

INVESTIGATION INTO CERTAIN SUPPLY CHAIN MANAGEMENT AND CONTRACT AWARD IRREGULARITIES BY THE PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA)

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1. GLOSSARY OF TERMS

1.1. Apart from the terms which are defined in this Glossary of Terms, all other capitalised terms shall bear the meaning assigned to them in Derailed –

1.1.1. **“BBBEE Codes”** means the BBBEE Codes of Good Practiced, published in accordance with the BBBEEA

1.1.2. **“BBBEEA”** means the Broad-Based Black Empowerment Act 53 of 2003;

1.1.3. **“Constitution”** means the Constitution of the Republic of South Africa, 1996;

1.1.4. **“Derailed”** means report number 2 of 2015/2016, compiled by the Public Protector;

1.1.5. **“GCEO”** means the Group Chief Executive Officer of the PRASA group of companies;

1.1.6. **“LSSATSA”** means the Legal Succession to the South African Transport Services Act of 1989, as amended in 2008;

1.1.7. **“MTEF”** means the Medium Term Expenditure Framework as set out by the National Treasury of South Africa;

1.1.8. **“NGBE”** means a National Government Business Enterprise, as listed in Schedule 3 Part B of the PFMA;

1.1.9. **“NTM”** means the National Transport Movement;

1.1.10. **“PCCA Act”** means the Prevention and Combating of Corrupt Activities Act 12 of 2004;

1.1.11. **“PPPFA”** means the Preferential Procurement Policy Framework Act 5 of 2000;

1.1.12. **“PPPFA Regulations”** means the regulations in terms of the PPPFA;

1.1.13. **“PFMA”** means the Public Finance Management Act 1 of 1999;

1.1.14. **“PRASA”** means the Passenger Rail Agency of South Africa Limited, a public company established in terms of section 22 of LSSATSA, which is wholly owned by the Government of the Republic of South Africa;

- 1.1.15. **“PRASA SCM Policy”** means the PRASA supply chain management policy, September 2013, Version 3, as compiled by the PRASA Supply Chain Management Department.
- 1.1.16. **“Public Protector”** means the Public Protector of South Africa, an institution established under chapter 9 of the Constitution;
- 1.1.17. **“Report”** means this Report on *“Investigation Into Certain Supply Chain Management And Contract Award Irregularities By The Passenger Rail Agency Of South Africa (PRASA)”* and its annexures, if any;
- 1.1.18. **“SATAWU”** means the South African Transport and Allied Workers Union;
- 1.1.19. **“TGR”** means Tshisevhe Gwina Ratshimbilani Incorporated; and
- 1.1.20. **“Treasury Regulations”** means the Treasury Regulations published under GN R225 in *Government Gazette 27388* of 15 March 2005 (with effect from 15 March 2005);

2. INTRODUCTION

- 2.1. In August 2015, the Public Protector compiled and published a report on an investigation into allegations of maladministration relating to financial mismanagement, tender irregularities and appointment irregularities against PRASA. This report, (entitled **“Derailed”**) was issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 and section 8(1) of the Public Protector Act 23 of 1994.
- 2.2. PRASA is an organ of state listed as a National Government Business Enterprise, in accordance with schedule 3B of the PFMA.
- 2.3. According the Derailed, PRASA reported an accumulated loss of R1 billion for the 2014/2015 financial year and the budget allocation from the South African government to PRASA for the period of 2015/2016 to 2017/2018 amounts to R17.2 billion. Further, the complaints which led to the investigation mostly deal with *“alleged procurement irregularities with the amount involved being more than R2.8 billion”*.¹ It is therefore clear

¹ Ibid.

that the alleged quantum of the complaint is significant in relation to the financial wellbeing of PRASA and its continued sustainability.

2.4. Furthermore, the Public Protector is of the view that –

“PRASA is an important and ... strategic organ of state. Its handling of public finances and procurement of goods and services has implications for efficient and effective public transport delivery in compliance with section 195 of the Constitution. As a public infrastructure provider, PRASA also has implications for the economy.”²

2.5. At this point we wish to note that the Public Protector is an independent constitutional institution which has as its mandate the investigation and redress of improper conduct in state affairs.

2.6. Pursuant to section 182(1) of the Constitution, the Public Protector has the power to –

“(a) 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;

(b) report on that conduct; and

(c) take appropriate remedial action.”

2.7. The Public Protector’s powers are regulated and amplified by the Public Protector Act, 23 of 1994 which states, among others, that the Public Protector has the power to investigate and redress maladministration and related improprieties in the conduct of state affairs.

2.8. Derailed was duly submitted in terms of the relevant legislation referred to in paragraph 2.1 above to the following persons:

2.8.1. The chairman of the PRASA board of directors, Dr P Molefe; and

2.8.2. The former GCEO of PRASA, Mr Tshepo Lucky Montana.

² at 52.

- 2.9. The complaints which led to the investigation being undertaken by the office of the Public Protector were initially lodged by SATAWU in 2012 and were then further pursued by NTM. These complaints specifically alleged the existence of –

*“maladministration and related improper conduct involving procurement irregularities, conflict of interest, nepotism and human resources mismanagement, including victimization of whistle-blowers, by the Group Chief Executive Officer (Mr Montana) and other functionaries at the Passenger Rail Agency of South Africa (PRASA).”*³

- 2.10. After having conducted the investigation and comparing the standards which were upheld and the procedures that were followed with the standards and procedures that ought to have been implemented, the Public Protector prescribed certain remedial action, in terms of section 182(1)(c) of the Constitution, with the view of –

“... placing the Complainant as close as possible to where they would have been had the improper conduct or maladministration not occurred, while addressing systemic procurement management deficiencies in PRASA”.⁴

- 2.11. The remedial action places an active duty on certain persons, in particular it requires, *inter alia* –

2.11.1. *“the Chairman of the PRASA Board to support National Treasury in conducting a forensic investigation into all PRASA contracts above R10 million since 2012 and take measures to address any findings regarding systemic administrative deficiencies allowing maladministration and related improprieties in its procurement system”*;⁵

2.11.2. *“the Acting GCEO of PRASA, together with National Treasury [to] commission a forensic investigation into all PRASA contracts above R10 million since 2012 and take measures to address any findings regarding systemic administrative*

³ Derailed at page 4.

