
STATEMENT

I, the undersigned,

SHARLA CHETTY

do hereby state that:

I have been requested by the Commission to provide a statement in respect of the procurement processes followed by Transnet in the awarding of certain high value tenders to specific entities where I was personally involved in such processes. Accordingly, this statement deals with the procurement process relating to the awarding of the Network Services Master Service Agreement (the MSA) to Neotel (Pty) Ltd.

1. The facts contained in this statement are both true and correct, and within my personal knowledge, unless the context provides otherwise.

INTRODUCTION

2. I qualified as a chartered account in 2000 and joined Transnet in 2003 as the Corporate Financial Accountant at Transnet Port Terminals (TPT), formerly South African Port Operations. My current position is that of Chief Information Officer of TPT. I took up this position from January 2018.



3. During my employment at Transnet I held various senior executive positions in different divisions of Transnet. This includes the following positions: Chief Financial Officer at Transnet Pipelines (TPL), Chief Financial Officer at Transnet Port Terminals (TPT), and Chief Executive of Transnet Pipelines (TPL).
4. During my 15 years of service at Transnet I managed various portfolios and I gained significant experience in IT, procurement and finance. In particular, I gained a sound knowledge of high value tenders (HVT) and the related procurement process. For the period under review (2012) high value tender within Transnet refers to any tender with a value higher than R50 million, this value has subsequently increased to R100 million. The tender for the Network Services Master Services contract falls within the definition of HVT since its estimated total contract value was approximately R1.5 billion.

PROCUREMENT PROCESS AND AWARDING OF THE MSA CONTRACT TO NEOTEL (PTY) LTD

5. In 2013 the former Group Chief Executive of Transnet ("Mr. Molefe") appointed me to act in his position as the Group Chief Executive ("GCE") for the period, 28 October 2013 - 1 November 2013. Mr Molefe delegated his powers to me. **Annexure SC1**
6. In my capacity as the Acting GCE, I was presented with a memorandum for the approval of the procurement process and the awarding of a tender (GSM/13/04/0722) for the provision of Network Services, in accordance with the recommendation made by the Cross Functional Evaluation Team (CFET) to the qualified bidder, Neotel (Pty) Ltd. **Annexure SC2**
7. Due to the fact that I was based in Durban, I was provided with the following documents via email **Annexure SC3** in order to consider the recommendation to approve the procurement process and award of tender:



7.1. Tender Evaluation and Recommendation Report (TEAR) **Annexure SC4;**

7.2. Transnet Internal Audit Reports;

7.2.1. Report 1 – Covering period 6/05/2013 to 14/06/2013 – (Satisfactory report)

Annexure SC5

7.2.2. Report 2 – Covering period 6/05/2013 to 09/06/2013- (Satisfactory report)

Annexure SC6

7.2.3. Report 3 - Covering period 13/08/2013 to 15/10/2013 – (Requires Improvement) **Annexure SC7**

7.3. Excerpt of decision of the Board of Directors of Transnet SOC LTD approving the 2-month extension of the existing Neotel Network Master Services Agreement (MSA) and the transition period capped to a maximum of 12 months from 1 November 2013.

Annexure SC8

8. In my capacity as Acting GCE, I was specifically requested to:

8.1. Approve the procurement process and award of the tender to Neotel (PTY) Ltd

Annexure SC2;

8.2. Sign a Letter of Intent (LOI) for the preferred bidder; **Annexure SC9**

8.3. Sign Letter of Regret for the four (4) unsuccessful bidders; **Annexures SC10-13**

8.4. Sign the letter to extend the current Neotel contract **Annexure SC14**

9. In arriving at a decision, I was supported by Mr Garry Pita, the Group Chief Supply Chain Officer at the time ("Mr Pita"). Mr Pita and I had a telephonic discussion during which he briefed me on the procurement process that was followed for the specific tender.

10. I furthermore studied the documentation that was provided to me and I was satisfied that the documentation was comprehensive and that it explained the procurement process in sufficient detail to enable me to duly exercise my delegated powers to approve the award of the tender.

11. In reaching my decision to award the tender to Neotel, I had placed reliance on the TEAR as well as the Transnet Internal Audit (TIA) reports that had a green status. The issue highlighted in the TEAR report, regarding the rounding-off of the scores, had been sufficiently addressed through the confirmation received from National Treasury.

11.1. The TEAR report discussed the entire procurement process, from stages 1-5 and it highlights any discrepancies that were identified during stage 3, it further clarifies these discrepancies by stating the corrective measures that were taken to resolve it.

