necessary haste in approaching the Court, as the primary objective of approaching a Court on an urgent basis is to prevent harm or prejudice from occurring[4].

[6] The starting point is whether the applicant had approached this Court with the necessary haste. I agree that she did so. The public announcement of the termination took place on 30 January 2021, and she received written

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[3] See *East Rock Trading 7 (Pty) Limited and another v Eagle Valley Granite (Pty) Limited and others* (2012) JOL 28244 (GSJ) at para 6 and 7; See also *Export Development Canada and Another v Westdawn Investments Proprietary and Others* (6151/2018) [2018] ZAGPJHC 60; [2018] 2 All SA 783 (GJ) at para 11; and *Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and others* (2014) JOL 32103 (GP) at para 63 – 64, where it was held;

> "It seems to me that when urgency is an issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent.
>
> Once such prejudice is established, other factors come into consideration. These factors include (but are not limited to): Whether the respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing, other prejudice to the respondent's and the administration of justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights. This last factor is often called, usually by counsel acting for respondents, self-created urgency."

[4] See *Golding v HCI Managerial Services (Pty) Ltd and others* [2015] 1 BLLR 91 (LC) at para 24; *Ntozini and Others v African National Congress and Others* (18798/2018) [2018] ZAGPJHC 415 (25 June 2018) at para 11

LABOUR COURT

confirmation of the termination on 1 February 2021. It is accepted that she took a further four days prior to putting PRASA on terms, but that delay in the light of the circumstances of the case is negligible, in view of PRASA's response of 9 February 2021 to her letter of demand. Thus, to the extent that this application was launched on 10 February 2021, and the matter was set down on 18 February 2021, the applicant cannot be accused of having been dilatory.

[7] The applicant's principal grounds for seeking urgent relief mainly relate to her personal circumstances and financial hardship. She conceded that a loss of income was on its own insufficient to justify urgency. She further complained about the defamatory statements made by PRASA and its conduct in effecting the termination, the irreparable reputational damage caused by the public announcement, and the consequences on her prospects of securing alternative employment.

[8] The issue of whether financial hardship is a basis of seeking urgent relief has received attention in this and other Courts. In other decisions, it has been held that as a general principle, financial hardship does not establish a basis for urgency[5]. It has been held that the mere fact that irreparable financial losses have been suffered or would be suffered by the applicant was not, by itself, sufficient ground to acquire the requisite urgency necessary to justify a departure from the ordinary court rules[6]. In other decisions however, it has been

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[5] See *Hultzer v Standard Bank of South Africa (Pty) Limited* (J 469/99) [1999] ZALC 46 (25 March 1999) at para 13; *Jonker v Wireless Payment Systems CC* (2010) 31 ILJ 381 (LC) at para 16.

[6] *Ntefe J Ledimo & others v Minister of Safety and Security & Others* (2242/2003) [2003] ZAFSHC 16 (28 August 2003) at paragraph 32, where Rampai J) held that:

> "In the three cases I have quoted above the courts have held that the mere fact that irreparable financial losses have been suffered or would be suffered by the applicant was not, by itself, sufficient ground to ground the requisite urgency necessary to justify a departure from the ordinary court rules. In applying this principle, a judge will do well to keep the words of wisdom which were expressed through the lips of Kroon J on p 15 in **CALEDON STREET RESTAURANTS CC** (*supra*). I find it apposite to echo those sentiments here by quoting him verbatim:
>
> > "However, the following comments fall to be made. First, to the extent that these cases may be interpreted as laying down that financial exigencies cannot be invoked to lay a basis for urgency, I consider that no general rule to that effect can be laid down. Much would depend on the nature of such exigencies and the extent to which they weigh up against other considerations such as the interests of the other party and its lawyers and any inconvenience occasioned to the court by having to entertain an application on an urgent basis. Second, whatever the extent of the indulgence, the sanction of the court thereof that an application be heard as a matter of urgency, would not in general, in this Division, accord the matter precedence over

LABOUR COURT

accepted that the general principle may be departed from if exceptional circumstances are established, depending on the merits of each case[7].

[9] I agree with the proposition in *Ntefe J Ledimo & others v Minister of Safety and Security & Others*[8] that there is no immutable rule that financial exigencies cannot be invoked to lay a basis for urgency. This is so in that Courts in any event enjoy a discretion in the overall determination of whether a matter should be accorded urgency or not. Inasmuch as factors surrounding financial hardship on their own are not a basis for according a matter urgency, these have to be determined together with other facts and circumstances pleaded in the founding papers, which points to a conclusion that those facts and circumstances are exceptional, thus necessitating that the matter should be treated as urgent.

[10] Again, inasmuch as it can be accepted and expected that dire consequences would flow from a loss of a job, including financial hardship, reputational damage, or dimmed prospects of securing alternative employment, the facts of this case given the manner with which the termination of the contract of employment took place, places this case in the category of exceptional circumstances. My conclusions are based on the uncontested facts, which are essentially the following;

i. Notwithstanding the subsequent elevation to other posts, the applicant's 2009 contract of employment was indefinite. As shall further be illustrated below, it was readily conceded on behalf of PRASA that there was no legal basis upon which it could be said that the 2018 and 2020 Recruitment and Selection Policies relied upon had retrospective effect, to be therefore applicable the applicant's original contract of employment.

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other matters and result in the disposal of the latter being prejudiced by being delayed."

[7] See *Harley v Bacarac Trading 39 (Pty) Ltd* (2009) 30 ILJ 2085 (LC) at para 8 where it was held:
'If an applicant is able to demonstrate detrimental consequences that may not be capable of being addressed in due course and if an applicant is able to demonstrate that he or she will suffer undue hardship if the court were to refuse to come to his or her assistance on an urgent basis, I fail to appreciate why this court should not be entitled to exercise a discretion and grant urgent relief in appropriate circumstances. Each case must of course be assessed on its own merits.'

[8] *supra*

LABOUR COURT

ii. The reliance by PRASA on clause 15 of the applicant's contract of 2009 does not take its case any further, in that it cannot be read from the provisions of that clause that PRASA is as a matter of course, entitled to substantially revise an employee's terms and conditions of employment as it deemed fit, including invoking substantive conditions that were not bargained for when the contract was entered into.

iii. The applicant was placed on precautionary suspension for over a period of 19 months with full pay (bar being placed on 'special leave' in August 2020), on the grounds of allegations of misconduct.

iv. Despite the prolonged suspension of the applicant and at enormous financial costs to PRASA, at no point were any formal allegations made against her. In fact, PRASA readily conceded that the allegations of misconduct (which are still unknown) were withdrawn, and that the precautionary suspension was also uplifted.

v. Without any warning, and without first extending any courtesy to the applicant, PRASA had publicly announced the termination of her contract of employment.

vi. In terminating the contract, PRASA other than setting out its reliance on its policies surrounding the five-year term period, failed in its press release, to mention that the termination had nothing to do with allegations of misconduct against the applicant, or her alleged suspension.

vii. In fact, PRASA went a step further by publicly announcing that the applicant was on suspension for alleged misconduct, when this was patently false, since the allegations in that regard were withdrawn and further since her suspension had been lifted as far back as July/August 2020.

