

Our Reference: Mr Johan Kruger

Your Reference: 43/1/2/5/1

Direct Line: +27 83 444 0908

Date: 14 December 2016

Email Address: johan.kruger@bowmanslaw.com

BY E-MAIL

Attention: Mr. Vukani Ndaba

Department:

NATIONAL TREASURY

Republic of South Africa

Private Bag X115

Pretoria

0001

Dear Mr. Ndaba,

PRIVILEGED AND CONFIDENTIAL

INVESTIGATION INTO 20 SELECTED CONTRACTS (AS PER ANNEXURE C TO THE AGREEMENT BETWEEN NATIONAL TREASURY AND BOWMAN GILFILLAN DATED 10 FEBRUARY 2016) ABOVE R10 MILLION AWARDED BY PRASA FROM 2012 TO DATE – SN PROJECT MANAGEMENT CC

1. Bowmans was mandated by National Treasury to investigate 20 PRASA contracts with a value exceeding R20m from 2012 to date.
2. This is our report pertaining to SN Project Management cc investigation.
3. Please do not hesitate to contact me should you require any further information.

Yours faithfully,

Bowman Gilfillan

per: Johan Kruger

Report
Department of National Treasury
PRASA SN Project Management cc
Account: 111228
Control of vegetation along the railway track
in Kwazulu-Natal

December 2016

This document is intended only for the use of the addressees named herein and may contain legally privileged and confidential information. If you are not the intended recipient of this document, you are hereby notified that any dissemination, distribution or copying of this document is strictly prohibited. If you have received this document in error, please immediately notify us by telephone and return the original / copy to us via the postal service. We will reimburse you any cost that you incur in notifying us and returning the document to us. Our telephone number is +27 (11) 669 9000.

EXECUTIVE SUMMARY OF FINDINGS AND OPINION

This executive summary must be read together with the full report, annexures and exhibits in this matter.

Mandate

1. The Public Protector in her report on the Passenger Railway Agency of South Africa ("PRASA") investigation, directed the Office of the Chief Procurement Officer ("OCPO") to conduct forensic investigations in respect of all PRASA contracts above R10 million from 2012 to date.
2. Bowmans was mandated by National Treasury to investigate 20 PRASA contracts above R10 million, awarded by PRASA from 2012 to date, which included *inter alia* the SN Project Management contract.
3. National Treasury selected 20 PRASA contracts to be investigated by Bowmans.

Summary of findings and opinion

Supplier Development Program

4. On 2 May 2012, a request (Request #1) was sent to the Group Chief Executive Officer ("GCEO") to approve the Supplier Development Program ("SDP").
5. This program was intended to provide BBBEE companies an opportunity to develop by working together with well-established companies.
6. The GCEO approved the SDP on 14 May 2012.
7. Nine suppliers were added to the SDP during the first request.
8. Three additional requests were submitted to the GCEO for approval where additional suppliers were added to the SDP:
 - a. Request #2 - 17 suppliers added on 11 December 2012
 - b. Request #3 – 27 suppliers added on 11 December 2013
 - c. Request #4 – 26 suppliers added on 9 January 2015
9. A total of 63 suppliers formed part of the SDP (there were some duplications between the various requests, therefore the total suppliers are less than the number of suppliers added during each request).
10. It is unclear how the SDP suppliers were selected by PRASA.
11. The PRASA Supply Chain Management ("SCM") Policies dated February 2009 and September 2013, respectively, were both silent on the SDP process.

Closed tender - 2014

12. On 28 April 2014, SN Project Management CC, ARS Engineering Projects CC, Asithokozeni Inkhululeko Trading and Hlamalane Projects were invited by PRASA to bid in a closed tender for the Kwazulu-Natal vegetation control contract (the purchase requisition was dated 9 July 2014, which is after the tender invitation was already sent to the three suppliers).
13. According to PRASA, the three suppliers were the only suppliers that offered vegetation control services, and as a result other SDP suppliers were not requested to bid.
14. SN Project Management, ARS Engineering and Asithokozeni submitted bid documents.
15. However, both SN Project Management and ARS Engineering were neither approved as SDP suppliers during the four requests approved by the GCEO as explained above, nor were they listed as suppliers on the SDP contract register.

ARS Engineering Projects CC – possible non-existent entity

16. Bowmans was unable to find any entity registered as ARS Engineering Projects CC.

No signed declaration of interest and confidentiality agreement for Ms Cwayi

17. Ms Cwayi did not sign a declaration of interest form confirming that she had no interest in the tender and bid companies. She also did not sign a confidentiality agreement stating that she will keep the tender information confidential.

Possible tender collusion

18. The TEC members evaluated the bid documents and all the TEC members submitted the exact same evaluation scores for each evaluation criteria.

No security screening report

19. SN Project Management was recommended for approval for the contract. No security screening report was performed and submitted with the recommendation report for approval by the PRASA Rail CEO.

No evidence of quotations/pricing

20. Bowmans has seen no evidence that SN Project Management, ARS Engineering and Asithokozeni submitted quotations/pricing to PRASA for the SDP or for this tender.

Accreditation/"audit"

21. SN Project Management was not accredited prior to being added to the SDP contracts register or prior to the award of the contract, i.e.:
 - a. No audit of the supplier's systems and procedures were performed in order to ensure that the supplier had capacity to deliver services. No assessment of the staff, facilities, equipment and infrastructure of the supplier was performed.

- b. No assessment was performed on the supplier to determine its practical ability to carry out the required maintenance and repairs on the assets.

Contract – 1 October 2014

22. On 1 October 2014, PRASA signed a contract with SN Project Management for the Kwazulu-Natal vegetation control on and off track.
23. In terms of the contract, SN Project Management had to provide PRASA with a performance bond. SN Project Management failed to adhere to this condition precedent.
24. According to Ms. Sarah du Plessis, PRASA SCM: Assistant Manager, only contracts exceeding R100 million has to provide PRASA with a performance bond. The PRASA SCM Policy is however silent on this matter. Therefore, in terms of the contract, SN Project Management was obliged to provide PRASA with a performance bond.
25. The contract with SN Project Management only specified the total contract value. There was no explanation and/or detailed analysis/breakdown of this amount, to specify the rate per square meter for vegetation control.

Payment does not correspond with contract

26. The payment made by PRASA to SN Project Management was not made in terms of the contract.
27. According to the contract, SN Project Management would receive 50% of the contract value, once all of the work was completed and after PRASA inspected the work.
28. However, PRASA paid SN Project Management R1,925,893 (8.5%) after one and a half months of work. PRASA was able to verify the square meters that SN Project Management worked, but was unable to verify the rate used by SN Project Management to bill PRASA.

Not a market related rate

29. The rate SN Project Management charged PRASA was not market related and appeared to be excessive.
30. We received documentation from the PRASA Durban office, which reflected the rate for vegetation control as per the bid documents of other suppliers. The confirmed rate charged therein was much lower than that charged by SN Project Management.

SN Project Management – company information

The following should be noted regarding SN Project Management:

- a. SN Project Management CC has one owner and member.
- b. The business is operated from residential premises.

- c. SN Project Management's business is situated in Klerksdorp but was awarded a Kwazulu-Natal vegetation control contract.
 - d. PRASA has had no contracts with SN Project Management prior to this vegetation control contract.
 - e. The company has no website or internet profile.
31. SN Project Management has no CIDB grading.

Vendor registration information

32. The company was classified as a "Black Women Owned" company on the PRASA vendor registration information system. However, the only director and shareholder of SN Project Management is Mr. Fesi.

Irregularities discovered

The appointment of Vendors in terms of the SDP by PRASA is in contravention of the PRASA SCM policies and the PFMA.

The PRASA Board should consider its legal remedies against the individuals involved with regard to possible disciplinary action, criminal investigation and /or civil recovery of losses. Further investigation will be required in this regard.

Internal control processes as identified in the National Treasury Irregular Expenditure guidelines must be developed and implemented to ensure irregular expenditure is adequately addressed within the organisation in the future.

The identical scoring of the TEC with regard to SN Project Management creates the suspicion that there was at least some collusion or discussion between TEC members with regard to the awarding of this contract.