⁴ 387.

⁵ 388.

deficiencies allowing maladministration and related improprieties in its procurement system” (emphasis added);⁶

2.11.3. *“the Chief Procurement Officer of the National Treasury to conduct a forensic investigation into all PRASA contracts above R10 million since 2012”;⁷*

2.12. It is pursuant to these recommendations that TGR has compiled this Report at the request and instruction of National Treasury. This Report aims to execute the recommendation to institute a forensic investigation into the award of PRASA contracts above R10 million since 2012 and to independently advise as to whether or not there has been any deviation from procedures and administrative standards, as alleged.

2.13. Our analysis and thus this Report is limited strictly to the documents provided to us and our evaluation is benchmarked against the standards which are prescribed in the PRASA SCM Policy, the relevant portions of the PFMA and Treasury Regulations, the PPPFA and the PPPFA Regulations, as well as the relevant portions of the Constitution. We therefore set out our findings below.

3. THE STANDARDS FOR PRASA’S PROCUREMENT OF GOODS AND SERVICES AND THE SUPPLY CHAIN MANAGEMENT SYSTEM

3.1. The general principles

3.1.1. PRASA is one of the implementing arms of the National Department of Transport, the latter being the sole shareholder of PRASA, and is primarily focused on the mandate contained in LSSATSA.

3.1.2. PRASA is an NGBE and is subject to certain sections of the PFMA relating to the procurement and supply chain management system requirements for public entities. One of the procurement prescript applicable to PRASA is section 51(1)(a)(iii) of the PFMA which provides that 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.

⁶ 389.

⁷ 389.

- 3.1.3. It is therefore appropriate to provide an overview of the key constitutional provisions, laws, policies and related regulatory instruments that collectively shape the standard of compliance applicable to PRASA for the lawful procurement of goods and services.
- 3.1.4. We note at the onset that in order to avoid a finding of administrative irregularity, the decision maker must have had authority to act, acted within the confines of that authority and followed the procedure prescribed by the authorising instrument should such procedure be prescribed. However, it must be equally noted, as clarified by the Constitutional Court in *Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency*⁸ that deviation per se does not deserve an irregularity finding.
- 3.1.5. Where the authorising instrument permits deviation, a finding of irregularity can only be escaped only if the conduct in question complied with the authority to deviate and remained within the permissible boundaries of the constitutional prescripts for procurement. In other words deviation is permitted under specified conditions and becomes irregular if such specified conditions were not complied with. Conduct that does not comply with prescribed procedure or permissible deviation provisions, it may still escape irregularity if the deviation was not material and the impugned conduct was reasonable rational in the circumstances.

3.2. The Constitution of the Republic of South Africa, 1996

- 3.2.1. The Constitution enjoins PRASA and all other organs of state to ensure that contracts for goods and services are entered into in accordance with a system that is “**fair, equitable, transparent, competitive and cost effective**”. Section 217 of the Constitution provides that:

“(1) 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...”

⁸ *Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency (No 1)* (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC).

(2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for-

(a) categories of preference in the allocation of contracts; and

(b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination...”

3.2.2. Section 33(1) of the Constitution provides that:

“(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

(3) National legislation must be enacted to give effect to these rights and must-

(a) provide for the review of administrative action by a court or, where appropriate,

(b) impose a duty on the state to give effect to the rights in subsections (1) and (2); an independent and impartial tribunal; and

(c) promote an efficient administration”.

3.2.3. When cancelling contracts with service providers, PRASA is required to follow a procedure that is fair, reasonable and also provide written reasons for such cancellation.

3.2.4. The provisions of section 33 of the Constitution also apply to labour administrative actions such as disciplinary action taken against employees.

3.2.5. ***Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency (No 1) (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC)***

3.2.6. In his judgment on 29 November 2013, Justice Froneman held that:

“It is because procurement so palpably implicates socio-economic rights that the public has an interest in it being conducted in a fair, equitable, transparent, competitive and cost-effective manner”.

3.2.7. The Court further held that:

“...deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence insistence on compliance with process formalities has a three-fold purpose: (a) it ensures fairness to participants in the bid process; (b) it enhances the likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influences”.

3.2.8. With regards to compliance with the regulatory framework in procurement, the court held that:

“Compliance with the requirements for a valid tender process, issued in accordance with the constitutional and legislative procurement framework, is thus legally required. These requirements are not merely internal prescripts that SASSA may disregard at whim. To hold otherwise would undermine the demands of equal treatment, transparency and efficiency under the Constitution. Once a particular administrative process is prescribed by law, it is subject to the norms of procedural fairness codified in PAJA. Deviations from the procedure will be assessed in terms of those norms of procedural fairness. That does not mean that administrators may never depart from the system put into place or that deviations will necessarily result in procedural unfairness. But it does mean that, where administrators depart from procedures, the basis for doing so will have to be reasonable and justifiable, and the process of change must be procedurally fair”.

3.2.9. In resorting to procurement under emergency/ urgency provisions state organs cannot rely on lack of planning or self-created urgency to justify deviation from the mandatory competitive and transparent bidding processes.