[11] To the extent that PRASA had contended that the applicant's financial hardship was hardly a consideration when determining urgency, it was held in *South African Informal Traders Forum and Others v City of Johannesburg and Others;*

LABOUR COURT

South African National Traders Retail Association v City of Johannesburg and Others[9] that the ability of people to earn money and support themselves and their families is an important component of the right to human dignity, and that without that ability, they faced "humiliation and degradation".

[12] In the light of the above undisputed facts, I fail to appreciate how any conclusion can be reached that the conduct of PRASA of terminating the contract publicly and in doing so, also misrepresented the facts, cannot be said to have created exceptional circumstances, This is particularly so in the light of the potential or actual public humiliation and reputational damage caused by the public announcement.

[13] In her founding papers, the applicant averred that any prospects of future employment are already dim in the light of the press release. She had made reference to one potential employer who had called her after the press release, to cancel any further discussions with her about potential employment. It follows that any further humiliation and degradation to the applicant arose not only from the mere termination of her contract of employment, but also from the manner with which that termination was effected.

[14] Too much emphasis was placed by PRASA on the fact that the events leading to the termination should be viewed in the light of the history of it being embroiled in malfeasance, which is the subject matter of the ongoing 'State Capture' enquiry. It is understandable that PRASA is entitled to clean up its mess in the light of that negative history. However, the fact remains that the applicant in this case has not been formally charged with any form of misconduct in that regard. In fact, PRASA has abandoned any disciplinary steps against the applicant. In the light of these facts, the question that remains unanswered is why then would PRASA publicly announce the termination, and also falsely state that the applicant was on suspension for alleged misconduct at the time of termination when this was the case?

LABOUR COURT

[9] 2014 (6) BCLR 726 (CC) at paras [31] and [36]

[15] I further agree with contentions made on behalf of PRASA that this Court is inundated with urgent applications from well-heeled employees and executives, who may have a false sense of importance and entitlement. These individuals purposefully seek to jump the proverbial litigation queue, and habitually approach this Court on an urgent basis in respect of routine matters that ought to have initially gone through the dispute resolution procedures set out in the overall scheme of the Labour Relations Act (LRA).[10] This Court has repeatedly taken a stand and expressed its displeasure against such individuals and application, and where appropriate, issued stern warnings through punitive costs orders[11].

[16] This case however, even if it involves a highly paid executive, is not one of those that fall under the above category. This is based purely on the common cause facts already pointed out, which in turn makes the facts of this case exceptional. In any event, it would be improper for this Court to solely concern itself with the type and status of litigants that approach it for urgent relief, rather than determining whether a case has been made out for that relief. This is so in that section 34 of the Constitution of the Republic[12] guarantees everyone to have their disputes resolved by the application of law decided in a fair public hearing before a court.

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[10] Act 66 of 1995, as amended

[11] See *Manamela v Department of Cooperative Governance, Human Settlement and Traditional Affairs, Limpopo Province and Another* (J 1886/2013) [2013] ZALCJHB 225 at para 52; *Mosiane v Tlokwe City Council* (2009) 30 ILJ 2766 (LC) at para 15 – 16, where it was held;

> "A worrying trend is developing in this Court in the last year or so where this Court's roll is clogged with urgent applications. Some applicants approach this Court on an urgent basis either to interdict disciplinary hearings from taking place, or to have their dismissals declared invalid and seek reinstatement orders. In most of such applications, the applicants are persons of means who have occupied top positions at their places of employment. They can afford top lawyers who will approach this Court with fanciful arguments about why this Court should grant them relief on an urgent basis. An impression is therefore given that some employees are more equal than others and if they can afford top lawyers and raise fanciful arguments, this Court will grant them relief on an urgent basis.
>
> All employees are equal before the law and no exception should be made when considering such matters. Most employees who occupy much lower positions at their places of employment who either get suspended or dismissed, follow the procedures laid down in the Labour Relations Act 66 of 1995 (the Act). They will also refer their disputes to the CCMA or to the relevant Bargaining Councils and then approach this Court for the necessary relief. Other employees would still approach this Court for relief in the ordinary manner and not on an urgent basis."

[12] The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)

[17] To conclude then on the issue of urgency, I am satisfied that the applicant has made out a case for this Court to treat her application with urgency. From the common cause facts leading to the termination of the applicant's contract, if her application were to be struck off, the consequences of the manner and circumstances under which the termination of her contract took place, may not be mitigated by any redress she may obtain in due course.

The merits:

[18] Given the concessions made by PRASA in regards to the lack of any legal basis upon which it can be said that the 2018 and 2020 Recruitment and Selection Policies had retrospective application to the applicant's contract of employment of 2009, and further in the light of my conclusions in regards to the provisions of clause 15 of the 2009 contract of employment, it follows that the invariable conclusion to be reached is that there was indeed a breach of the applicant's contract of employment. It is therefore not even necessary to deal with any submissions regarding the interpretation of these policies *vis-à-vis* the applicant's contract of employment. Furthermore, nothing needs to be said about the fact that out of about 20 Executives who were in a similar position as the applicant insofar as the application of these policies were concerned, only the applicant and other two executives were adversely affected by PRASA's ill-advised decision and its reliance on the policies in question.

[19] In regards to whether the applicant has satisfied the requirements of the relief she seeks, on its plain reading, the applicant's original contract of employment was for an indefinite duration. That contract incorporated the standard clauses of non-variation or amendments unless these were reduced to writing between the parties, and further stipulated the notice periods in regards to termination. Clearly all of these clauses did not matter to PRASA, when it decided to publicly announce the termination of the applicant's contract of employment with immediate effect. Such conduct clearly amounts to an unlawful repudiation, entitling the applicant to enforce that contract.

[20] It is not even necessary to address issues surrounding whether the applicant has an alternative remedy in the light of the facts that led to the termination of

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her contract and the legal basis of her claim. The irreparable harm to her should urgent relief not be granted is apparent from the consequences of the circumstances and manner surrounding the termination of the contract as already dealt with. It follows therefore that her urgent applicant should succeed.

Costs:

[21] The applicant seeks a costs order in the light of PRASA's conduct in terminating her services. She contended that PRASA acted in bad faith, knowing that there was no legal basis to justify its stance, and that its conduct smacked of gross abuse of power. I agree with these contentions based on the conclusions reached in this judgment.