Contents

1.	BACKGROUND	10
2.	MANDATE, PERIOD, REPORT FORMAT AND QUALIFICATIONS TO OUR REPORT	10
3.	PROCEDURES PERFORMED	12
4.	COMPANY INFORMATION	14
5.	VENDER REGISTRATION INFORMATION.....	15
6.	PRASA SUPPLY CHAIN MANAGEMENT POLICY – FEBRUARY 2009 AND SEPTEMBER 2013	15
7.	PRASA SCM POLICY (FEBRUARY 2009) – UNSOLICITED BIDS (PARA 11.3.3)	15
8.	PRASA SCM POLICY (SEPTEMBER 2013) – CONFINEMENT (PARA 12.3.8)	16
9.	SUPPLIER DEVELOPMENT PROGRAM.....	17
10.	AD HOC CONTRACTORS - PROCEDURES.....	22
11.	AUDIT OF THE SUPPLIER'S SYSTEMS, PROCEDURES AND PRACTICAL CAPABILITY	23
12.	TENDER APPOINTMENT OF SN PROJECT MANAGEMENT CC	23
13.	QUOTATIONS BY SN PROJECT MANAGEMENT, ARS ENGINEERING AND ASITHOKOZENI	30
14.	AGREEMENT BETWEEN PRASA AND SN PROJECT MANAGEMENT DATED 1 OCTOBER 2014	30
15.	AD HOC CONTRACTS FOUND TO BE IRREGULAR AND TERMINATED BY PRASA	32
16.	INTERVIEW – MR SIZWE MAJOLA (SUPERVISOR OF THE PROJECT).....	33
17.	INTERVIEW – MR PHAKAMILE KENNEDY FESI (OWNER OF SN PROJECT MANAGEMENT)	35
18.	PAYMENTS MADE BY PRASA TO SN PROJECT MANAGEMENT	36
19.	MARKET RELATED RATE FOR VEGETATION CONTROL	36
20.	PHYSICAL VERIFICATION OF THE VEGETATION CONTROL.....	37
21.	REMEDIAL ACTION	37
	ANNEXURES.....	38
	EXHIBITS.....	39

Abbreviations

Descriptions and explanations of abbreviations and terms relevant to this report are listed below. These descriptions and explanations are intended to simplify the report content and are not intended to be authoritative.

Abbreviation / term	Description
ARS Engineering	ARS Engineering Projects CC. One of the entities invited by PRASA in a close tender to bid for the Kwazulu-Natal vegetation control contract.
Asithokozeni	Asithokozeni Inkhululeko Trading. One of the entities invited by PRASA in a close tender to bid for the Kwazulu-Natal vegetation control contract.
BBBEE	Broad-Based Black Economic Empowerment as defined in the Broad Based Black Economic Empowerment Act no 53. of 2003.
Bowmans	Bowmans Inc., forensic investigators for National Treasury.
CEO	Chief Executive Officer
COIDA	Compensation for Occupational Injuries and Diseases Act
CIDB	Construction Industry Development Board
GCEO	Group Chief Executive Officer
Mr. Bonongo	Mr. Sydney Bonongo, issued the purchase requisition
Mr. Bopape	Mr. Maishe Bopape, PRASA SCM Senior Manager
Mr. Fesi	Mr. Phakamile Kennedy Fesi. Owner and sole member of SN Project Management.
Mr. Majola	Mr. Sizwe Majola. Supervisor of the SN Project Management contract.
Mr. Luthuli	Mr. Tusani Luthuli. Project Manager of the SN Project Management contract.
National Treasury	The National Treasury of the Republic of South Africa. National Treasury means the National Treasury as established in terms of section 5 of the Public Finance Management Act, 1999 (Act no 1 of 1999).
Notice to proceed	Notice to proceed means an official letter duly signed by an authorised PRASA representative to the contractor instructing the contractor to carry out work.

Abbreviation / term	Description
OCPO	Office of the Chief Procurement Officer
On and off track	On the PRASA railway tracks and next to the railway tracks.
PRASA	Passenger Rail Agency of South Africa
Public Protector	<p>The Public Protector is appointed by the President, on the recommendation of the National Assembly, in terms of Chapter Nine of the Constitution, 1996. The Public Protector is required to be a South African citizen who is suitably qualified and experienced and has exhibited a reputation for honesty and integrity.</p> <p>The Constitution also prescribes the powers and duties of the Public Protector: Further powers, duties and the execution thereof are regulated by the Public Protector Act.</p> <p>The Public Protector has the power to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice.</p>
R	Rand, the RSA currency.
RSA	Republic of South Africa
SCM	Supply Chain Management
SDP	Supplier Development Program. A program PRASA attempted to follow in order to provide BBBEE companies the opportunity to develop by working together with well-established companies.
SN Project Management	SN Project Management CC, registration number 2001/024259/23, was awarded the Kwazulu-Natal vegetation control contract. Mr. Fesi is the owner and sole member of the close corporation.
Shosholozza	Shosholozza Meyl, which operates regional and inter-city rail services.
TEC	Technical Evaluation Committee

1. BACKGROUND

- 1.1 In December 2008, the Passenger Rail Agency of South Africa (PRASA) was established, consolidating all of the passenger rail entities to better manage and aggressively address the underperformance of rail passenger services into an entity that was more modern, efficient and customer-focused.
- 1.2 PRASA is a South African state owned enterprise responsible for most passenger rail services in the country. It consists of four branches:
 - 1.2.1 Metrorail - operates commuter rail services in urban areas;
 - 1.2.2 Shosholoza Meyl - operates regional and inter-city rail services;
 - 1.2.3 Autopax - operates regional and inter-city coach services; and
 - 1.2.4 Intersite - manages the property owned by PRASA.
- 1.3 Operating within six large cities across the country, today PRASA manages over 374 stations and transports over 2.2 million passengers daily through its local metropolitan line and 1.4 million passengers per annum through its main line passenger service.
- 1.4 On 1 October 2014, PRASA signed a contract with SN Project Management for the control of vegetation, on and next to the railway tracks in the Kwazulu-Natal region.
- 1.5 SN Project Management was approved as a supplier for the PRASA Supplier Development Program during 2014. This program attempted to provide BBBEE companies with the opportunity to be empowered by providing services to PRASA on an ad hoc "as and when" basis, which would then create a further opportunity for the BBBEE companies to provide maintenance services for the PRASA rail infrastructure (perway).
- 1.6 On 28 April 2014, PRASA sent SN Project Management, ARS Engineering and Asithokozeni a Request for Proposal in a closed tender for the control of vegetation in the Kwazulu-Natal region.
- 1.7 SN Project Management was successful in its bid and was awarded the PRASA project.
- 1.8 During 2014, the Public Protector investigated various allegations of irregularities at PRASA. The Public Protector found widespread evidence of maladministration, improper conduct and nepotism at PRASA.
- 1.9 The Public Protector in her report on the PRASA investigation, directed the Office of the Chief Procurement Officer (OCPO) to conduct forensic investigations in respect of all PRASA contracts above R10 million from 2012 to date.
- 1.10 Bowmans was mandated to conduct forensic investigations into 20 PRASA contracts, which included *inter alia* the SN Project Management contract.

2. MANDATE, PERIOD, REPORT FORMAT AND QUALIFICATIONS TO OUR REPORT

Mandate

- 2.1 Bowmans was mandated by National Treasury to provide forensic investigation services in respect of PRASA. The principal objectives of our investigation were to:
- 2.1.1 Investigate the procurement processes which were followed in the appointment of the supplier.
 - 2.1.2 Determine whether the appointment of the supplier was made in line with relevant prescripts and were approved by relevant authorities.
 - 2.1.3 Establish where applicable, whether deviations were in-line with relevant prescripts.
 - 2.1.4 Determine whether payments correspond to the respective bid price and/or contractual agreement.
 - 2.1.5 Identify all persons or entities that unduly benefited as a result of irregular conduct.
 - 2.1.6 Advise on the remedial actions which must be taken, in instances of maladministration and/or where improper conduct has been detected.
 - 2.1.7 Provide a report on the findings.
- 2.2 We were not mandated to and did not conduct an audit in compliance with generally accepted auditing standards.

Period under investigation

- 2.3 This investigation covered the period 2010 to 2015.

Report format

- 2.4 Section 3 of the report sets out the work which we have performed. Section 4 onwards deals with our detailed findings.
- 2.5 References in this report in parenthesis are to the various annexures and exhibits, which must be read in conjunction with this report.

Qualifications to our report

- 2.6 This report is provided solely as an internal document, for the addressees and their legal Counsel and to the National Treasury. It may not be used for any other purpose or disseminated to any person without the prior written consent of Bowmans.
- 2.7 Our report deals only with the documentation with which we have been provided, together with other information which we have been able to obtain ourselves from third parties.
- 2.8 In compiling this report, we have accepted and relied on representations from persons and on the authenticity of documents provided to us. In order to make these representations and documents admissible for Court purposes, the authors of the representations and documents would have to confirm these in the relevant Court processes.

- 2.9 Should it come to light that material information has been withheld or additional information is brought to our attention, we have the right to amend our report.