11.2. I took further comfort in the fact that Transnet Internal Audit (TIA) (as set out in page 19 of the TEAR) had produced the requisite gateway reports which confirmed that the procurement process was compliant with Transnet policies.

11.3. After I had duly considered all the facts that were presented to me, I did the following on 31 October 2013:

11.3.1.1. Approved the procurement process and awarded the tender to Neotel (PTY) Ltd;

11.3.1.2. Signed the Letter of Intent (LOI) for the preferred bidder, being Neotel;

Annexure SC9

11.3.1.3. Signed the Letters of Regret for the four (4) unsuccessful bidders;

Annexure SC10-13

11.3.1.4. Signed the letter to extend the current Neotel contract in line with the memorandum **Annexure SC14**

11.3.1.5. Approved and signed the memorandum and supporting letters as required by the memorandum. **Annexure SC15**

SUBSEQUENT OVERRIDING OF THE AWARD TO NEOTEL

12. I have been presented by the Commission's investigators with documents that reflect subsequent events after I had awarded the tender to Neotel (PTY), in particular, a memorandum dated 20 November 2013. This memorandum was signed by Mr. Molefe and addressed to Anoj Singh the Group Chief Financial Officer and the Mr. Pita, the Group Supply Chain Officer. **Annexure SC16**

13. The aforesaid memorandum reflects a decision to award the Network Services Master Service tender to T-Systems. Effectively overturning the award, I made on 31 October 2013 to Neotel. Paragraph 26 and 27 of the memorandum states the following:

13.1.1. "....Based on the explanations given above, I request that the group Chief Financial Officer, Group Information Officer and the Group Chief Supply Chain Officer to note my decisions to award the contract to T-Systems South Africa in terms of section 20.5 of the Procurement Procedure Manual (PPM) and that I am overriding the recommendation made in the TEAR report (par 27);

13.1.2. "Please find the following attached:

- i. Signed Letter of Intent to T-Systems South Africa (Annexure G);*
- ii. Signed Letter of Regret to four (4) unsuccessful bidders (Annexure H); and*
- iii. Signed Letter to extend the current Neotel Contract (Annexure I)" Par (27)*

14. Neither Mr. Molefe, nor any of the other officials, consulted with me or informed me that my decision had been overridden /overturned.



CONCLUSION

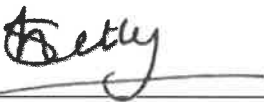
15. Based on my interpretation of paragraph 20.5 of the Procurement Procedures Manual ("PPM") **Annexure SC17**, if Mr Molefe had concerns on the awarding of the tender to Neotel, he should have referred the matter back to the recommending officers or the evaluation team and he should have considered the responses from the recommending officers before making his final decision. In addition, if there is any material risks as per paragraph 20.2.14 of the PPM that the GCE was aware of, he should have requested for a risk evaluation (if not sufficiently addressed) before making his final decision.
16. Mr Molefe did mention in paragraph 7 of the said letter that he had meetings with recommending officers for re-motivation but we have no sight of their responses which should have been reduced to writing for good governance purposes.
17. Mr Molefe reasons provided for overriding the recommending officers' decision are in my opinion not valid for the following reasons:
 - 17.1. Counterparty risk and alienation of state assets – I believed this risk was mitigated based on paragraph 11 of the TEAR and could also have been firmed up in the contractual negotiations.
 - 17.2. Concentration risk – This risk was dealt with in paragraph 2.7 of the TEAR which provides reasons why awarding to a single service provider was more preferable. In addition, awarding the bid to T Systems would actually increase the concentration risk as they were already providing IT services to Transnet. The due diligence report also indicated an amber status for T Systems which indicates that there was a risk of them not being able to fully supply the service to Transnet.
 - 17.3. BBBEE Partners- This component was part of the evaluation criteria and considered in arriving at the recommendation. This should not have been considered in isolation of the other evaluation criteria.
 - 17.4. Information Security Incident – Per the PPM unless a bidder has been disqualified or backlisted you cannot use your contract experience with them to not award



business to them if the process followed was fair and transparent. The incident mentioned should have been managed through the current contract and not be used to prejudice a bidder.

17.5. CCTV Network issues – This should have been dealt with contractually with Neotel if there were issues with their performance. This is contract management and cannot be used to prejudice a bidder.

18. Paragraph 2.4 of the TEAR *Fourth Price Evaluation* **Annexure SC3** clearly indicates that the possible price reductions could not be taken into account as the final pricing had already been submitted. Mr Molefe could not approve that the price reduction be considered as part of T System best and final offer as this prejudices the other bidders and is not considered fair and transparent.



SHARLA CHETTY (MAIDEN PILLAY)

DATE: 12 April 2019