3.3. **Applicable legislation**

- 3.3.1. Building on section 217 of the Constitution, national legislation seeks to provide public functionaries, principally accounting officers and authorities, with guidance regarding the key elements of a procurement system that is fair, equitable, transparent, competitive and cost effective. Practical measures need to be implemented to ensure that procurement in their organs of state is undertaken in accordance with such a system.
- 3.3.2. The legislative framework, which includes the Preferential Procurement Policy Framework Act 5 of 2000, Broad Based Black Economic Empowerment Act 53 of 2003, the Public Finance Management Act 1 of 1999 and Treasury Regulations, also incorporates elements of financial management, more specifically relating to avoiding financial mismanagement in the procurement of goods and services.
- 3.3.3. The legislative framework basically unpacks the constitutional principles such as fairness, equity, transparency and competitiveness while outlining processes to be followed for a proper procurement process
- 3.3.4. It is worth noting that the six phased Supply Chain Management cycle, incorporating Demand Management, Acquisition Management; Logistics Management; Disposal Management; Risk Management; and Regular Assessment of Supply Chain Performance, that is captured in the PRASA SCM Policy comes from paragraph 16A3.2 of Treasury Regulation which seeks to provide an integrated framework that seeks to simplify compliance with the legal framework for public functionary involved in the procurement of goods and services. It is my considered view that compliance with the PRASA's policy barring the threshold for the procurement of goods without a tender, automatic compliance with the constitutional and legal policy framework. In the same token, a violation of the PRASA SCM Policy translates into contravention of the national legal framework on procurement.

3.4. **Preferential Procurement Policy Framework Act 5 of 2000**

- 3.4.1. The PPPFA, the key legislation, directly giving effect to section 217 of the Constitution principally provides guidance on striking a balance between the weighting of the functionality of goods and services providers, incorporating

pricing and ability to deliver, and considerations of equitable access to state contracts for historically disadvantaged business owners or suppliers.

3.4.2. The PPPFA provides the framework for implementation of preferential procurement policy. Section (2) states that:

“(1) An organ of state must determine its preferential procurement policy and implement it within the following framework:

(a) A preference point system must be followed;

(b) (i) for contracts with a Rand value above a prescribed amount a maximum of 10 points may be allocated for specific goals as contemplated in paragraphs (d) provided that the lowest acceptable tender scores 90 points for price;

(ii) for contracts with a Rand value above a prescribed amount a maximum of 20 points may be allocated for specific goals as contemplated in paragraphs (d) provided that the lowest acceptable tender scores 80 points for price;

(c) any other acceptable tenders which are higher in price must score fewer points, on a pro rata basis, calculated on their tender prices in relation to the lowest acceptable tender, in accordance with a prescribed formula;

(d) the specific goals may include-

(i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability;

(ii) implementing the programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994;

(e) any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender;

(f) the contract must be awarded to the tenderer who scores the highest points, unless objective criteria in addition to those contemplated in paragraphs (d) and (e) justify the award to another tenderer; and

(g) any contract awarded on account of false information furnished by the tenderer in order to secure preference in terms of this Act, may be cancelled at the sole discretion of the organ of state without prejudice to any other remedies the organ of state may have.

(2) Any goals contemplated in subsection 1(e) must be measurable, quantifiable and monitored for compliance”.

3.4.3. The PPPFA is essentially given life through the BBEEA and National Treasury SCM Guidelines.

3.5. **Broad-Based Black Economic Empowerment Act 53 of 2003**

3.5.1. The BBEEA, essentially seeks to redress the legacy of exclusion of black people (as defined in the Act and further defined in the BEE Codes) in the South African economy before the advent of democracy (Before April 27 1994), by imposing preferential for business composition and other equity considerations.

3.5.2. Key provisions of the BBEEA that PRASA the impugned PRASA procurement activities had to comply with include the requirement of a balance between equity and cost effectiveness. The BBEEA is principally implemented through Codes of good practice that provide more elaborate guidelines on appropriate weights to be accorded to enterprise functionality and its BEE profile using points to be allocated during the bid adjudicating and evaluation processes Treasury Regulations integrate the provisions of the BEE Codes with financial management prescripts arising from the PFMA

3.6. **Public Finance Management Act, 1 of 1999**

3.6.1. Although essentially setting standards for financial management, including financial controls, the PFMA’s provisions have enormous compliance implications for and, to some extent; spill over to the regulation of aspects of state procurement. Key provisions in this regard are principally those relating to

fiscal discipline or prudence and the duties imposed on accounting officers and authorities.

3.6.2. It is the PFMA read with Treasury Regulations and guidelines issued under it that bring everything regarding the responsibilities that the PRASA Board and GCEO were required to comply with to escape a finding of maladministration or improper conduct owing to tender and related financial irregularities as alleged in the complaints investigated. Worth noting is that while the GCEO of PRASA is not statutorily the accounting officer as the Board is the accounting authority, through delegations, he has become the accounting officer.

3.6.3. The preamble of the PFMA announce that it seeks:

“To regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in those governments; and to provide for matters connected therewith”.

3.6.4. The PFMA imposes certain basic responsibilities on Accounting officers regarding financial and procurement management. Relevant to the questions that had to be answered in regard to the impugned conduct of the GCEO and other functionaries are principally regulated by section 38 which provides, among others, that:

“The accounting officer for a department, trading entity or constitutional institution—

*(a) must ensure that that department, **trading entity** or constitutional institution has and maintains:*

(i) effective, efficient and transparent systems of financial and risk management and internal control;

(ii) ...