3. PROCEDURES PERFORMED

Documents reviewed

- 3.1 Company search of SN Project Management.
- 3.2 PRASA Supply Chain Management Policy dated February 2009.
- 3.3 PRASA Supply Chain Management Policy dated September 2013.
- 3.4 First request dated 2 May 2012 compiled by Mr Bopape and submitted to the GCEO to approve the Supplier Development Program.
- 3.5 Second request compiled by Dr Daniel Mtimkhulu, the former Executive Manager: Engineering Services, in a Memorandum dated 10 December 2012 sent to the GCEO, whereby he requested the approval of additional suppliers for the Supplier Development Program.
- 3.6 Third request compiled by Dr Daniel Mtimkhulu, the former Executive Manager: Engineering Services, in a Memorandum dated 26 November 2013 sent to the GCEO, where he again requested the approval of additional suppliers for the Supplier Development Program.
- 3.7 Fourth request compiled by the former Group Chief Procurement Officer, Dr Josephat Phungula, sent to the acting GCEO, Ms Martha Ngoye, in a Memorandum dated 12 December 2014, whereby he requested the approval of additional suppliers for the Supplier Development Program.
- 3.8 SDP contracts register
- 3.9 Request sent on 8 December 2015 by Mr Bopape (Supply Chain Management Senior Manager: Rail Operations) and Mr Letsane Rathaba (Acting Executive Manager: Engineering Services) to the Acting GCEO (Mr Nkosinathi Khena), whereby the Acting GCEO was requested to approve that the ad hoc works be finalised in the forthcoming four months, whilst the new tender and procurement processes were put in place.
- 3.10 Tender documentation relating to the appointment of SN Project Manager as the supplier of the vegetation control in the Kwazulu-Natal region.
- 3.11 Agreement between PRASA and SN Project Management dated 1 October 2014 for the vegetation control in the Kwazulu-Natal region.
- 3.12 Termination of contract letters from PRASA to ad hoc suppliers dated April 2016.
- 3.13 SN Project Management creditor account in the accounting records of PRASA.
- 3.14 SN Project Management invoice and other supporting documentation for the payment made by PRASA to SN Project Management.

Interviews Conducted

3.15 We conducted interviews with the following individuals:

Name	Position
PRASA	
Ms. Sarah du Plessis	Assistant Manager: Supply Chain Management
Mr. Sizwe Majola	Senior Engineering Technician, PRASA Rail Durban
SN Project Management	
Mr. Phakamile Kennedy Fesi	Sole owner and member of SN Project Management CC

Other Procedures Performed

- 3.16 Performed a company search on SN Project Management.
- 3.17 Obtained and perused the supply chain management policy and procedures for the period under investigation.
- 3.18 Obtained and perused the four requests relating to the Supplier Development Program.
- 3.19 Obtained copies of all procurement files and related documentation relevant to this SN Project Management vegetation control contract.
- 3.20 Read and reviewed appointment of SN Project Management as supplier of PRASA for the vegetation control in the Kwazulu-Natal region.
- 3.21 Obtained and reviewed the agreement between PRASA and SN Project Management dated 1 October 2014.
- 3.22 Obtained the SN Project Management creditors account in the accounting records of PRASA in electronic format.
- 3.23 Obtained all supporting documentation for the payment made by PRASA to SN Project Management.
- 3.24 Compared SN Project Management's creditor accounts in the accounting records of PRASA to the physical SN Project Management invoice.
- 3.25 Conducted various preliminary interviews with PRASA officials and the SN Project Management sole owner.

3.26 Reviewed the PRASA physical inspection report compiled by Mr Majola and submitted for review to Mr Luthuli when the work was completed and when SN Project Management submitted their invoice to PRASA.

3.27 Compiled a report on our findings.

4. COMPANY INFORMATION

4.1 SN Project Management CC, registration number 2001/024259/23, was founded in 2001 (Exhibit 1).

4.2 SN Project Management only has one member as listed in the table below (Exhibit 1):

#	Director	ID number	Appointment date
1	Phakamile Kennedy Fesi	750520 5438 089	24 March 2004

4.3 SN Project Management's business address is 79 Miemie Street, Klerksdorp. This is a residential address.

4.4 SN Project Management's nature of business according to the company search is stated as "Management of Business Projects" and "Activities auxiliary to financial intermediation" (Exhibit 1).

4.5 Mr Fesi is also a director of the following entities (Exhibit 1a):

#	Entity	Registration number
1	Chrystalpine Investments 23 CC	2001/020617/23
2	Exclusive Access Trading 153 (Pty) Ltd	2005/009782/07
3	Gracias Investments CC	2004/016539/23
4	KMF Farm Holdings (Pty) Ltd	2011/101684/07
5	Lefakedi Trading and Projects CC	2011/080299/23
6	Lilithalethu Trading CC	2003/041309/23
7	Makweteng Communications Media CC	1997/023044/23
8	Manyano Electrical Contractors CC	2003/005659/23
9	Matlotlo Trading 53 (Pty) Ltd	2006/010182/07
10	Nolandu Industries (Pty) Ltd	2006/007205/07

11	Nolandu Waste Management CC	1996/011246/23
12	Phuti Mining CC	2002/044729/23
13	Recycle R US (Pty) Ltd	1992/001031/07
14	Roximark (Pty) Ltd	2008/022547/07
15	Umsobomvu Constructions CC	1998/054572/23

5. VENDER REGISTRATION INFORMATION

- 5.1 According to the PRASA vender registration information, SN Project Management was loaded as a vendor on 9 October 2014 and was approved by Mr Maishe Bopape.
- 5.2 SN Project Management has no CIDB grading.
- 5.3 The company was classified as a "Black Women Owned" company. However, the only director and shareholder of SN Project Management is Mr Fesi.
- 5.4 The core services was described as being "electrical and electronics solutions".
- 5.5 No business address was loaded on the vendor system for SN Project Management.

6. PRASA SUPPLY CHAIN MANAGEMENT POLICY – FEBRUARY 2009 AND SEPTEMBER 2013

- 6.1 The PRASA Supply Chain Management ("SCM") Policy dated February 2009 and September 2013 stipulates that for (Exhibits 2 and 3):
- 6.1.1 All amounts less than R350,000 - a minimum of three written quotes should be obtained from suppliers listed on the PRASA database.
- 6.1.2 All amounts more than R350,000 - a competitive tendering process is applicable.
- 6.2 Exceptions for competitive tendering will only be considered in the following circumstances (Exhibits 2 and 3):
- 6.2.1 In the case of emergency;
- 6.2.2 In the case of a sole source; and
- 6.2.3 In the case of confinements.
- 6.3 Contracts must be awarded for a period of not more than three years except bids for a lease agreement for immovable property which may be awarded for a period of not more of 5 years.

7. PRASA SCM POLICY (FEBRUARY 2009) – UNSOLICITED BIDS (PARA 11.3.3)

- 7.1 According to PRASA's Supply Chain Management Policy dated February 2009, unsolicited bids are generally prohibited unless it is approved for consideration by the GCEO (Exhibit 2).
- 7.2 However, the GCEO should take the following into account (Exhibit 2):
- 7.2.1 That the unsolicited bid is a unique concept or offering.
- 7.2.2 That the offering of the bid cannot be provided efficiently through competitive bidding process.
- 7.2.3 That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited bid.

8. PRASA SCM POLICY (SEPTEMBER 2013) – CONFINEMENT (PARA 12.3.8)

- 8.1 According to paragraph 12.3.8 of the PRASA Supply Chain Management Policy dated September 2013, "Confinement" occurs "where the needs of the business preclude the use of the competitive tendering process and for practical reasons only one or a select number of tenderers are approached to quote for goods and/or services" (Exhibit 3).
- 8.2 Situations where the method of "Confinement" are used include, but are not limited to the following (Exhibit 3):
- 8.2.1 The task that represents a natural continuation of previous work carried out by the firm;
- 8.2.2 An assignment where only one or a limited number of firms are qualified or have experience of exceptional worth for the assignment;
- 8.2.3 Appointment of professional services such as legal, financial, technical contracts and security where unique expertise and/or security are required; and
- 8.2.4 If it is an emergency as defined in clause 12.3.6 (refer below).
- 8.3 The decision to make use of the confinement process has to be motivated by PRASA for approval and ratification by the GCEO (Exhibit 3).

Emergency purchases (Para 12.3.6)

- 8.4 Purchases made for emergency "situations" where competitive tendering would be inappropriate is limited to the following types of situations (Exhibit 3):
- 8.4.1 Disasters (e.g. damage from cyclone, flood, fires, etc.);
- 8.4.2 System failures (including supporting items which could affect the system); and
- 8.4.3 Security risk.
- 8.5 During emergencies the required goods, works or services may be obtained by means of quotations by preferably making use of PRASA's supplier database (Exhibit 3).
- 8.6 A motivation of the emergency purchase has to be submitted by PRASA to the GCEO for ratification (Exhibit 3).

9. SUPPLIER DEVELOPMENT PROGRAM

- 9.1 During 2010, PRASA invited suppliers to bid for various tenders and during an open tender process PRASA obtained bids from interested suppliers for the following tenders (Annexure A):
- 9.1.1 Tender HO/PR/INFR (P) 202/12/2010: Ballast Tamping Machine for Gauteng South;
- 9.1.2 Tender HO/PR/INFR (P) 211/09/2011: Ballast screening of Track Nationally;
- 9.1.3 Tender HO/PR/INFR (P) 301/09/2011: Grinding and Pre-Profiling of Rails Nationally;
- 9.1.4 Tender HO/PR/INFR (P) 209/09/2011: Ballast Regulating of Tracks Nationally.
- 9.2 A formal tender process was followed regarding the four tenders referred to above. PRASA received tenders submitted by interested suppliers (Annexure A).
- 9.3 The tender processes were then put on hold by PRASA (Annexure A).