[22] It has already been stated that PRASA given its history of being embroiled in allegations of malfeasance, was entitled to act against individual employees proven to have been involved in such malfeasance. This however did not entitle it to act in a gung-ho manner, that grossly violated its employees' basic fundamental rights. As a side issue, various options were available to PRASA in dealing with the applicant to the extent that it could not pursue any disciplinary measures against her and/or saw her as redundant. It is common cause that attempts were made at initiating a retrenchment process, and it is not clear how that process faltered.

[23] In the end, PRASA's conduct of publicly announcing the termination of the applicant's contract without first informing her, and in the course of doing so, misrepresented the true facts at the time of the termination, was not only appalling, but shockingly malicious and inhumane. As at the time the contract was terminated, the applicant was neither suspended nor was she facing allegations of misconduct. The consequences of that misrepresentation in the light of the public announcement of the termination of her contract are indeed colossal, and to a large extent irreparable. To this end, the requirements of law and fairness dictate that the applicant be entitled to her costs.

[24] Accordingly, the following order is made;

Order:

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1. The non-compliance with the forms and service contemplated in the Rules of this Court is condoned and this matter is heard as one of urgency in terms of Rule 8 of the Rules of this Court.

2. It is declared that the employment contract between the Applicant and the Respondent remains extant.

3. The Respondent is ordered to comply with the terms of the employment contract, and to reinstate the Applicant in its employ retrospective from 29 January 2021.

4. The Respondent is ordered to pay the applicant's costs, on Attorney and own Client scale.

Edwin Tlhotlhalemaje

Judge of the Labour Court of South Africa

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APPEARANCES:

For the Applicant:	G. Fourie SC, instructed by Elliot Attorneys
For the Respondent:	A. Mosam SC with M.T.M. Phehane, instructed by De Swartd Myambo Attorneys

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"OMN 7"

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO.
(2) OF INTEREST TO OTHER JUDGES: YES/NO.
(3) REVISED.
02/03/2021
DATE SIGNATURE

THE JUDICIARY · REPUBLIC OF SOUTH AFRICA

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable
Case No: J 111/21

In the matter between:

ONICA MARTHA NGOYE	**First Applicant**
NKOSINATHI ALLEN KHENA	**Second Respondent**
TIRO HOLELE	**Third Respondent**

and

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA	**First Respondent**
LEONARD RAMATLAKANE	**Second Respondent**
THINAVUYO MPYE	**Third Respondent**
DINKEANYANE MOHUBA	**Fourth Respondent**
SMANGA SETHENE	**Fifth Respondent**
XOLILE GEORGE	**Sixth Respondent**
NOSIZWE NOKWE-MACAMO	**Seven Respondent**
MATODZI MUKHUBA	**Eighth Respondent**
THEMBA ZULU	**Ninth Respondent**
MS THANDEKA MABIJA	**Tenth Respondent**

Heard: 12 February 2021

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Labour

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Court website and release to SAFLII. The date and time for handing-down is deemed to be 10h00 on 02 March 2021.

JUDGMENT

BALOYI, AJ

Introduction

[1] The termination of employment contracts of the three applicants with immediate effect is the subject matter of this application. The applicants approached this court on urgent basis essentially seeking an order that such termination be declared unlawful and set aside. Consequently, the reinstatement to their respective positions be ordered. The application is opposed with pleas of lack of urgency and this Court's lack of jurisdiction in the forefront of the respondents' case. The matter was first scheduled for hearing on 11 February 2021. Due to administrative glitches a bulk of the Court papers did not reach the Court file on time. As a result, the matter was by agreement adjourned to 12 February 2021.

[2] It appears from the Court papers and the arguments that the termination was effected by the first respondent at the instances of its Board of Control. The said Board of Control is headed by the second respondent as its chairperson. The third to ninth respondents are the second respondent's fellow members of the Board of Control. The tenth respondent is the Acting Group CEO of the first respondent. They are cited on reason that the termination was precipitated by their collective decision. Part of the relief sought by the applicants is to have the resolutions so taken by the Board be declared unlawful, invalid and of no force. Furthermore, the Board was according to the applicants not properly constituted hence a specific order is sought in this respect. More of this appear herein below.

Background

[3] As pointed above, the respondents have raised legal objections with regard to lack of urgency and this Court's lack of jurisdiction. To enable me to deal with these points, it is thus imperative to briefly lay down the factual background to this dispute. The first applicant, Ms Onica Martha Ngoye, received a letter of termination of her contract on 29 January 2021 dated 29 January 2020. It appears that the parties held a common understanding that the date appearing in her letter of termination was intended to be 29 January 2021. The relevant content of the letter is self-explanatory and was crafted in the following manner:

> "Dear Ms Ngoye
> SAP Number: XXXXXX 29 January 2020
>
> **Re: Termination of Employment**
>
> 1. You will recall that on 13 January 2021, the Chairperson of HCM & REMCO requested employment contracts of all executives, including yours. In response to the said request, you indicated by way of an email dated 13 January 2021, that there is no contract signed between yourself and PRASA on your current position.
>
> 2. Having perused PRASA's records, the only contract of employment PRASA has with you relates to your previous role as Chief Executive Officer: Intersite
>
> 3. For your current position, only the letter of transfer [transferring you from Intersite to Group Executive: Legal, Risk and Compliance] dated 22 August 2014, could be found. For ease of reference, I attach the said letter as annexure **"A"**.
>
> 4. According to the letter, your transfer was to commence on 1 September 2014 and the other conditions of service were not amended by the said letter.
>
> 5. In the circumstances, your stay at PRASA has exceeded the normal five years fixed-term contract extended to all executives. In your

current position, PRASA relies on you for issues concerning legal, risk and compliance and you out to have brough this administrative defect to the attention of PRASA (sic).

6. Consequently, having considered the documents referred to above, the employment contract between PRASA and yourself is hereby terminated with immediate effect.

7. Having said that, PRASA hereby informs you of its intention to approach court for necessary relief against you in respect of various matters including the unauthorised and unlawful approval of R58 153 296.72.

8. You are to return with immediate effect any PRASA property that is in your custody.

Yours Sincerely,

Signed

Ms Thandeka Mabija
Acting Group Chief Executive
Passenger Rail Agency of South Africa"

[4] On the very day, that is, 29 January 2021 the second applicant, Mr Nkosinathi Allen Khena, also received a letter of termination of his contract of employment dated 29 January 2021. The letter is similarly self-explanatory and it reads as follows:

"Mr Khena
SAP Number: XXXXXX 29 January 2021

Re: Termination of Employment

[1] Having perused PRASA's records, the only contract of employment PRASA has is that of Chief Operating Officer dated 1 December 2012.

[2] In the circumstances, your stay at PRASA has exceeded the normal five years fixed-term contract extended to all executives.

[3] Consequently, having considered the documents referred to above, the employment contract between PRASA and yourself is hereby terminated with immediate effect.