*(iii) **an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;***

- (iv) *a system for properly evaluating all major capital projects prior to a final decision on the project;*
- (b) *is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution;*
- (c) *must take effective and appropriate steps to:*
 - (i) *collect all money due to the department, trading entity or constitutional institution;*
 - (ii) ***prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and***
 - (iii) *manage available working capital efficiently and economically;*
- (d) *is responsible for the management, including the safe-guarding and the maintenance of the assets, and for the management of the liabilities, of the department, trading entity or constitutional institution;*
- (e) ...
- (f) *must settle all contractual obligations and pay all money owing, including intergovernmental claims, within the prescribed or agreed period;*
- (g) *on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender PRASA Board;*
- (h) *must take effective and appropriate disciplinary steps against any official in the service of the department, trading entity or constitutional institution 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 system of the department, trading entity or constitutional institution; or*

(iii) *makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure”*

3.6.5. Section 1 of the PFMA provides for definitions, as follows:

“Fruitless and wasteful expenditure- means expenditure which was made in vain and would have been avoided had reasonable care been exercised;” and

“Irregular expenditure- means expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation”.

3.6.6. Section 51(b)(ii) of the PFMA further provides that an accounting authority for a public entity must take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity.

3.6.7. The same as the PRASA SCM policy, the PFMA, together with the National Treasury Regulations and guidelines, impose a responsibility for demand management, which includes requirement that proper planning be in place when setting out a budget and as a consequence, needs are prioritized and budgeted for. The ideal scenario is a need should be identified, analysed, and included in the strategic planning and therefore budgeted for.

3.6.8. With regard to budgeting, paragraph 52 of the PFMA, directs PRASA to do the following:

“Annual budget and corporate plan for schedule 2 public entities and government business enterprises- The accounting authority for a public entity listed in schedule 2 or a government business entity listed in schedule 3 must submit to the accounting officer for a department designated by the executive authority responsible for that Public entity or government business enterprise,

and to the relevant treasury at least 1 month or another period agreed by National Treasury before start of the financial year

(a) A projection of revenue, expenditure and borrowings for the financial year in the prescribed format; and

(b) A corporate plan in the prescribed format covering the affairs of the public entity or business enterprise for the following three financial years, and if it has subsidiaries, also the affairs of the subsidiaries”.

3.7. Prevention and Combating of Corrupt Activities Act, 12 of 2004

3.7.1. Section 12 of the PCCA Act provides that:

“(1) Any person who, directly or indirectly-

(a) Accepts or agrees or offers to accept any gratification from any person whether for the benefit of himself or herself or for the benefit of that other person or of another person; or

(b) Gives or agrees or offers to give to any person any gratification whether for the benefit of that other person or for the benefit of another person

(i) In order to improperly influence in any way-

(aa) The promotion, execution or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution; or

(bb) The fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or

(ii) as a reward for acting as contemplated in paragraph (a) is guilty of an offence.”

3.8. National Treasury Regulations

3.8.1. The Treasury Regulations, as indicated earlier, integrate all of the constitutional and legislative requirements for procurement and financial management and set out clear guidelines to facilitate legal compliance. It is these regulations that

provide the six phased supply chain management system mentioned earlier and reproduced in the SCM Policy.

3.8.2. Key compliance requirements relevant to the conduct questioned in the PRASA complaints arise from National Treasury Regulations 2005 issued in terms of the PFMA Act of 1999.

3.8.3. Paragraph 16A3.2 of the National Treasury Regulations states that:

“A supply chain management system...must-

(a) be fair, equitable, transparent, competitive and cost effective;

(b) be consistent with the Preferential Procurement Policy Framework Act, 2000;

(c) be consistent with the Broad Based Black Economic Empowerment Act, 2003;
and

(d) Provide for at least the following:-

(i) Demand management;

(ii) Acquisition management;

(iii) Logistics management;

(iv) Disposal management;

(v) Risk management; and

(vi) Regular assessment of supply chain performance.”

3.8.4. Paragraph 16A6.1 of the National Treasury Regulations states that:

“Procurement of goods and services, either by way of quotations or through a bidding process, must be within the threshold values as determined by the National Treasury”

3.8.5. Paragraph 16A6.3 of the National Treasury Regulations states that:

“The accounting officer or accounting authority must ensure that-

(a) Bid documentation and the general conditions of a contract are in accordance with-

(i) The instructions of National Treasury; or

(b) ...

(c) Bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine..."

3.8.6. Paragraph 16A6.4 of the National Treasury Regulations state that:

"If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required good or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority".

3.8.7. According to paragraph 15.10.1.1 of the National Treasury Regulations, the accounting officer is responsible for establishing systems, procedures, processes and training and awareness programmes to ensure efficient and effective banking and cash management.

3.8.8. Paragraph 15.10.1.2 (c) of the National Treasury Regulations provides that for purposes of the regulation, cash management includes avoiding prepayments for goods or services (i.e. payments in advance of the receipt of the goods or services), unless required by the contractual arrangements with the supplier.

3.8.9. Paragraph 33.1.1 of the National Treasury Regulations provides that if an employee is alleged to have committed financial misconduct, the accounting authority of the public entity must ensure that an investigation is conducted into the matter and if confirmed, must ensure that a disciplinary hearing is held in accordance with the relevant prescripts.

3.8.10. Paragraph 33.1.2 of the National Treasury Regulations provides that the accounting authority must ensure that the investigation is instituted within 30 days from the date of discovery of the alleged financial misconduct.

3.8.11. Paragraph 33.1.3 of the National Treasury Regulations provides that if an accounting authority or any of its members is alleged to have committed financial misconduct, the relevant executive authority must initiate an investigation into the matter and if the allegations are confirmed, must ensure that appropriate disciplinary proceedings are initiated immediately.

Budget

3.8.12. Paragraph 5.1 of the National Treasury Regulations makes it mandatory for the Accounting Officer of an institution to prepare a strategic plan for the forthcoming MTEF cycle.