REQUEST 1

- 9.4 On 2 May 2012, the former Senior Manager of PRASA's Supply Chain Management Department, Mr Maishe Bopape ("Mr Bopape"), drafted a business case recommending that the GCEO approves the strategy for the Supplier Development Program that sought to insist on partnerships between well-established Perway companies and emerging BBBEE companies for a period of three years as part of the awarding of future Perway contracts (Exhibit 4).
- 9.5 Mr Bopape stated in the business case that three companies were appointed by PRASA on an emergency basis to assist PRASA Rail in restoring the rail tracks to acceptable levels of safety and operation. According to Mr Bopape, these companies had continuous monopoly of service provision and participation over a long period of time (Exhibit 4).
- 9.6 According to Mr Bopape, a number of BBBEE companies showed an interest in participating in the maintenance of the PRASA railway tracks. However, because of the massive infrastructure, specialised equipment and training required for effective participation in the sector, some BBBEE companies have been reluctant to invest without first signing contracts with PRASA (Exhibit 4).
- 9.7 Once the BBBEE companies sign contracts with PRASA, it enables the companies to apply for funding at a financial institution (Exhibit 4).
- 9.8 There is insufficient time for the BBBEE company to participate in tenders advertised by PRASA, as it requires at least a year to manufacture the machinery required for the maintenance of the tracks (Exhibit 4).
- 9.9 According to Mr Bopape, the same companies are appointed by PRASA every time at exorbitant cost (Exhibit 4).
- 9.10 Mr Bopape stated that if the emerging BBBEE companies could partner with the well-established construction companies, after a period of three years, the BBBEE companies would

have acquired the necessary skills, expertise, knowledge and competency to stand alone and fairly compete with well-established companies in the tendering process (Exhibit 4).

- 9.11 Nine companies were recommended for consideration by the GCEO for the Supplier Development Program including *inter alia* Mabule Rail and Infrastructure Solutions (Pty) Ltd and 4 Phase Rail Technick that are part of the 20 contracts being investigated by Bowmans (Exhibit 4).
- 9.12 On 14 May 2012, Mr Tshepo Lucky Montana, the GCEO, approved the business case (Exhibit 4).
- 9.13 The GCEO directed as part of his approval that wider internal consultation should include (Exhibit 14 – Memorandum dated 14 March 2013):
- 9.13.1 Leadership by the Office of the Chief Procurement Officer should be the cornerstone of the strategy.
- 9.13.2 PRASA's key business units affected by this process be engaged in the development of the implementation strategy i.e. the Supply Chain Management of PRASA Rail and PRASA Technical.
- 9.14 External consultations were conducted with (Exhibit 14 – Memorandum dated 14 March 2013):
- 9.14.1 Well established companies, i.e. Plasserail (Pty) Ltd, Aveng Manufacturing (Lenning Rail Services) and the Construction Industry Development Board (CIDB);
- 9.14.2 The emerging BBBEE service providers; and
- 9.14.3 Department of Trade and Industry's Rail Transport Equipment Directorate represented by Mrs. Mmetsa Lebelo and Mr. Nicholas Pule.
- 9.15 PRASA would present training to suppliers on the Supplier Development Program. Once the training was completed, the Supplier Development Program suppliers were expected to commence with the implementation of their work packages/streams, during February 2013 (Exhibit 14 – Memorandum dated 14 March 2013).

REQUEST 2

- 9.16 Dr Daniel Mtimkhulu, the former Executive Manager: Engineering Services, in a Memorandum dated 10 December 2012 requested the approval of additional suppliers to the Supplier Development Program (Exhibit 5).
- 9.17 According to Dr Mtimkhulu, there was inadequate technical team support after hours, which added pressure on the limited staff and which resulted in increasing delays in operations (Exhibit 5).
- 9.18 Dr Mtimkhulu stated that urgent interventions was required to assist the technical team to increase the capacity on the call-out basis, based on the negotiated rate with various services provided to minimise delays and on route failures (Exhibit 5).

- 9.19 The submission to the GCEO was to request approval to extend the technical support to 17 (seventeen) service providers (Exhibit 5).
- 9.20 Mr Bopape supported the recommendation by Dr Mtimkhulu on 10 December 2012 (Exhibit 5).
- 9.21 On 11 December 2012, the GCEO, Mr Montana, approved the request (Exhibit 5).

REQUEST 3

- 9.22 The former Executive Manager, Engineering Services, Dr Daniel Mtimkhulu, in a Memorandum dated 26 November 2013, requested the approval of additional suppliers to the Supplier Development Program (Exhibit 6).
- 9.23 According to Dr Mtimkhulu, the staff members and personnel of PRASA were currently engaged in a number of projects and work activities resulting in the organisation being thin on capacity to deal with other priority areas of work (Exhibit 6).
- 9.24 Therefore, PRASA required identified service providers outside of the organisation, to provide services on negotiated rates, to perform adhoc works, in order to provide technical support (Exhibit 6).
- 9.25 Dr Mtimkhulu requested the approval of 27 (twenty-seven) service providers, which included *inter alia* (Exhibit 6):
- 9.25.1 Nandisa Milisa Consulting Services (Pty) Ltd
 - 9.25.2 Dikiza Rail (Pty) Ltd
 - 9.25.3 Y-Rail (Pty) Ltd
 - 9.25.4 Scope Engineering (Pty) Ltd
 - 9.25.5 Mabule Rail and Infrastructure (Pty) Ltd
 - 9.25.6 Maredi Telecoms (Pty) Ltd
- 9.26 The Technical support by the service providers were recommended for a period of two years (Exhibit 6).
- 9.27 Mr Bopape signed the request on 6 December 2013 as proof that he supported the request (Exhibit 6).
- 9.28 Mr Mosenngwa Mofi, CEO PRASA Rail, recommended the request on 6 December 2012 (Exhibit 6).
- 9.29 The GCEO, Mr Montana, approved the request on 11 December 2012 (Exhibit 6).

REQUEST 4

- 9.30 The former Group Chief Procurement Officer, Dr Josephat Phungula, in a Memorandum dated 12 December 2014, requested the approval of additional suppliers for the Supplier Development Program (Exhibit 7).

- 9.31 Prior to 2000, PRASA procured all its rails and rail related perway material from Transwerk which was sold to Voestalpine VAE. Since 2000, PRASA procures all rails and rail related perway material from Voestalpine VAE SA (Pty) Ltd (Exhibit 7).
- 9.32 Voestalpine VAE SA (Pty) Ltd has workshops at Isando, Bloemfontein and Kimberley. VAE SA (Pty) Ltd is currently the sole supplier in the country that provides both PRASA and Transnet and possibly other private companies with all rails and rail related material (Exhibit 7).
- 9.33 According to Dr Phungula, this monopoly has created a number of challengers for PRASA, e.g. VAE SA (Pty) Ltd was unable to honour PRASA's requirement of rails to address an urgent safety related situation in the Western Cape. Upon failure by VAE SA (Pty) Ltd to meet PRASA's urgent requirements, PRASA had to engage an international supplier to supply the required rails (Exhibit 7).
- 9.34 Dr Phungula recommended eight companies, which included *inter alia* Mabule Rail and Infrastructure Solutions (Pty) Ltd and 4 Phase Rail Technick (Pty) Ltd that are part of the 20 contracts being investigated by Bowmans. These companies were recommended and included in the memorandum dated 14 May 2012 (Exhibit 7).
- 9.35 An additional 26 (twenty-six) companies were recommended, which included *inter alia* (Exhibit 7):
- 9.35.1 Active Power (Pty) Ltd
 - 9.35.2 David Sekgobela Rail Engineering Services (Pty) Ltd
 - 9.35.3 Scope Engineering (Pty) Ltd
 - 9.35.4 Y-Rail (Pty) Ltd
- 9.36 These companies were recommended to provide the following services (Exhibit 7):
- 9.36.1 Replacement of rail fasteners
 - 9.36.2 Drainage rehabilitation
 - 9.36.3 Turn-outs replacement
 - 9.36.4 Rails and formation rehabilitation
 - 9.36.5 Overhauling and Transformers
 - 9.36.6 Supply, delivery and installation of concrete sleepers
 - 9.36.7 Rail grinding and profiling
 - 9.36.8 Ultrasonic rail flaw detection and measuring
 - 9.36.9 Provision of on-track machines and maintenance services of the tracks nationally.
- 9.37 The Acting GCEO, Ms Martha Ngoye, approved the request on 9 January 2015 (Exhibit 7).