[4] Having said that, PRASA hereby informs you of its intention to approach court for necessary relief against you in respect of various matters including the unauthorised and unlawful approval of an amount in excess of R 25 million without requisite authority.

[5] You are to return with immediate effect any PRASA property that is in your custody.

Yours Sincerely,

Signed

Ms Thandeka Mabija
Acting Group Chief Executive
Passenger Rail Agency of South Africa"

[5] As at 29 January 2021 the first and second applicants occupied the positions of Group Executive: Legal Risk and Compliance and Chief Operating Officer respectively. These positions fall within the level of executives in terms of the first respondents' structure. These letters were followed by the first respondent's media statement published on 30 January 2021 announcing the termination of employment of three executives for having been in the employ of the first respondent for more than 5 years, and they ought to have left years ago. According to the statement all executives are employed for a period not exceeding 5 years with no expectation of extension of the contracts. The statement went on to state that these executives took advantage of instability at the level of the first respondent's Board, hence they stayed unlawfully for a longer period in the positions. The letter further conveyed the first respondent's intentions to institute legal action to recover R58 million from the first applicant and R25 million from the second applicant. The reason for the legal action relates to their approval of such payments to the external service providers without the requisite authority.

[6] The first applicant came into her position by virtue of the transfer from her initial position of CEO at one of the subsidiaries of the first respondent, Intersite Asset Investment Soc Ltd as per the transfer letter dated 22 August 2014 following the Board's resolution to the effect. What is of utmost importance in this regard is that in the first applicant's letter of transfer it is recorded that such transfer was lateral and did not amend all other terms and conditions. The conditions referred to, in the understanding of the parties are those set out in the first applicant's contract she entered into with Intersite Asset Investment Soc Ltd dated 01 September 2012. The commencement date is recorded as 01 September 2011.

[7] The relevant features of the contract as recorded in clause 3 are that the first applicant accepted the appointment subject to the terms and conditions contained in the very agreement and its annexures. Furthermore, that the appointment in question *shall be deemed to have commenced on 01 September 2011 and shall endure until terminated as provided for herein.* Clause 9 of the contract identified the grounds on which the employment shall be terminated. Firstly, without notice on account of misconduct or any other cause recognized by law. Secondly, within three months' notice which the employee has to serve. Whichever mode of termination to be effected in terms of clause 9, the parties are in all respects bound to have regard to the internal policies and procedures and the provisions of the Labour Relations Act prior to such termination.

[8] In Annexure **"A"** of the first respondent's contract, the salient details of employment are recorded as follows:

"ANNEXURE A – SALIENT DETAILS OF EMPLOYMENT

[1] **Full Name:** Martha Onica Ngoye
[2] **Identity Number:** XXXXXX
[3] **Capacity:** Chief Executive Officer
[4] **Annual Leave Entitlement:** 22 Days per annum
[5] **Duration:** Permanent

[6] **Commencement Date**: 01/09/2011

[7] **Termination Date:** N/A

[8] **Physical Address, postal address and telefacsimile:**

Physical - XXXXXX

Postal - XXXXXX

[9] **Sick Leave entitlement:** 40 working days per leave cycle"

[10] The second applicant's contract of employment signed on 30 November 2012 with commencement date recorded as 01 December 2012 contains the same terms and conditions as that of the first applicant with regard to the appointment and duration in clause 3 as well as the termination in clause 9. Annexure **"A"** of his contract reveals the salient details of employment as follows:

"ANNEXURE A – SALIENT DETAILS OF EMPLOYMENT

1. **Full Name:** Nkosinathi Khena
2. **Identity Number:** XXXXXX
3. **Capacity:** Chief Operating Officer: PRASA
4. **Annual Leave Entitlement:** 22(twenty two) paid working days per annum
5. **Duration:** Full time
6. **Commencement Date**: 01 December 2012
7. **Termination Date:**
8. **Physical Address, postal address and telefacsimile:**

Physical - XXXXXX

Postal - XXXXXX

9. **Sick Leave entitlement:** 40 working days per leave cycle"

[11] The third applicant, Mr Tiro Holele was appointed to the position of General Manager: Corporate Affairs on 30 May 2007 by the first respondent's predecessor known at the time as South African Rail Commuter Corporation Ltd. Although the appointment letter refers to an employment contract that he was supposed to sign, it was however never signed. On 01 December 2009 he was offered a position of Group Executive: Office of the CEO subject to 6

months' probation which he accepted. Reference to the signing of the contract is also made in the appointment letter. His continued occupation of the position beyond the period of 6 months signalled that he had probably completed his probation successfully. Between 2011 and 2020 he was moved to several executive positions within the first respondent by either transfer or appointments. This included appointment to the positon of the CEO at Autopax, one of the first respondent's subsidiaries.

[12] After the third applicant's recall from the Autopax CEO position in March 2020, he continued to serve the first respondent as Group Executive: Office of the CEO. In March 2020 he was offered a position of General Manager: Strategy following the phasing out of the position of Executive: Office of the CEO from the first respondent's structure. He only accepted the offer in August 2020 through his attorney. The General Manager position is not an executive position but a managerial position. On 01 February 2021 he received a letter terminating his contract of employment stating the same reason as that in the other applicants' letters with the following content:

"Mr Tiro Holele
SAP Number: XXXXXX 01 February 2021

Re: Termination of Employment

1. Having perused PRASA's records, a letter of appointment dated 01 December 2009 relates to your last role as Group Executive: Office of the GCEO, I attach the letter as **annexure A**.

2. For your current position, Group Executive: Office of the GCEO, there is no contract of employment that was signed between yourself and PRASA in our records.

3. In the circumstances, your stay at PRASA has exceeded the normal five years fixed-term contract extended to all executives.

4. Consequently, having considered the documents referred to above, the employment contract between PRASA and yourself is hereby terminated with immediate effect.

5. You are to return with immediate effect any PRASA property that is in your custody.

Yours Sincerely,

Signed

Ms Thandeka Mabija
Acting Group Chief Executive
Passenger Rail Agency of South Africa"

[13] Upon receipt of the letters of termination of contracts of employment, all applicants separately addressed letters to all the respondents raising their discontent with the termination as they viewed same to be unlawful. The core issues raised in the letters were akin to cautioning the first respondent about the incorrect position it has adopted. Furthermore, that there is no basis for its assertion in both letters of termination and the media statement that they had exceeded their stay at PRASA and ought to have left years ago. They also intimated that they were never aware of the alleged normal five years fixed term contract extended to all executives. They requested particulars upon which the claim of extension to all executive was based. They further reminded the respondents that at no point did they enter into five years fixed term contracts. Notably, none of the applicants' letters was favoured with a reply.