3.8.13. Paragraph 5.2.2 of the National Treasury Regulations requires that the strategic plan include the following:

“5.2.2 The strategic plan must –

(a) Cover a period of three years and be consistent with the institution’s published medium term expenditure estimates;

(b) Include specific Constitutional and other legislative, functional and policy mandates that indicate the output deliverables for which the institution is responsible;

(c) include policy developments and legislative changes that influence programme spending plans over the three-year period;

(d) include the measurable objectives, expected outcomes, programme outputs, indicators (measures) and targets of the institution’s programmes;

(e) include details of proposed acquisitions of fixed or movable capital assets, planned capital investments and rehabilitation and maintenance of physical assets;

(f) include details of proposed acquisitions of financial assets or capital transfers and plans for the management of financial assets and liabilities;

(g) include multi-year projections of income and projected receipts from the sale of assets;

(h) include details of the Service Delivery Improvement Programme;

(i) include details of proposed information technology acquisition or expansion in reference to an information technology plan; and

(j) for departments, include the requirements of Chapter 1, Part III B of the Public Service Regulations, 2001”.

Cash Management

3.8.14. Paragraph 15.10 of the National Treasury Regulations deals with Banking and Cash Management. Sub-regulation 15.10.1.1 states that “The accounting officer is responsible for establishing systems, procedures, processes and training and awareness programmes to ensure efficient and effective banking and cash management”. Sub-regulations 15.10.1.2 (c) further states that for purposes of this regulation, sound cash management includes “avoiding prepayments for goods or services (i.e. payments in advance of the receipt of the goods or services), unless required by the contractual arrangements with the supplier”.

Unauthorised, irregular and fruitless and wasteful expenditure

3.8.15. Paragraph 9.1.1 of the National Treasury Regulations states that:

“An Accounting Authority/Officer of an institution must exercise all reasonable care to prevent and detect unauthorised, irregular, fruitless and wasteful expenditure, and must for this purpose implement effective, efficient and transparent process of financial and risk management”.

3.9. National Treasury Practice Note No: 8 of 2007/2008

3.9.1. The practice note is issued in terms of section 76 (4) (c) of the Public Finance Management Act and is intended to regulate the threshold values within which

accounting officers / authorities may procure goods, works and services by means of petty cash, verbal / written price quotations or competitive bids.

- 3.9.2. Paragraph 3.4.1 of the National Treasury Practice Note 8 of 2007/2008 deals with bids above the R500 000.00 thresholds. It provides that:

“Accounting officers / authorities should invite competitive bids for all procurement above R 500 000”.

- 3.9.3. The National Treasury Practice Note 8 of 2007/2008 further provides at paragraph 3.4.2 that:

“competitive bids should be advertised in at least the Government Tender Bulletin and in other appropriate media should an accounting officer / authority deem it necessary to ensure greater exposure to potential bidders”.

- 3.9.4. Paragraph 3.4.3 of the National Treasury Practice Note 8 of 2007/2008 deals with the issue of urgency or emergency situations. It provides as follows:

“Should it be impractical to invite competitive bids for specific procurement, e.g. in urgent or emergency cases or in case of a sole supplier, the accounting officer / authority may procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4. The reasons for deviating from inviting competitive bids should be recorded and approved by the accounting officer / authority or his / her delegate. Accounting officers / authorities are required to report within ten (10) working days to the relevant treasury and the Auditor-General all cases where goods and services above the value of R1 million (VAT inclusive) were procured in terms of Treasury Regulation 16A6.4. The report must include the description of the goods or services, the name/s of the supplier/s, the amount/s involved and the reasons for dispensing with the prescribed competitive bidding process”.

3.10. The Supply Chain Management Policy of PRASA, September 2013

- 3.10.1. The purpose of the PRASA SCM Policy, dated September 2013, is to give effect to the Constitutional and Legislative requirements by documenting and formalizing the policies relating to SCM within PRASA. It provides for a practical framework

and guidelines for the effective implementation of SCM including preferential procurement.

- 3.10.2. The PRASA SCM Policy referred to in Derailed, is that of February 2009, which remained relevant to the time at which the impugned contracts were awarded by PRASA. We note that the amendments to the PRASA SCM Policy, as reviewed and approved in September 2013 impose largely similar requirements for procurement systems, as compared to the earlier version of February 2009.
- 3.10.3. The PRASA SCM Policy provides for the details and specific requirements of PRASA's SCM system in line with the requirements of the Constitution and other key legislative prescripts for tendering.
- 3.10.4. Subsequent to setting out statement of policy, purpose, aims, objectives and the broader regulatory framework for procurement compliance, the PRASA SCM Policy provides the Code of Conduct for its procurement system in paragraph 8, and states that:

“Code of Conduct

General

All officials and other role players involved in the SCM process must adhere to the National Treasury's Code of Conduct for SCM Practitioners...

In addition, all board committee members must adhere to the PRASA's Code of Conduct...

Bribes and Irregular Offers

Should a bidder or contractor have, in the opinion of PRASA, acted fraudulently, illegally, in bad faith or in any improper manner, with regard to a contract or bid, PRASA may, at its sole discretion, disregard any bid without advising the bidder thereof or cancel the contract without prejudice to any legal rights that PRASA may have.

In the event that there is suspicion that such a situation has arisen, the matter may be brought to the attention of the GCEO and Group Internal Audit.

Corrupt Acts

Should a Corrupt Act be committed in relation to any tender or contract awarded by PRASA, PRASA shall be entitled to-

Terminate such contract and institute legal proceedings;

Cancel the tendering process and institute legal proceedings;

Institute an investigation with regard to the tender or contract awarded; and

Take any other step that it deems necessary to resolve the matter including instituting criminal proceedings.

Declaration of Interest

PRASA employees occupying management roles, from junior management level, and all PRASA SCM officials must declare to the company secretary twice per annum. All PRASA junior staff outside SCM are required to declare once per annum”.