9.38 At the PRASA Supply Chain Management office a record is kept of all the suppliers selected for the Supplier Development Program and relevant information regarding the contracts. To date, PRASA have a total number of approximately 63 (sixty-three) suppliers registered for the Supplier Development Program. The contracts with the 63 (sixty-three) suppliers amount to more than R1.5 billion in contracts (Exhibit 8).

9.39 All of the suppliers for the Supplier Development Program (except Active Power) were appointed as "Confinement Suppliers". A normal tender process was followed for the appointment of Active Power (Annexure A).

9.40 The table below is a list of the "Confinement Suppliers" that Bowmans was mandated to investigate:

#	Entity	Registration number
1	Dikiza Railway and Civil Engineering CC	2007/041764/23
2	David Sekgobela and Associates	2000/027352/23
3	Langa Lebalele Trading CC	2007/132179/23
4	Nandisa Milisa Consulting Services (Pty) Ltd	2012/078524/07
5	JJ Vacuum CC	2007/001120/23
6	Maredi Telecom and Broadcasting (Pty) Ltd t/a Maredi Telecoms	2006/024830/07
7	Active Power Projects (Pty) Ltd	2002/028820/07
8	Mabule Rail and Infrastructure (Pty) Ltd	2011/149920/07
9	Y-Rail (Pty) Ltd	2014/016370/07
10	S N Project Management CC	2001/024259/23
11	Scope Engineering (Pty) Ltd	2012/115101/07
12	Conogon Trading CC t/a Conogon Engineering	2009/017099/23

9.41 Although SN Project Management, JJ Vacuum CC and Langa Lebalele Trading CC are defined as SDP suppliers, they do not appear and were not approved through the four requests approved by the GCEO and are also not on the SDP supplier contract register.

Memorandum dated 14 March 2013

9.42 The Senior Manager of PRASA Supply Chain Management submitted a request to the GCEO on 14 March 2013. The request was for the approval from the GCEO for (Exhibit 14):

9.42.1 The implementation of the Supplier Development Program.

9.42.2 Request for the confinement of the appointments of the companies identified in the memorandum dated 14 May 2012 as part of the transformation of the Perway sector to allow BBBEE companies to play a significant role in this Perway sector, thus creating competition and addressing the undesirable challenges related to monopoly and the lack of competition in the sector.

9.42.3 Introduce and implement training, development and accreditation program to assist the identified BBBEE companies to execute their mandates in line with PRASA's safety plan and other related requirements in time to ensure systems availability and readiness for the launch of the New Rolling Stock Fleet in 2015.

10. **AD HOC CONTRACTORS - PROCEDURES**

10.1 The ad hoc suppliers/contractors were required to undergo an accreditation process. The purpose of accreditation was to ensure the minimum competency, capacity and facility requirements of any service provider to build, refurbish and supply new material and components for PRASA as required by the Railway Safety Regulatory Act and the SANS 3000-1 Standard for Safety Management (Exhibit 9).

10.2 The first stage of the accreditation entails an audit of the suppliers systems and procedures to ensure capacity to deliver. The staff, facilities, equipment and infrastructure of the supplier is assessed as part of the process (Exhibit 9).

10.3 Apart from the audit, the supplier is assessed on their practical ability to carry out the required maintenance and repairs on the assets. On successful conclusion of this process, the accreditation is issued, and the contractor work quality is monitored on an ongoing basis (Exhibit 9).

10.4 The issuing of work is done on an "as and when" basis where accredited ad hoc contractors are requested to submit quotations based on a technical work list. Work is allocated to service providers considering the quality, repair, turnaround times and warranty repair performance (Exhibit 9).

10.5 Once accredited, the normal process for engaging the contractor is as follows (Exhibit 9):

10.6 The depot assesses the work load on a coach.

10.7 A request is made for development of scope of work.

10.8 All ad hoc contractors are invited for a site briefing where the Quality Assessor develops scope of work jointly with them to minimise variations on execution.

- 10.9 The scope of work is then issued to all the contractors with specific response deadlines and expected mean time to repair.
- 10.10 Before invoicing the payment is done, the work is verified to ensure it is completed as per work list and meets the quality standards.
- 10.11 The job card and an acceptance certificate are then signed off.
- 10.12 The documentation which includes the work list, works order, job card and acceptance certificate is then submitted to finance for payment.
- 10.13 Then the capitalisation documentation is completed and payment requisition documents are validated and signed off by the project manager and Executive Manager for final payment.

11. **AUDIT OF THE SUPPLIER'S SYSTEMS, PROCEDURES AND PRACTICAL CAPABILITY**

- 11.1 There was no supplier audit/accreditation performed by PRASA on SN Project Management. This was confirmed with Mr Khumbulani Khumalo, Engineer of PRASA, on 8 November 2016.

12. **TENDER APPOINTMENT OF SN PROJECT MANAGEMENT CC**

Purchase requisition

- 12.1 On 9 July 2014, Mr Sydney Bonongo ("Bonongo") of the PRASA issued a purchase requisition for the (Exhibit 12):

"1) Supply Development Programme, for Gauteng area east, west, south And north (SDP), service providers"

"2) (SDP) Service provider on grinding and for KZN area"

"All above form part of SDP(s) (Supply Development Programme)" (Exhibit 12).

- 12.2 There was no estimated cost indicated for the project (Exhibit 12).
- 12.3 The requisition was signed by the Requestor, Mr Bonongo, and signed for approval by the Line Manager (there was no name written next to the signature), on 9 July 2014 (Exhibit 12).

Request for proposal

- 12.4 The tender was a closed tender, only intended for certain suppliers listed on the Supplier Development Program. Therefore, the tender was not advertised to the public but only advertised on 28 April 2014 to certain approved Supplier Development Program suppliers (Exhibit 19 - Adjudication Report).
- 12.5 Only SN Project Management, ARS Engineering and Asithokozeni were invited to bid.
- 12.6 However, both SN Project Management and ARS Engineering were not approved as SDP suppliers during the four requests approved by the GCEO as explained above. SN Project

Management and ARS Engineering were also not listed as suppliers on the SDP contract register.

12.7 Bowmans was unable to find an entity registered as ARS Engineering Projects CC.

12.8 Asithokozeni only has one member, namely Mr Andries Jabulani Mashika.

12.9 The Scope of Work according to the Request for Proposal was the following (Exhibit 13):

"This contract covers the control of vegetation by means of chemical herbicides (portable and/or other approved equipment or methods) growing on Metrorail KZN property in the geographical region controlled by the Engineer, to the extent that area(s) treated chemically or otherwise in terms of this contract are rendered, and maintained, free of obstructing vegetation as defined, for the periods specified herein.

The performance due by the Contractor shall include any other work arising out of or incidental to the above or required from the Contractor for the proper completion of the WORKS in accordance with the true meaning and intent of the contract documents.

The Contractor shall obtain his/her own information regarding species, occurrence and extent of vegetation to be controlled in order to comply with the required standards."

12.10 The duration of the contract was for a period of two years (Exhibit 13).

Collection register

12.11 Four companies collected the tender documentation by 6 May 2014, namely (Exhibit 15):

#	Entity	Representative
1	ARS Engineering Projects CC	T.S. Ngwatyu
2	Asithokozeni Inkhululeko Trading	J. Mashika
3	Hlamalane Projects	Buki Dlephu
4	SN Project Management CC	T. Fesi

"Tenders received" register

12.12 PRASA compiled a "tenders received" register that recorded the bid documentation received from the companies before the closing date of the tender (Exhibit 16).

12.13 A total of three companies submitted bid documentation, namely (Exhibit 16):

12.13.1 ARS Engineering

- 12.13.2 Asithokozeni
- 12.13.3 SN Project Management
- 12.14 According to the Adjudication Report, the SDP data based consist of 25 (although the correct number is 63) companies supplying various services, of which only the four companies approached, provide the service required by PRASA. Therefore, PRASA did not approach the other SDP companies listed on the SDP data base (Exhibit 19 - Adjudication report).
- 12.15 This bid documentation was received and opened by Ms Sarah du Plessis and Messrs. Sydney Bonongo and Vukosi Shirinda signed as witnesses (Exhibit 16).
- 12.16 The "tenders received" register was submitted to Messrs. Bonongo and Shirinda (Exhibit 16).

Technical Evaluation Committee members

- 12.17 The following individuals served on the Tender Evaluation Committee ("TEC"), to evaluate the tender bid documentation received from the companies for the vegetation control in Kwazulu-Natal region:
- 12.17.1 Ms. Sarah du Plessis
- 12.17.2 Ms. Phumeza Cwayi
- 12.17.3 Mr. Sydney Bonongo
- 12.17.4 Mr. Vukosi Shirinda

Declaration and confidentiality forms

- 12.18 Three of the four TEC members declared that they had no interest or relationship with the companies that submitted bid documentation for the Kwazulu-Natal vegetation control project (Exhibit 17). Ms Cwayi did not sign her declaration (Exhibit 17).
- 12.19 Furthermore, three of the four TEC members signed confidentiality agreements in which they undertook to keep the information about the tender confidential and not to disclose the tender information to anyone (Exhibit 17). Ms Cwayi did not sign a confidentiality agreement (Exhibit 17).