The case before this Court

[14] The applicants seek a relief that the resolution passed by the Board directing the termination of their contracts of employment be found to be unlawful. Furthermore, such resolution was passed by a Board that was not properly constituted as it did not have a member appointed from Department of Transport. The resolution does not form part of the Court papers and it is not pleaded in the founding papers as to when was the resolution passed. The applicants also seek an order that the termination of the applicants' contracts through the resolution be declared unlawful and accordingly be set aside. The

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applicants' case goes further to seeking the setting aside of the termination of the contracts and reinstatement. In opposition the respondents deny the absence of a person sourced from the Department of Transport in the Board. A letter of appointment of Hlengiwe Ngwenya by the Minister of Transport dated 05 January 2021 is attached to the answering affidavit to back up the said denial.

[15] The applicants raised certain controversies in the replying affidavit which in effect suggest that it cannot be possible that Ms Ngwenya was appointed a Board member. This is in view of the second respondent's comments in another media statement of 03 February 2021 that the Director General is in fact the person appointed from the Department of Transport to serve as a Board member. Furthermore, Ms Ngwenya's name did not appear in the list of invitees to the Board meetings. The rest of the opposition of the application comprises of objections based on lack of urgency as well as this Court's lack of jurisdiction. I will, therefore, deal with these objections herein below

Lack of jurisdiction

[16] The respondents' challenge to the jurisdiction of this Court is heavily loaded with the attack on the primary relief sought, that is, unlawfulness. The respondents contend that it does not fall within the competencies of this Court to grant. Huge focus is placed on the fact that the applicants' founding affidavit lacks specificity as to the terms of the contract alleged to have been breached. The mere asking for an order to declare the termination unlawful, so goes the argument, does not in itself disclose a cause of action. The applicants' failure to specifically plead breach of contract deprives this Court jurisdiction to determine this application. In support of this contention the respondents relied on *Phahlane v Minister of South African Police Services*[1], *Shezi v South African Police Services*[2] *and Chubisi v South African Broadcasting Corporation (Soc) & Others*[3]. The respondent's arguments are in essence that this Court's

[1] Unreported J736/2020 (11 August 2020).
[2] [2021] 42 ILJ 184 (LC).
[3] (2021) 42 ILJ 395 (LC)

jurisdiction cannot be found where relief is sought to declare unlawfulness of the employer's action without locating a claim in the cause of action justiciable by this Court.

[17] The applicants' reaction to the jurisdictional issue is that the terms of the contract have been pleaded and specific references were made to clauses 3 and 9 of the contracts of the first and second applicants. The absence of the phrase 'breach of contract' cannot deprive this Court of its jurisdiction to determine a claim of unlawfulness of the termination of employment contract. By determining the matter solely based on the respondents' interpretation, the Court will undesirably be asked to prioritize form over substance. The applicants further relied on *Somi v Old Mutual Africa Holdings (Pty) Ltd*[4] and *Solidarity v South African Broadcasting Corporation*[5] to demonstrate that this Court has jurisdiction as it upheld the applicants' claims based on unlawfulness. The respondents' non-compliance with the terms of the agreement leads to unlawfulness and this cannot be dispelled by mere use of words.

[18] Based on what is placed before this Court, I am of the view that this Court has jurisdiction for the reasons appearing below. Section 157 of the Labour Relations Act has been given a consistent interpretation by various Courts as to the jurisdiction of this Court. The Constitutional Court has put this issue to bed in *Baloyi v Public Protector & Others*[6] and held as follows at paragraphs 26 - 29:

> "[26] By virtue of section 157(1), the Labour Court will enjoy exclusive jurisdiction over any matter "in terms of" the Employment Act. Matters governed by or concerning the enforcement of a provision of, the Employment Act accordingly fall within the ambit of the Labour Court's exclusive jurisdiction. The Labour Court and the Labour Appeal Court have held on a number of occasions that "the provisions of section 77(1) do no more than confer a residual exclusive jurisdiction on the

[4] [2015] 36 ILJ 2370 (LC).
[5] [2016] 37 ILJ 2888 (LC).
[6] (2021 (2) BCLR 101 (CC) (4 December 2020).

Labour Court to deal with those matters that the [Employment Act] requires to be dealt with by the court".

[27] However, both the LRA and the Employment Act expressly recognise that there are certain matters in respect of which the Labour Court and the High Court enjoy concurrent jurisdiction. Section 157(2) of the LRA provides, in relevant part:

"The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from—

(a) employment and from labour relations;

(b) . . .

(c) . . . ."

[28] Section 77(3) of the Employment Act provides, similarly, that the Labour Court "has concurrent jurisdiction with the civil courts to hear and determine any matter concerning *a contract of employment*, irrespective of whether any basic condition of employment constitutes a term of that contract". That disputes arising from contracts of employment do not, without more, fall within the exclusive jurisdiction of the Labour Court is further made clear by section 77(4) of the Employment Act, which emphasises that the exclusive jurisdiction of the Labour Court referred to in section 77(1)—

"does not prevent any person relying upon a provision of [the Employment Act] to establish that a basic condition of employment constitutes a term of a contract of employment in any proceedings in a civil court or an arbitration held in terms of an agreement."

[29] It is plain from these sections that the parameters of the scope of the exclusive jurisdiction of the Labour Court is not cast in Manichean terms. Section 157(1) of the LRA does not refer to specific sections of that Act as sources of the Labour Court's exclusive jurisdiction. It only provides that they are to be found elsewhere in the Act. In some instances, their location is clear: for example, sections 68(1), 77(2), 145 and 191. In others, it is left to the courts to determine whether a matter is one that arises in terms of the LRA and is, in terms of that Act, or another law, to be determined solely by the Labour Court."

[19] In the *Baloyi* matter the applicant sought an order declaring the termination of her contract unlawful for non-compliance with internal policies including probation policy in the High Court. A jurisdictional issue was raised to the effect that the High Court was not a correct forum but this Court. The essence of the Constitutional Court's findings is that this Court has concurrent jurisdiction with the High Court on employment issues which do not require any determination of fairness. The exclusive jurisdiction which this Court has is in respect of fairness which is only assertable through the Labour Relations Act. In view of the fact that *Baloyi* was not seeking relief based on fairness or unfairness of the termination of her employment contract, but unlawfulness, both this Court and the High Court were found to have jurisdiction to determine issues of unlawfulness.

[20] In so far as this matter is concerned, this Court is called upon to determine unlawfulness of the dismissal based on section 77(3) read with section 77A(e) of the Basic Conditions of Employment Act. The three decisions referred to by the respondents above do not in my view suggest that this Court does not have jurisdiction to make a determination on unlawfulness. What is of essence is that a claim for unlawfulness should within the accompanying pleadings establish unlawfulness, meaning that whatever is pleaded should establish unlawfulness. The unfairness disputes are only determinable within the scheme of the Labour Relations Act. Since the unlawfulness in this instant case is claimed under the Basic Conditions of Employment Act to assert a right in terms of a contract, I find no reason to conclude that this Court has no jurisdiction. The question whether the applicants' pleadings do establish a case calling for the granting of the relief sought or otherwise, may be addressed through determination of the merits of the case. This will certainly receive attention herein below since this Court has jurisdiction.