- 3.10.5. According to the PRASA SCM Policy, the following is stated regarding Conflict of Interest clause 8.1:

“A conflict of interest shall exist where any PRASA employee or employee’s Close Family Member, partner or associate:

8.1.1 Has any business interest in any contract to be awarded by PRASA,

*8.1.2 Participates in any activity that might lead to the disclosure of PRASA’s proprietary information in relation to any contract to be awarded by PRASA,
or*

8.1.3 Has any business relationship with any PRASA Contractor and/or supplier,

That employee or role player must disclose that interest to the GCEO and withdraw from participating in any manner whatsoever in the process relating to that contract.

8.1.4 Furthermore, where an employee of PRASA has any business relationship with any third party who has submitted a tender such employee shall notify the GCEO of such conflict and the GCEO may request the employee to recuse himself from the evaluation and award of the contract and/or may appoint an external panel of evaluators from either a national department or other public entity to assist in the evaluation of that contract”.

Roles and responsibilities of PRASA

3.10.6. The roles and responsibilities of the PRASA board is set out in paragraph 9.1 which states that:

“PRASA Board

The Board of PRASA as the Accounting Authority must delegate appropriate powers and duties to the GCEO to enable the GCEO to re-delegate appropriate powers and duties to the CPO as the Head of Supply Chain Management to enable him to:

Discharge the Supply Chain Management responsibilities conferred to him/her in terms of-

9.1.1 PFMA, sections 76 4(c) and 51 (a)(iii);

9.1.2 Regulations in terms of the Public Finance Management Act, 1999 and Framework for Supply Chain Management;

9.1.3 Preferential Procurement Policy Framework Act (5: 2000) and Regulations;

9.1.4 National Treasury Regulations;

9.1.5 Practice Notes issued by Provincial Treasury; and all other applicable legislation”.

3.10.7. Paragraph 9.3 deals with the Group CEO and states that:

“The GCEO has the responsibility to...

9.3.12 Approve appointments, irrespective of value, outside of the normal process in emergency situations or other exceptional circumstances that threaten life, property or equipment or can have a major negative impact on the smooth and safe operation of critical services of PRASA in conjunction with EXCO...”

3.10.8. The roles and responsibilities of the Bid Specification Committee and the Bid Evaluation Committee is set out in paragraphs 9.5 and 9.6, as follows:

“9.5 Bid Specification Committee (BSC)

The members and chairperson of the BSC shall be appointed by the GCEO. The BSC shall have a minimum of five members, two of which shall be SCM officials. The chairperson shall be an SCM official. Depending on the tender(s) under review, officials from the end-user department and/ or suitably qualified specialists may be invited to be part of the BSC for their respective tenders.

The BSC has the following responsibilities:

9.5.1 Review, approve or disapprove all tender specifications for procurement that is above R350 000.00;

9.5.2 Take into account the PRASA preferential procurement targets when formulating specifications;

9.5.3 Ensure that the specifications/tender documents are developed in an unbiased manner to allow all potential tenderers to offer their goods and services without favour or prejudice;

9.5.4 Consider the method followed in procurement and disposal of goods and services, taking due cognizance as far as procedure, substance and value for money is concerned;

9.5.5 Ensure that preference is given to those enterprises that enhance equality of employment opportunity, BEE, business skills and economic conditions of HDI's;

9.5.6 Ensure that appropriate preference point system is determined for evaluation of the tender;

9.5.7 Advise on the deliverables or performance indicators against which the tenderer awarded the contract will be assessed; and

9.5.8 Ensure that specifications/tender documents comply with relevant legislation.

9.6 Bid Evaluation Committee

The Bid Evaluation Committee is a cross functional committee constituted of at least four members who are be appointed on a project by project basis. The members of the Bid Evaluation Committee shall be appointed by the CPO and shall be made up of a minimum of two officials from the SCM Department, one official from finance and one end-user. When it is deemed necessary, independent experts may also be co-opted to a Bid Evaluation Committee in an advisory capacity. Where such independent experts are sought, approval should be sought from the GCEO for corporate, Divisional CEO for the divisions, and Regional Manager for regions.

The Bid Evaluation Committees shall be established to perform the following functions:

9.6.1 Conduct administrative compliance evaluation;

9.6.2 Evaluate all tenders in accordance with the criteria specified in the bid documentations and the prescripts of the PPPFA;

9.6.3 Ensure that all potential suppliers are compliant with all relevant legislation through ensuring the completion of background checks on potential vendors;

9.6.4 Compile evaluation reports for submission to the applicable adjudication committees;

9.6.5 Make recommendations to the applicable adjudication committee regarding the outcome of the evaluation process; and

9.6.6 Maintain records to ensure the existence of an audit trail.

The Bid Evaluation Committee, in performing their functions, also verifies the following:

- The capability/ability of the bidder to execute the contract, from a technical, managerial and financial perspective;*
- Whether the bid is to specification in respect of quality, functionality, dimensions, design, customer support, guarantee, etc.;*
- Whether a bid offers value for money;*

- *Number of contracts awarded to bidder/s in contention during the preceding twelve months;*
- *Allocation of preference points;*
- *Representivity in the composition of the bidder and the possibility of fronting;*
- *Success/failure in executing contracts awarded to a bidder previously;*
- *Tax Clearance certificate issued by the SARS; and*
- *The bidder/s is/are not on National Treasury’s Database of Restricted Suppliers”.*

3.10.9. Paragraph 11 sets out the minimum requires for tenders, as follows:

“11.1 Description

Prescription for minim requirements for tenders.