Evaluation score sheets

- 12.20 On 10 June 2014, all TEC members submitted their evaluation score sheets for the bid documentations submitted by the contractors (Exhibit 18).
- 12.21 The evaluation criteria for the tender bid documentation was the following (Exhibit 20):

Technical evaluation criteria	Weight
Provision and completeness of the safety file	20 points

Technical evaluation criteria	Weight
The BBBEE status of the SDP	10 points
Level of readiness to commence work	35 points
Capability of SDP	25 points
General health of the SDP company	5 points
Tax status of the SDP	5 points
Total	100 points

12.22 The evaluation scores are reflected in the table below (Exhibit 20):

Evaluator	ARS Engineering	Asithokozeni	SN Project Management
Evaluator 1	88.75	48.75	97.5
Evaluator 2	88.75	48.75	97.5
Evaluator 3	88.75	48.75	97.5
Evaluator 4	88.75	48.75	97.5

12.23 As can be seen from the table above, the total evaluation scores were the same for each TEC member and for each company.

12.24 Further, we have also noted that the individual evaluation score sheets for each evaluation criteria reflected the same scores for all the TEC members, as reflected in the table below (Exhibit 18):

TEC member	ARS Engineering	Asithokozeni	SN Project Manager
Provision and completeness of the safety file			
Ms. Phumeza Cwayi	4	2	4
Mr. Vukosi Shirinda	4	2	4
Ms. Sarah du Plessis	4	2	4

Report
 Department of National Treasury
 PRASA SN Project Management cc
 Account: 111228
 Control of vegetation along the railway track
 in Kwazulu-Natal

December 2016

TEC member	ARS Engineering	Asithokozeni	SN Project Manager
Mr. Sydney Bonongo	4	2	4
BEE status of the SDP			
Ms. Phumeza Cwayi	3	3	3
Mr. Vukosi Shirinda	3	3	3
Ms. Sarah du Plessis	3	3	3
Mr. Sydney Bonongo	3	3	3
Level of readiness to commence with the work			
Ms. Phumeza Cwayi	3	1	4
Mr. Vukosi Shirinda	3	1	4
Ms. Sarah du Plessis	3	1	4
Mr. Sydney Bonongo	3	1	4
Capability of the SDP			
Ms. Phumeza Cwayi	4	2	4
Mr. Vukosi Shirinda	4	2	4
Ms. Sarah du Plessis	4	2	4
Mr. Sydney Bonongo	4	2	4
General health of SDP			
Ms. Phumeza Cwayi	3	3	3
Mr. Vukosi Shirinda	3	3	3
Ms. Sarah du Plessis	3	3	3
Mr. Sydney Bonongo	3	3	3

TEC member	ARS Engineering	Asithokozeni	SN Project Manager
Tax status of SDP			
Ms. Phumeza Cwayi	5	5	5
Mr. Vukosi Shirinda	5	5	5
Ms. Sarah du Plessis	5	5	5
Mr. Sydney Bonongo	5	5	5

12.25 As can be seen from the table above, each evaluation criteria, e.g. "Safety file", "BEE status", "level of readiness", were all scored the same by each of the TEC members.

Technical report

12.26 There was no external technical report for this tender process.

Security screening report

12.27 There was no security screening report obtained and performed on SN Project Management at the time when the recommendation report was submitted to the PRASA Rail CEO for approval.

Recommendation report

12.28 On 31 July 2014, the Senior Manager of PRASA Supply Chain Management, Mr Maishe Bopape, submitted a recommendation report to the Chief Executive Officer, Mr Mosengwa Mofi (Exhibit 20).

12.29 The scope of the project was described as (Exhibit 20):

- **Control of Vegetation**
 - Control of Vegetation
 - Rehabilitation of service roads

- **Maintenance of Perway**
 - Renewal of grease spots
 - Tamping cleaning of ballast
 - Formation rehabilitation
 - Renewal of earth bonds

- **Maintenance of Turnouts**
 - *Turnouts replacements and maintenance*
 - *Slips replacement and maintenance*
 - *Diamonds replacement and maintenance*
 - *Replacement and maintenance of Scissors*

- **Track welding**
 - *Skid marks*
 - *Battered ends*
 - *Welding of crossings*
 - *Exothermic joints*

- **Ultrasonic defects**
 - *Replacement of ultrasonic defects*

- **Drainage system**
 - *Maintenance of drainage and cleaning of culverts*

- **Small plant hire**
 - *Provision of small plant and equipment*
 - *Servicing of small plant and equipment*
 - *Repair of small plant and equipment"*

- 12.30 The Senior Manager of PRASA Supply Chain Management, Mr Bopape, based on the TEC's scoring of the bid documentation, recommended on 31 July 2014 to the CEO, that the bid of SN Project Management be approved for the maintenance of infrastructure (perway) in the Kwazulu-Natal region at a total cost of R22.6 million over a period of two years on an "as and when" basis (Exhibit 20).
- 12.31 The CEO, Mr Mosenngwa Mofi, approved the recommendation report on 31 July 2014 (Exhibit 20).
- 12.32 There was no security screening report completed at the time when the recommendation report was signed by the PRASA Rail CEO, Mr Mofi (Exhibit 20).

Tender Advice

- 12.33 On 31 July 2014, a tender advice was sent from the Divisional Tender Procurement Committee by Mrs Sarah du Plessis of Supply Chain Management to Mr Tusani Luthuli, Infrastructure, Engineering Services at the PRASA Durban office (Exhibit 21).

- 12.34 The tender advice confirmed that the contract of SN Project Management of R22.6 million for the maintenance of infrastructure (perway) in the Kwazulu-Natal region was approved on 31 July 2014 (Exhibit 21).
- 12.35 The tender advice was signed Mr Bopape (Exhibit 21).

Letter of intent

- 12.36 On 19 August 2014, Mr Bopape sent a letter to SN Project Management, which stated that PRASA acknowledge receipt of SN Project Management's bid for the maintenance of infrastructure (perway) in Kwazulu-Natal at a total cost of R22,600,000 (Exhibit 22).
- 12.37 In the letter PRASA recognised SN Project Management's status as "*Preferred Contractor*" for the maintenance of infrastructure (perway) in the Kwazulu-Natal region (Exhibit 22).
- 12.38 PRASA stated that it presents an opportunity for SN Project Management to enter into discussion for possible conclusion of a contract for this project. If the discussion would be successful, the "*Preferred Contractor*" status could change to "*Appointed Contractor*" (Exhibit 22).
- 12.39 PRASA afforded SN Project Management fourteen days in order to conclude the discussions regarding the contract with PRASA (Exhibit 22).

Notice to proceed

- 12.40 On 2 October 2014, Mr Bopape submitted a Notice to Proceed to SN Project Manager confirming the approval by PRASA of the maintenance of infrastructure (perway) on an "*as and when*" required basis (Exhibit 23).

Letter of acceptance

- 12.41 SN Project Management sent a letter to PRASA, undated, that accepted the terms and conditions per the contract on the maintenance of infrastructure (perway) in the Kwazulu-Natal Metrorail region for R22.6 million (Exhibit 24).

Rejection letters

- 12.42 Bowmans have not yet received the PRASA letters of regret that were sent to the other unsuccessful companies in this tender process and we have requested the rejection letters from PRASA.

13. QUOTATIONS BY SN PROJECT MANAGEMENT, ARS ENGINEERING AND ASITHOKOZENI

- 13.1 Bowmans has requested but have not received evidence that SN Project Management, ARS Engineering and Asithokozeni submitted quotations for this tender.

14. AGREEMENT BETWEEN PRASA AND SN PROJECT MANAGEMENT DATED 1 OCTOBER 2014

- 14.1 PRASA and SN Project Management signed an agreement for the “*Maintenance of Infrastructure (Perway) on an ‘as and when’ required basis*” on 1 October 2014, contract number HO/PR/INF(P)/258/04/2014 ((Exhibit 25).
- 14.2 The contract value was R22,600,000 (Twenty Two Million Six Hundred Thousand Rand) including VAT (Exhibit 25).
- 14.3 The contract commenced on 1 October 2014 and the date of completion was stipulated as “31 September 2016” (i.e. 24 months) (Exhibit 25).
- 14.4 The agreement between PRASA and SN Project Management was subject to the fulfilment of the conditions precedent within 30 days of the signature date of the agreement (Exhibit 25).
- 14.5 The conditions precedent was that SN Project Management had to deliver a Performance Bond to PRASA prior to 31 October 2014. A “Performance Bond” was defined in terms of the agreement as (Exhibit 25):

“... an unconditional and on demand bank guarantee to the value of 10% of the Contract Price as indicated pursuant to clause 29.5, to be issued by a South African registered bank in favour of the Employer, substantially in the form set out in the RFT or Request of Quotation”.