Urgency

[21] A challenge to urgency is the next issue for this Court's consideration. The respondents are attacking the issue of urgency on two fronts. Firstly, the fact

that the application was filed on 5 February 2021 challenging the terminations that took place on 29 January 2021 and 01 February 2021 demonstrates that the applicants did not act with the necessary haste that enables this Court to deal with the matter on urgent basis. The second challenge is that financial hardship has never been a ground for urgency. The applicants argue otherwise and maintain that the matter was attended to with necessary urgency. The applicants accept that, as a general rule, financial hardship is in itself not a ground for urgency, as exceptional circumstances must exist for the Court to find this as a ground for urgency. Both parties referred to relevant case law in support of their arguments and are discussed hereunder.

[22] When a final order is sought, as it is the position in this matter, the bar remains high for the applicants to establish a clear right, that they stand to suffer irreparable harm, they do not have alternative remedy and that balance of convenience favours the granting of the relief sought. In *Hultzer v Standard Bank of South Africa (Pty) Ltd*[7] the Court held at paragraph 13 as follows:

> "[13] Financial hardship or loss of income is not regarded as a ground for urgency. Mlambo J in the *University of Western Cape* matter *(supra)* found that loss of income cannot establish a ground for urgency in an attempt to obtain urgent interim relief from this court. The applicant, in its founding papers, has not put forward any evidencery detail with regard to injury to his reputation if he is not reinstated in his former position, by way of urgent interim relief."

[23] The above decision was followed with approval in *Tshwaedi v Greater Louis Trichardt*[8] where the Court had this conclusion to make at paragraph 10:

> "[10] It was common cause between the parties that the rules which have been adopted by High Court in relation to urgent applications apply equally to this Court. Those rules are to the effect that an applicant who comes to court for urgent relief must explain the reason for his departure from the ordinary rules regarding service and time

[7] [1999] 8 BLLR 809 (LC).
[8] [2000] 4 BLLR 469 (LC).

periods and show that such departure is justified. He must depart from the rules as little as is possible under the circumstances. If an application is brought as a matter of urgency, there must be facts to show why relief at some later date or in the ordinary course would not have sufficed. In other words, in the present case the applicant must show that he will suffer harm which cannot be cured if relief is granted in the ordinary course."

[24] In *SACWU & Others v Sentrachem*[9] with regard to financial hardship it was held as follows at paragraph 20:

"[20] In my view, a medical aid benefit, *per se*, does not establish special circumstances. Virtually all employees, particularly those employed by large companies, are members of a medical aid fund. A medical aid benefit is often obtained on the same basis as the general remuneration package of an employee. Loss of income, probably the worst consequence of dismissal, is not a ground for urgency. Therefore, it is difficult to understand the argument that a loss of a medical benefit, *per se*, is a ground for urgency."

[25] In *Mthembu v Mpumalanga Economic Growth Agency*[10] the Court held as follows at paragraph 22, per Tlhotlhalemaje AJ (As then he was):

"[22] As already indicated, it is not always that this court should regard financial hardship and loss of income as grounds for urgency, but in this case the applicant has adduced sufficient evidence to support these grounds, which invariably extends beyond pure financial considerations. In conclusion on this issue, I am willing to further accept that the lack of diligence was not unreasonable given the circumstances of this case, and even if a contrary view was to be held, there are other factors in this case that are indeed compelling and exceptional to call for the court's intervention as illustrated below."

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[9] [1999] 6 BLLR 615 (LC).
[10] [2015] ZALCJHB 184.

[26] In *Ngqeleni v Member of the Executive Council for Department of Health, Eastern Cape*[11] the High Court found financial hardship to be sufficient reason for urgency based on the circumstances which the applicant found himself in due to termination of employment which its unlawfulness was subject matter of the application.

[27] I find it highly necessary to first consider whether the applicants were dilatory in filing the application on 05 February 2021 in respect of the termination of contracts of employment that took place on 29 January 2021 and 02 February 2021. All applicants addressed letters to the Board of Control wanting to know the legal basis for termination. The first applicant dispatched her letter on 31 January 2021 and demanded a reply on 01 February 2021. The second applicant did the same on 01 February 2021 and anticipated a reply on the same date. The third applicant sent a letter on 03 February 2021 through his attorneys with a demand for a response on 04 February 2021. None of these letters were afforded a courtesy of reply. In view of this, I have no doubt that the applicants were active from the moment they were terminated. The period between 29 January 2021 and 05 February 2021 is extremely short, during which period the applicants made attempts to get clarity on their termination. I am as much constrained to accept that the applicants acted with necessary swift in prosecuting this application.

[28] Turning onto financial hardship, it is now a well settled position that financial hardship cannot on mere mention be considered a reason for urgency. The argument that financial hardship is in fact a consequence of any form of termination of employment cannot fit in each and every case. In situations where an employee was afforded a notice prior to termination, whether in accordance with statutory provisions or contractual terms and conditions, the argument against a plea of financial hardship is likely to prevail. The argument against plea of financial hardship may also stick in situations where termination was effected without a notice to the employee, such as in a dismissal based on misconduct following a disciplinary action. From the above scenario, the

[11] [2018] ZAECMHC 77 (22 November 2018).

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underlying issue is that the employee would have had some time to revise his/her own affairs bearing in mind that a termination of employment will obviously bring about some form of financial hardship.

[29] What happened in this matter is that on 29 January 2021, the first and second applicants woke up as employees of PRASA, when they went to bed later in the day, they formed part of the unemployment statistics, and so was the case in respect of the third applicant on 01 February 2021. I am under these circumstances compelled to consider the abrupt manner in which the termination of employment contracts was effected, that is with *immediate effect*. There appeared no prior word or sign of caution that their contracts were facing termination. I find this on its own to raise exceptional circumstances.

[30] The fact that the termination of contracts was also accompanied by what was placed in the public domain that they face multimillion law suits and that they took advantage of the first respondent's instability at Board level. This draws a great deal of public interest. The public policy consideration on its own renders the application urgent particularly where the public funds are made a subject matter of the case[12]. Furthermore, the applicants' reputation and good name are at stake in this matter. Two of the applicants have been branded as guilty of unauthorized and unlawful approval of R58 153 296.72 (in case of Ms Ngoye) and R25 million (in case of Mr Khena).