All tender shall meet the following requirements:

- (a) The evaluation criteria and the weighting thereof;*
- (b) Indicating that minimum qualifying criteria score for functionality;*
- (c) Include the spread sheet that will be used for the evaluation without the weighting thereof;*
- (d) Indicate the tender evaluation process to be followed;*
- (e) Indicate clearly the grounds for disqualification; and*
- (f) List all compliance issues;”.*

Invitation of tenders

3.10.10. Paragraph 12 of the SCM Policy sets out the Acquisition Management system of PRASA, which is “the process of compiling tender documents and criteria, inviting, evaluating and awarding tenders and the eventual management f contracts”.

3.10.11. Paragraph 12.3 of the PRASA SCM Policy sets out the Tendering Methods applicable for Acquisition Management, as follows:

“Tendering methods

Depending on the outcome of the assessment under the demand management, phase the best possible tendering method must be decided upon. The

prescripts of the PPPFA and its associated Regulations should be applied for all procurement equal to or above R30 000.00.

The following methods can be pursued:

12.3.1 Request for Quotation

A request for quotation is allowed for procurement not exceeding R350 000. 00 (Three Hundred and Fifty Thousand Rand). All requisitions above R350 000.00 shall be submitted for the invitation of tenders.

In respect of procurement below R350 000.00, the following will apply:

12.3.1.1 A minimum of three (3) written quotes should be obtained from suppliers on the database. In the event that potential suppliers are not available on the approval Supplier Database, quotations can be obtained from any other suppliers provided the authorization has been granted as prescribed in Clause 12.2.1 above.

12.3.1.2 Requests for quotations must be in writing by means of letter, facsimile or electronically (email), containing precise and detailed specifications from the onset as contained in the authorized Purchase Requisition.

12.3.1.3 If it is not possible to obtain at least three (3) written price quotations, the reasons should be recorded and approved by the CPO or his / her delegate.

12.3.2 Competitive Tendering Process.

A competitive tendering process is applicable when the estimated total value of the requirement is more than R350 000.00. This process must be followed irrespective of the type of service or product required.

Exceptions for competitive tendering will only be considered in the following circumstances:

12.3.2.1 In the case of emergency;

12.3.2.2 In the case of a sole source; and

12.3.2.3 In the case of confinements.

12.3.3 Competitive Data Base

The CPO shall procure, through an open tender process, a Competitive Data Base of professionals which shall be valid for three years and shall:

12.3.3.1 Be procured with rates that professionals will charge over the three years;

12.3.3.2 Have a minimum of five approved professional service providers per area of professional expertise; and

12.3.3.3 The appointment of professionals shall be on a rotational basis to ensure equitable distribution of work and shall be approved by the CPO.

The award of work to professionals on the Competitive Data Base shall be evaluated based on technical proposals each time professional services are required.

12.3.3 Non Competitive Data Base

The CPO shall bi-annually open for registration the data base for goods and services excluding professional services and the Non Competitive Data Base shall:

12.3.4.1 Valid for period of 6 months;

12.3.4.2 Shall be used for quotations for goods and services below R350 000.00 (Three hundred and Fifty Thousand Rand).

12.3.5 Unsolicited Tenders

Unsolicited tenders are generally prohibited unless approved for consideration by the GCEO. In approving their consideration, the GCEO shall take the following into account:

12.3.5.1 That the unsolicited tender is a unique concept offering;

12.3.5.2 That the offering of the tender cannot be provided efficiently through competitive tendering process; and

12.3.5.3 That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited tender.

All unsolicited tenders must be tested in the market through Expression of Interest to ensure that indeed the concept is unique and is the only one available in the market.

12.3.6 Emergency Purchases

Purchases made for emergency “situations” where competitive tendering would be inappropriate is limited to the following types of situations:

12.3.6.1 Disasters (e.g. damage from cyclone, flood, fire, etc.);

12.3.6.2 System failures (including supporting items which could affect the system); and

12.3.6.3 Security risk.

During emergencies, the required goods, works or services may be obtained by means of quotations by preferably making use of PRASA’s supplier database.

A motivation of the emergency purchase should be submitted to the GCEO for ratification.

12.3.7 Sole Source

Sole sourcing exists when there is only one source (supplier) available in the market. A sole source may make a special product or technology that no one else does. Where such a situation exists, competitive tendering is not advisable.

All sole sourcing motivations demonstrating that there is no other supplier available in the market, must be submitted to the GCEO for approval prior to entering negotiations with the sole source.

12.3.8 Confinement

This 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.

Situations where this method is used include, but not limited to the following:

12.3.8.1 The task that represents a natural continuation of previous work carried out by the firm;

12.3.8.2 An assignment where only one or a limited number of firms are qualified or have experience of exceptional worth for the assignment;

12.3.8.3 Appointment of professional services such as legal, financial, technical contracts and security where unique expertise and/ or security are required; and

12.3.8.4 If it's an emergency as defined in clause 12.3.6 above.

The decision to make use of the confinement process shall be motivated for approval and ratification by the GCEO".

3.10.12. Paragraph 12.4.7 of the SCM Policy states the following in respect of invitation for bids:

"Tenders will be advertised in the print media or any publication if and when is necessary.

Tenders will be closed at least three weeks after the date of publication. In exceptional circumstances; a short period may be stipulated. Where this is required; the approval of the GCEO must be sought

No late bids shall be considered as a rule".

3.10.13. According to paragraph 12.7.1 of the SCM policy the following is stated in respect of Appointment of Consultants:

"General

"For the purpose of this policy; the term consultant includes; among others; consulting firms; engineering firms; construction managers; management

firms; procurement agents; inspection agents; auditors; other multinational organization, investment and merchant banks, universities, research agencies, government agencies non- governmental organizations (NGOs) and individuals.

Tendering methods

The bidding methods described above in clause 12.3 will also apply when consultants need to be appointed.

Consultants should not be hired for any assignment that would be in conflict with their prior or current obligation to other clients, or that may place them in a position of not being able to carry out assignment in the best interest of PRASA” (emphasis added).