- 14.6 According to the agreement, the SN Project Management did not have the right to subcontract the entire contract but only a portion of the services subject to the written approval of PRASA (para 15.2.1) (Exhibit 25).
- 14.7 PRASA's written consent prior to the sub-contracting should be obtained (para 15.3.3) (Exhibit 25).
- 14.8 Annexure B under part “A.1 Scope of work” the nature of the agreement was defined as follows (Exhibit 25):

“This contract covers the control of vegetation by means of chemical herbicides (portable and/or other approved equipment or methods) growing on Metrorail KZN property in the geographical region controlled by the Engineer, to the extent that area(s) treated chemically or otherwise in terms of this contract are rendered, and maintained, free of obstructing vegetation as defined, of the period specified herein.

The performance due by the Contractor shall include any other work arising out of or incidental to the above or required from the Contractor for the proper completion of the WORKS in accordance with the true meaning and intent of the contract documents.

The Contractor shall obtain his/her own information regarding species, occurrence and extent of vegetation to be controlled in order to comply with the required standards.”

- 14.9 Measurement of payment for the work completed will be made in three stages as follows during the contract period (part B.10) (Exhibit 25):

"After completion of the initial program of the entire contract area the Technical Office or his/her deputy and the Contractor will measure and evaluate the work performed...The Contractor will thereafter receive payment at 50% of the rates tendered for all work where control as specified has been achieved."

"A second measurement and evaluation will be made concurrent with the second official inspection conducted...The Contractor will thereafter receive payment at 25% of the rates tendered for all work where control as specified has been achieved".

"A third measurement and evaluation will be made concurrent with the third official inspection conducted...The Contractor will thereafter receive payment at 25% of the rates tendered for all work where control as specified has been achieved".

15. **AD HOC CONTRACTS FOUND TO BE IRREGULAR AND TERMINATED BY PRASA**

- 15.1 During December 2015 all confinements were declared irregular by PRASA Internal Audit and all contracts were stopped and/or cancelled with the suppliers. The PRASA Internal Auditors found the ad hoc contracts to be irregular because of the following reasons (Exhibit 9):
- 15.1.1 Non-application of the preferential point system as required by the Preferential Procurement Policy Framework Act in all procurement activities above R30,000. The key issue was the non-application of the 90/10 point system.
- 15.1.2 The sourcing of emerging supplier to be placed on the ad hoc supplier lists for the provision of services to the infrastructure and rolling stock disciplines on an "as and when" basis was non-transparent.
- 15.1.3 Technical capability and capacity of the suppliers placed on the ad hoc supplier lists was not assessed as contractors were appointed on the basis of a confinement.
- 15.1.4 The suppliers placed on the ad hoc lists do not have the CIDB grading applicable to their allocated contract values in case of construction projects.
- 15.2 PRASA provided all the suppliers with letters of regret (Exhibit 10).
- 15.3 On 8 December 2015, Mr Bopape (Supply Chain Management Manager: Rail Operations) and Mr Letsame Rathaba (Acting Executive Manager: Engineering Services) sent a request to the Acting GCEO (Mr Nkosinathi Khena) (Exhibit 9).

15.4 They requested the Acting GCEO to approve the finalisation of the ad hoc works, which would still be in process in the following four months, whilst the new tender and procurement processes are put in place (Exhibit 9).

16. **INTERVIEW – MR SIZWE MAJOLA (SUPERVISOR OF THE PROJECT)**

16.1 Bowmans interviewed Mr Sizwe Majola ("Mr Majola"). During the interview, Mr Majola stated the following (Annexure B):

16.2 Mr Majola is employed as a Senior Engineering Technician by PRASA Rail of the Durban Office, in Kwazulu-Natal.

16.3 He assisted the Project Manager, Mr Tusani Luthuli with the work provided or services rendered by the service provider, SN Project Management to PRASA.

Background

16.4 PRASA entered into an agreement with SN Project Management CC (Contract number HO/PR/INF(P)/258/04/2014). The commencement date was on 1 October 2014 and termination date was "31 September 2016" (i.e. 30 September 2016). The contract price was for an amount of R22, 600,000.00 (Twenty Two Million Six Hundred Thousand Rand) including VAT.

16.5 During October 2014, Mr Majola was tasked by his Manager, Mr Victor Shange, to monitor the services that would be rendered by SN Project Management for the control of vegetation in Kwazulu-Natal region "on and off track", i.e. for the control of vegetation on the rail way track and next to the rail way track.

16.6 Mr Majola attended an initial meeting with the contractor, SN Project Management. However, the work on the project could not commence as the PRASA KwaZulu-Natal Region Office did not have the written contract entered into with SN Project Management.

16.7 The contract describes the scope of work that was required to be performed.

16.8 Prasa Rail Durban Office then requested and obtained the agreement from the Gauteng PRASA office.

16.9 This resulted in SN Project Management commencing with the vegetation control on 24 June 2015.

16.10 During PRASA Rail Durban Office's first meeting with SN Project Management, PRASA was informed by SN Project Management that they would provide services for the control of vegetation.

16.11 According to the agreement entered into with SN Project Management, the contract was for the "Maintenance of Infrastructure (Perway) on an 'as and when' required basis".

16.12 However, under "Nature of Work", it stipulated that the contract was for the control of vegetation and not for the "Maintenance of Infrastructure".

- 16.13 PRASA had a site meeting on 24 June 2015 with SN Project Management and its workers for the induction and the formal site handover. An attendance register was completed and signed during this meeting (Annexure B).
- 16.14 PRASA contracted with SN Project Management to provide control of vegetation in the Kwazulu-Natal region "on and off track" along the following routes:
- 16.14.1 From Durban to KwaMashu;
 - 16.14.2 Rossburgh to Durban;
 - 16.14.3 Rossburgh to Pinetown; and
 - 16.14.4 Umgeni to Springfield.
- 16.15 SN Project Management worked for a month and a half and then submitted Invoice number SN2015-323 dated 21 August 2015 for the amount of R1,925,893.20 (Annexure B).
- 16.16 Some time passed before PRASA Head Office made the payment to SN Project Management.
- 16.17 Mr Majola physically checked the work performed by SN Project Management as claimed for in their invoice submitted.
- 16.18 Mr Majola completed his inspection report dated 20 August 2015 and submitted the report to Mr Tusani Luthuli (Annexure B).
- 16.19 Mr Luthuli then authorised the payment by signing the SN Project Management invoice on 18 September 2015. Mr Luthuli submitted the authorised invoice of SN Project Management for payment to the PRASA Finance Department.
- 16.20 The supplier received payment from PRASA (refer to PRASA Remittance Advice and statement from Supplier) (Annexure B).
- 16.21 According to Mr Majola, SN Project Management's services were expensive. PRASA did not agree a rate per square meter with SN Project Management, as the contract only stipulates the total amount and does not specify the rate per square meter or hectares.
- 16.22 According to Mr Majola, the PRASA Rail Durban Office was only allocated SN Project Management and could not obtain quotations from other suppliers that could have provided a more reasonable price for the work.
- 16.23 PRASA Rail Durban Office decided that after SN Project Management were paid their invoice; PRASA Rail Durban Office would request SN Project Management to provide PRASA with a quotation for any further work. This was communicated to SN Project Management but they were not satisfied with PRASA's new proposal.
- 16.24 SN Project Management did not provide any further services to PRASA. SN Project Management left the site when there was uncertainty which PRASA office had to pay the invoice.

16.25 SN Project Management has neither returned to the site nor delivered any further work for PRASA in Kwazulu-Natal.

17. INTERVIEW – MR PHAKAMILE KENNEDY FESI (OWNER OF SN PROJECT MANAGEMENT)

17.1 Mr Phakamile Kennedy Fesi ("Mr Fesi") is the owner and sole member of SN Project Management CC based at 79 Miemie Street, Klerksdorp. The business is registered with the Registrar of Companies under CK number 2001/024259/23 (Annexure C).

17.2 The main purpose of the business is Project Management, Construction and Electrical works.

17.3 According to Mr Fesi, he learned from PRASA during 2011 and 2012 that PRASA had a Supplier Development Program. Mr Fesi cannot remember who specifically at PRASA informed him about the Supplier Development Program, but according to Mr Fesi, this information was general knowledge within PRASA.

17.4 Mr Fesi then registered his business, SN Project Management, for the Supplier Development Program at PRASA.

17.5 Mr Fesi stated that he had to submit full company details such as Company Profile, Tax Clearance, and COIDA (Compensation for Occupational Injuries and Diseases Act), BBBEE certificates, CIDB (Construction Industry Development Board) information and information regarding previous work completed as references.

17.6 Mr Fesi's understanding is that the purpose of the Supplier Development Program was to develop previously disadvantaged individuals as service providers into the Rail Industry.

17.7 Once SN Project Management was registered as a supplier on the Supplier Development Program, they would submit bid documents every time there was an invitation to tender.