The merits of the application

[31] The critical issue here is the authority on which the respondents relied upon to effect termination of the employment contracts. The issue of contract has been raised twice by the respondents, that is, in the letters of termination addressed to the applicants and through the address to the public by way of a media statement. One important thing came out of these respective addresses by the respondents, that is, the applicants exceeded their stay at PRASA the stay was

[12] See *solidarity v South African Broadcasting corporation* 2016 *ILJ* 2888 (LC) at paragraphs 67 to 69 where the court considered the responsibilities of the parties towards the public.

supposed to be not in excess of five years in terms of the fixed term contract extended to all executives.

[32] The applicants refuted knowledge of their employment contracts being fixed to a term of five years. Their attempts to seek clarity through the letters to the Board drew blank. The very issue was raised as a persuasive factor to find urgency. The Court papers received no factual response from the respondents. It is not denied that the contracts of employment do not have expiry dates. The respondents elected not to produce documentation or to make averments to support the decision to terminate the contracts. It is not in dispute that clause 3 of the standard contracts signed by first and second applicants were designed to endure until terminated as provided for in the very contracts. Clause 9 which recognizes various forms of termination of employment, makes no mention of termination on ground of expiry of a five year fixed term contract.

[33] The respondents' contention that the absence of plea of a breach of contract disentitles the applicants a claim of unlawfulness in respect of their termination cannot in my view be sustainable in the context of this matter. By acting in a manner that is contrary to the terms of a contract, on its own amounts to breach which is unlawful. It is immaterial on how it is pronounced. The unlawfulness may as a result occur. The *Court in Ngubeni v National Youth Development Agency & Another*[13] found the employer's conduct to be in breach of contract for termination of the employee's contract in violation of the terms of the contract and concluded at paragraph 21 as follows:

> "[21] In so far as the remaining requirements relevant to the relief sought are concerned, there is no alternative remedy that is adequate in the circumstances. Ngubeni has no right to pursue a contractual claim in the CCMA, and the law does not oblige him to have recourse only to any remedies that he might have under the LRA. Equally, he is fully entitled to seek specific performance of his contract, and is not obliged to cancel the agreement and claim damages. The balance of convenience dictates that the order sought should be granted – there is

[13] [2014] 35 *ILJ* 1356 (LC).

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> little inconvenience to the NYDA should it continue with and complete the disciplinary hearing; the result may well be the same. For Ngubeni, the effect of the NYDA's decision to terminate his employment at this stage is to deprive him of his employment and livelihood. Similarly, I am satisfied that Ngubeni will suffer irreparable harm should the application not be granted. He stands to suffer financially, and the high public profile of this matter (it is not specifically denied that much of the raising of this profile has been at the instance of the NYDA) has ensured that Ngubeni has been branded as corrupt and dishonest, with little prospect of alternative employment."

[34] The above decision was followed with approval in *Somi v Mutual Africa Holdings (Pty) Ltd*[14] where the Court, per Molahlehi J, found the termination of employment unlawful based on the employer's failure to follow the incapacity procedures as stipulated in the employees' contract read with IR policies.

[35] It deserves to be stressed that the third applicant does not have a standard contract similar to that of the first and second applicants. His appointment letter states that he was to sign an employment contract. Does this mean that the absence of the signed standard contract disentitles him a relief in terms of section 77(3) of Basic Conditions of Employment Act? The answer in my view is in the negative. There is no evidence presented to suggest that he was employed on terms that are different to those appearing in the first and second applicants' contracts. Although the first respondent states in the termination letter that there is no contract signed between itself and the third applicant, it is notable in the third applicant's termination letter that the first respondent acknowledges that all its executives have the same terms and conditions of employment. The appointment letter does not stipulate that he was appointed for a limited duration. On this note I do not find any reason to distinguish the third applicant's case from that of the first and second applicants.

[36] Although there are controversies raised as to whether the Department of Transport was represented in the Board when the decision to terminate the

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[14] [2015] 36 *ILJ* 2370 (LC).

contracts was made, with the filing of the actual proof of appointment of Ms Ngwenya signed by the Minister, I find no reason to doubt that the Board was constituted in compliance with the enabling legislation. I therefore attach no weight to the second respondents' media statement made post the date of appointment of Ms Ngwenya that the Director General was the relevant Board member from the Department of Transport.

[37] The resolution sought to be set aside is not attached to the applicants' founding affidavit and there are no details regarding the date on which it was passed. Therefore, there is no case made for the relief sought in respect of the constitution of the Board and the validity of the resolution. The case for all the applicants which remained uncontested has been made from the founding papers. By ruling on whether the supplementary affidavit should be admitted to evidence or not will not change the case that is already established in the founding papers. The respondents' act of terminating the applicants' contracts of employment with immediate effect gives rise to unlawfulness on account of violation of the terms and conditions of the applicants' contracts of employment.

[38] The applicants sought specific performance consequent to the finding of unlawfulness of the termination of contracts. The only specific performance available to the applicants is in the form of reinstatement. There is no evidence to suggest that reinstatement will not be practicable particularly where the dispute is about the restoration of the applicants' rights in terms of the binding contracts of employment. That there is possible civil litigation against the first and second applicants cannot impact on the trust relationship since the matters forming subject of such litigation have been known to the respondents for some years whilst the applicants continued with their ordinary duties.

[39] Regarding costs, the applicants have sought a cost order against the respondents. The respondents equally asked for a cost order against the applicants in the event of a dismissal of the application. In *Zungu v Premier*[15] of the province of KwaZulu-Natal the Constitutional Court restated a developed

[15] 2018 (4) *BLLR* 323 CC at paragraph 24

principle that: *The rule of practice that costs follow the result does not apply in Labour Court matter*. However a cost order may be made in accordance with the requirements of the law and fairness[16].

[40] In this regard there is sufficient course for this Court to make an order of costs against the respondents in view of their conduct as alluded to herein below. Upon receipt of the letters of termination of contracts of employment, all applicants addressed letters to all the respondents. Despite their contestations and reminders to the respondents that at no point did they enter into five year fixed term contracts, they never received any response from the respondents. Their attempts to seek clarity through the letters to the Board resulted in futility. The Court papers received no factual response from the respondents on the merits of the case founded on issues raised in the applicant's letters. The respondents failed to produce evidence to justify the decision to terminate the contracts.

[41] The respondents' above-mentioned conduct is of great concern. In *Gangaram v MEC for the Department of Health, KwaZulu-Natal and Another*[17], Tlaletsi DJP (as he then was) had this to say:

> "[31] There is one matter which is of great concern to me. This relates to the conduct of the respondents' officials in their dealings with the appellant. Most of the time the appellant's letters could not solicit a courtesy of a response from the respondent. This is an unacceptable conduct from a public office such as that of the respondents run on tax payer's funds. The same applies to the failure by the respondents' officials to respond to the appellant's formal application for reinstatement. What is more perplexing is that their failure to respond is subsequently used as a defence to the review application that there had not been a decision taken that can be a subject of review. They

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[16] *Member of the Executive Council for Finance, KwaZulu-Natal v Wentworth Dorkin N.O* [2008] 6 *BLLR* 540 (LAC) at para 19. See also *Martin Vermaak v MEC for Local Government & Traditional Affairs, North West Province* [2017] *ZALA* 2 (10 January 2017)

[17] [2017] 38 *ILJ* 2261 (LC); [2017] 11 *BLLR* 1082 (LAC); at paragraph [31].

> are prepared to use their failure to do what is expected of them to their benefit."

[42] In conclusion, the respondents did not deny the applicants' allegations concerning the meeting held on 25 February 2020 during which the Director General openly said amongst other things, that:

42.1 PRASA was well-resourced to out-litigate any employee challenging their unlawful terminations and that the Administrator should employ the resources of PRASA to out-litigate any employee challenging their unlawful terminations; and

42.2 No individual employee will be able to succeed using their own Personal resources against the resources of the state.

[43] These are serious allegations which needed the respondents to have pleaded to them. In *Kalil NO and Others v Mangaung Metropolitan and Others*[18], Leach JA had this to say:

> "...This is public interest litigation in the sense that it examines the lawfulness of the exercise by public officials of the obligations imposed upon them by the Constitution and national legislation. The function of public servants and government officials at national, provincial and municipal levels is to serve the public, and the community at large has the right to insist upon them acting lawfully and within the bounds of their authority. Thus where, as here, the legality of their actions is at stake, it is crucial for public servants to neither be coy nor to play fast and loose with the truth. On the contrary, it is their duty to take the court into their confidence and fully explain the facts so that an informed decision can be taken in the interests of the public and good governance. As this court stressed in *Gauteng Gambling Board and another v MEC for Economic Development, Gauteng,* our present constitutional order imposes a duty upon state officials not to frustrate the enforcement by courts of constitutional rights."

[18] 2014 (5) *SA* 123 (SCA) para 30

[44] Given the above there exist no reason that costs should not follow the result.

[45] The following order is therefore made:

Order

1. This application is found to be urgent and, insofar as the applicants might not have complied with the Rules of this Court, their failure to do so is condoned, and the Rules relating to forms and service are dispensed with and the application is dealt with as one of urgency.

2. It is declared that the contracts of employment concluded by the applicants and the respondents are extant.

3. It is declared that the respondents' termination of the applicants' contracts of employment by letters addressed to the applicants on 29 January 2021 and on 1 February 2021 is unlawful.

4. The termination of the contracts of the applicants' contracts of employment is set aside.

5. The respondents are ordered to reinstate the applicants with immediate effect and retrospectively from the date of the termination of their contracts of employment.

6. The first respondent is ordered to pay any salaries and benefits due to the applicants from the date on which the contracts of employment were terminated to the date of reinstatement.

7. The respondents are to pay applicants' costs except for costs of 11 February 2021.

Baloyi M

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicants:	Adv. B Makola SC with Adv. Mahlaku and Adv. Mokgotho
Instructed by:	Gwina Attorneys
For the Respondents:	Adv. A Mosam SC with Adv. Phehane
Instructed by:	De Swardt Myambo Attorneys

Media Release

To: All Media
Date: 02 March 2021
Embargo: For Immediate Release

THE BOARD NOTES THE JUDGMENT OF THE LABOUR COURT HANDED DOWN TODAY BY BALOYI AJ.

PRASA will be appealing the judgment of the Acting Judge as the basis of the judgment in favour of the applicants is flawed in Law. PRASA's legal team will be filling the necessary papers before the end of business tomorrow, Wednesday 03 March 2021.

Ends

Issued By:
PRASA Chairperson on behalf of the Board

STAY SAFE
PROTECT SOUTH AFRICA
TOGETHER WE CAN BEAT THE CORONAVIRUS

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Your Ref:

DEPUTY CHIEF JUSTICE ZONDO
THE LEARNED COMMISSIONER
COMMISSION OF INQUIRY INTO STATE CAPTURE

BY E-MAIL

Dear Sir

RE: PASSENGER RAIL AGENCY OF SOUTH AFRICA

1. We represent the Board of Control of Passenger Rail Agency of South Africa ("*the Board of PRASA*").

Introductory facts

2. The current board of PRASA under the chairperson of Leonard Ramatlakane was appointed by the new Minister of Transport on the 16th of September 2020.

3. Ms. Onica Martha Ngoye was dismissed by PRASA on the 29th of January 2021. The reason for the termination of her employment on her employer's version is that her fixed-term contract had terminated by duration of time.

4. Ms. Ngoye is challenging the fairness and legality of her dismissal by PRASA.

Ms Ngoye's evidence at the commission

5. On 23 February 2021, Ms. Ngoye appeared before the Judicial Commission of Inquiry Into Allegations of State Capture, Corruption and Fraud In the Public Sector Including Organs of State ("the Commission") on the premise that she had available evidence and facts relating to corrupt practices at PRASA during the tenure of Mr. Lucky Montana's role as CEO of PRASA, which terminated on the 1st of August 2015 date and the leadership thereafter, but prior to the appointment of the current board.

6. In her testimony, however, Ms. Ngoye sought to link her unhappiness with her termination of employment to the conduct of members of the current Board of PRASA.

7. It is clear from the evidence of Ms. Ngoye apropos the new Board that she wishes to use the platform of the Commission to ventilate issues surrounding her dismissal. Ms. Ngoye testified as follows at the Commission:

> "*Those like myself, regarded by the main actors as dangerous, have been pushed out of their jobs and rendered lepers. When I first came to testify at this Commission, I was an employee of PRASA. But I was ultimately pushed out of the organisation by the Board of PRASA, based on spurious reasons.*"

8. She further testified at the Commission that "*the Board, which has been there for four months, lodged a smear campaign against me, dismissing me unlawfully*".

Submissions

9. Ms. Ngoye has access to justice to challenge the fairness and legality of her dismissal. It is not a matter that should take up the time of this Commission. In fact, she has already had interim success in the Labour Court on this very issue.

10. The circumstances surrounding the dismissal of Ms. Ngoye is unrelated to the business of the Commission and will unnecessarily take up valuable time of the Commission and detract from the Commission's main function in so far as PRASA is concerned. The current Board as pointed out by Ms. Ngoye has been in existence for some four to five months now, and the allegations of corruption and state capture at PRASA predates the arrival of the new board.

Directives

11. On behalf of our client, we request preliminary rulings that Ms Ngoye's testimony in relation to her complains of unfair or unlawful dismissal falls outside the ambit of the business of this Commission.

12. The notices in terms of Rule 3.3 of the Rules of the Judicial Commission of Inquiry Into allegations of State Capture, Corruption and Fraud In The Public Sector Including Organs of State ("*the Rules*") issued to the present Board members be re-visited with a view to withdrawing the notices.

Kind regards

DE SWARDT MYAMBO

per:

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