17.8 During 2014, Mr Fesi submitted a bid for "*Off Track Maintenance Contractor*" and was successful with the bid application for the Durban area.

17.9 Mr Fesi stated that he dealt with Mr Tusani Luthuli from the Durban Office. Mr Luthuli delegated his responsibilities to Mr Sizwe Majola and as such Mr Fesi dealt with Mr Majola on a daily basis for the duration of the project.

17.10 The contract number HO/PR/INF(P)/258/04/2014 entered into with PRASA was for the "*Maintenance of Infrastructure (Perway) on an 'as and when' basis*". Mr Fesi confirmed that SN Project Management never performed any Maintenance of Infrastructure. However, SN Project Management did provide Vegetation Control services to PRASA in the following areas:

17.10.1 Durban to Duff Road (52,500 square meters),

17.10.2 Duff Road to KwaMashu (35,000 square meters),

17.10.3 Umgeni to Springfield (35,000 square meters),

17.10.4 Seaview to Pinetown (105,000 square meters), and

- 17.10.5 On Track hectares (56 hectare).
- 17.11 This was the commencement of SN Project Management's contract with PRASA, PRASA first contracted with SN Project Management for the Vegetation Control and the aim was to later utilise SN Project Management for the Maintenance of Infrastructure.
- 17.12 According to Mr Fesi, PRASA took a long time to pay the SN Project Management invoice number SN2015-323 dated 21 August 2015 to the amount of R1,925, 893,20 (Annexure C).
- 17.13 Mr Fesi submitted a letter dated 18 September 2015 to PRASA regarding the slow payment of his invoice (Annexure C).
- 17.14 Subsequent to his letter, SN Project Management received payment from PRASA.
- 17.15 Due to the delay in payment from PRASA, Mr Fesi further submitted a second invoice SN2015-324 for the interest due to late payment. The invoice amounted to R362,260.51. To date, SN Project Management has not received payment from PRASA for the second invoice for the interest charged (Annexure C).
- 17.16 The slow payment from PRASA had the effect that. SN Project Management struggled to pay its workers and service providers. Mr Fesi decided not to do any further work for PRASA.
- 17.17 Mr Fesi understood that PRASA considered the pricing by SN Project Management for the services as excessive and PRASA wanted to renegotiate the pricing.
- 17.18 In SN Project Management's letter to PRASA dated 18 September 2015, it was stipulated that Mr Fesi would be open to negotiation on the pricing.
- 17.19 On 30 November 2015, Mr Fesi received an e-mail message from Mr Luthuli regarding the pricing, wherein he stated that SN Project Management would not be allowed to be on site again before the pricing issue was not resolved (Annexure C).

18. PAYMENTS MADE BY PRASA TO SN PROJECT MANAGEMENT

- 18.1 PRASA made one payment of R1,925,893.20 to SN Project Management for the following invoice (Annexure D)(Exhibits 26 and 27).

Invoice number	Document Date	Amount (Rand)	Text
SN2015-323	2015/08/21	(1 925 893.20)	Rehabilitation of perway off-track systems

- 18.2 This payment of R1,925,893.20 was reconciled to the physical invoice that was submitted by SN Project Management to PRASA during August 2015.

19. MARKET RELATED RATE FOR VEGETATION CONTROL

- 19.1 Bowmans obtained comparative schedules from the PRASA Kwazulu-Natal office that confirm that the market related rate for cutting and removal of vegetation was as low as R0.15 per square meter and R0.22 per square meter for the spraying of weed with herbicides (Exhibit 28).
- 19.2 According to the SN Project Management invoice dated 21 August 2015, they charged PRASA R6.60 per square meter for vegetation control.

20. PHYSICAL VERIFICATION OF THE VEGETATION CONTROL

- 20.1 As a result of the timing difference between when Bowmans commenced the investigation into the SN Project Management project and when the work was completed by SN Project Management, it was not possible for Bowmans to perform a physical verification of the work completed by SN Project Management, as the purpose of the contract was to control the vegetation in Kwazulu-Natal on and next to the rail way track.
- 20.2 Therefore, Bowmans had to rely on the inspection and verification by PRASA at the time when the work was completed by SN Project Management.
- 20.3 Mr Majola inspected the work completed by SN Project Management and compiled a detailed spread sheet "METRORAIL KZN WEEDSPRAY – TRACK AREAS IN HECTARES" (Exhibit 29).
- 20.4 Mr Majola further compiled a summary of the work performed (Exhibit 29).
- 20.5 Mr Majola signed both these documents on 20 August 2015 as proof that the work of SN Project Managements were inspected and that the work was completed successfully.

21. REMEDIAL ACTION

- 21.1 The possible tender collusion between TEC members as referred to above should be further investigated by PRASA.
- 21.2 The appointment of Vendors in terms of the SDP by PRASA is in contravention of the PRASA SCM policies and the PFMA.
- 21.3 The PRASA Board should consider its legal remedies against the individuals involved with regard to possible disciplinary action, criminal investigation and /or civil recovery of losses. Further investigation will be required in this regard.
- 21.4 Internal control processes as identified in the National Treasury Irregular Expenditure guidelines must be developed and implemented to ensure irregular expenditure is adequately addressed within the organisation in the future.

Annexures

The detailed report should be read in conjunction with the annexures listed below. Annexures constitutes the working paper of Bowmans:

Annexure #	Description
A	Notes of interview conducted with Ms. Sarah du Plessis
B	Notes of interview conducted with Mr. Sizwe Majola (Supervisor of the project)
C	Notes of interview conducted with Mr. Phakamile Kennedy Fesi (owner of SN Project Management)
D	SN Project Management invoice paid by PRASA as per the SN Project Management creditors account in accounting records of PRASA compared and agreed to the physical SN Project Management invoice

Exhibits

The detailed report should be read in conjunction with the exhibits listed below. Exhibits are third party documentation obtained from e.g. PRASA and SN Project Management:

Exhibit #	Description
1	Company search of SN Project Management
1a	Director search on Mr. Fesi
2	PRASA Supply Chain Management Policy dated February 2009
3	PRASA Supply Chain Management Policy dated September 2013
4	First request dated 2 May 2012 compiled by Mr. Bopape and submitted to the GCEO to approve the Supplier Development Program.
5	Second request by Dr Daniel Mtimkhulu, the former Executive Manager: Engineering Services, in a Memorandum dated 10 December 2012, whereby he requested the approval of additional suppliers to the Supplier Development Program.
6	Third request by the former Executive Manager: Engineering Services, Dr Daniel Mtimkhulu, in a Memorandum dated 26 November 2013, where he furthermore requested the approval of additional suppliers to the Supplier Development Program.
7	Fourth request by the former Group Chief Procurement Officer, Dr Josephat Phungula, in a Memorandum dated 12 December 2014, whereby he requested the approval of additional suppliers for the Supplier Development Program.
8	SDP contracts register
9	Request sent on 8 December 2015 by Mr. Bopape (Supply Chain Management Senior Manager: Rail Operations) and Mr. Letsane Rathaba (Acting Executive Manager: Engineering Services) to the Acting GCEO (Mr. Nkosinathi Khena), requested the Acting GCEO to approve the finalization of the ad hoc works, which would be in process for the following four months, whilst the new tender and procurement processes were put in place.
10	Termination of contract letters from PRASA to ad hoc suppliers.
11	Tender file check list
12	Purchase requisition dated 9 July 2014

Exhibit #	Description
13	Request for Proposal
14	Memorandum dated 14 March 2013 sent by the Senior Manager of the Supply Chain Management Department to the GCEO
15	Tender collection register with the closing date stated as 6 May 2014
16	Supply Chain Management – tenders received register undated
17	Declaration of interest by TEC members and confidentiality agreements signed by the TEC members
18	TEC members' evaluation score sheets for the bids dated 10 June 2014
19	Adjudication report dated 21 July 2014
20	Supply Chain Management recommendation report dated 31 July 2014
21	Tender advice dated 31 July 2014 from the Divisional Tender Procurement Committee to Mr. Tusani Luthuli, of PRASA Infrastructure, Engineering Services of the PRASA Durban office.
22	Letter of intent dated 19 August 2014 sent from PRASA to SN Project Management
23	Notice to proceed dated 2 October 2014 sent from PRASA to SN Project Management.
24	SN Project Management letter addressed to PRASA accepting the appointment for the Kwazulu-Natal vegetation control contract
25	Agreement between PRASA and SN Project Management dated 1 October 2014
26	SN Project Management creditor account in the accounting records of PRASA
27	SN Project Management invoice and other supporting documentation for the payment made by PRASA to SN Project Management in terms of the Kwazulu-Natal vegetation control contract.
28	Various tender comparisons compiled by the PRASA Kwazulu-Natal office of vegetation control quotations received during the tender processes.

Report
Department of National Treasury
PRASA SN Project Management cc
Account: 111228
Control of vegetation along the railway track
in Kwazulu-Natal

December 2016

Exhibit #	Description
29	Inspection report of Mr. Majola