3.11. National Treasury SCM Guidelines of February 2004

- 3.11.1. In February 2004, the National Treasury, issued a document entitled “Supply Chain Management: A Guide for Accounting Officers/Authorities” (National Treasury SCM Guidelines). The purpose of the National Treasury SCM Guidelines was to give guidance to accounting officers in fulfilling their roles within the SCM framework.
- 3.11.2. Paragraph 3 of the National Treasury SCM Guidelines sets out guidelines in regard to demand management and reads as follows:

“Demand management

3.1 Introduction

3.1.1 Demand management is the first phase of SCM. The objective is to ensure that the resources required to fulfil the needs identified in the strategic plan of the institution are delivered at the correct time, price and place and that the quantity and quality will satisfy those needs. As part of this element of SCM, a total needs assessment should be undertaken. This analysis should be included as part of the strategic planning process of the institution and hence will incorporate the future needs.

3.1.2 It is vital for managers to understand and utilise sound techniques to assist them in their planning, implementation and control activities. As part of the strategic plan of the institution, resources required for the fulfilment of its obligations should be clearly analysed. This includes a detailed analysis of the goods, works and services required, such as how much can be accomplished, how quickly and with what materials, equipment, etc”.

3.11.3. This document is applicable to all accounting officers and contains the following principles:

- (a) The identification of a need is the initiating trigger to a procurement process;*
- (b) The fulfilment of the need should form part of the strategic objectives of the department and a needs analysis should therefore be part of the strategic planning process;*
- (c) Sound techniques should be utilised in conducting the needs analysis; and*
- (d) The need should be linked to the budget.*

3.11.4. Paragraph 1.3.2.2 of the National Treasury SCM Guidelines states that Demand Management is the beginning of the supply chain where:

- (a) a needs assessment is done to ensure that goods or services are acquired in order to deliver the agreed service;*
- (b) specifications are precisely determined;*
- (c) requirements are linked to the budget; and*
- (d) the supplying industry has been analysed.*

3.11.5. This phase will bring the Supply Chain practitioner close to the end user and ensures that value for money is achieved.

3.11.6. Paragraph 4 of the National Treasury SCM Guidelines states the following:

“4.7.5.1 In urgent and emergency cases, an institution may dispense with the invitation of bids and may obtain the required goods, works or services by means of quotations by preferably making use of the database of prospective suppliers, or otherwise in any manner to the best interest of the State.

4.7.5.2 Urgent cases are cases where early delivery is of critical importance and the invitation of competitive bids is either impossible or impractical. (However, a lack of proper planning should not be constituted as an urgent case.)

4.7.5.3 Emergency cases are cases where immediate action is necessary in order to avoid a dangerous or risky situation or misery. The reasons for the urgency/emergency and for dispensing of competitive bids should be clearly recorded and approved by the accounting officer/authority or his/her delegate”.

3.11.7. Paragraph 4.9 ‘Advertising Bids’ of the National Treasury SCM Guidelines states that, “Timely notification of bidding opportunities is essential in competitive bidding. Bids should be advertised for at least 30 days before closure in at least the Government Tender Bulletin and in other appropriate media should an accounting officer/authority deem it necessary to ensure greater exposure to potential bidders except in urgent cases when bids may be advertised for such shorter periods as the accounting officer/authority may determine”.

3.11.8. The general approach in terms of the National Treasury SCM Guidelines dated February 2004 are captured in paragraph 5.4.1, as follows:

“The accounting officer/authority should be responsible for preparing and implementing the project, for selecting the consultant, awarding and subsequently administering the contract. While the specific rules and procedures to be followed for selecting consultants depend on the circumstances of the particular case, at least the following four major considerations should guide the accounting officer’s/authority’s policy on the selection process:

- (a) the need for high-quality services;*
- (b) the need for economy and efficiency;*
- (c) the need to give qualified consultants an opportunity to*
- (d) compete in providing the services; and*
- (e) the importance of transparency in the selection process”.*

3.11.9. Paragraph 5.4.2 states that:

“In the majority of cases, these considerations can best be addressed through competition among firms in which the selection is based both on the quality of the services to be rendered and on the cost of the services to be provided (Quality- and Cost-Based Selection [QCBS]) as described in paragraph 5.9.3. However, there are cases when QCBS is not the most appropriate method of selection. For complex or highly specialized assignments or those that invite innovations, selection based on the quality of the proposal alone (Quality-Based Selection [QBS]), would be more appropriate. Other methods of selection and the circumstances in which they are appropriate are outlined in paragraph 5.10”.

3.11.10. Paragraph 5.4.3 states that:

“The particular method to be followed for the selection of consultants for any given project should be selected by the accounting officer/authority in accordance with the criteria outlined in this guide”.

3.11.11. Paragraph 5.4.4 states that:

“When appropriate, the accounting officer / authority may include under the special conditions of contract, the following or similar condition:

A service provider may not recruit or shall not attempt to recruit an employee of the principal for purposes of preparation of the bid or for the duration of the execution of this contract or any part thereof”.

3.11.12. Paragraph 5.16.1.1.1 states that:

“Any granting of a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15 percent, will be subject to the approval of the accounting officer / authority or his / her delegate”.

3.12. Powers and Authority of the Board and Delegation of Authority

Powers and Duties of the Board

3.12.1. The Board is empowered to exercise all the 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, subject to existing PRASA Policies and the provision set out herein.

3.12.2. The approval of the Board shall be obtained for all matters that are beyond the authority delegated herein.

3.12.3. According to the tender approval there are various categories set out in the Delegation of Authority ranging from R10 million to R100 million for the GCEO.

3.12.4. The threshold for Operating tenders:

GCEO: R100 million;

CEO's of Subsidiaries: R50 million;

CFO: R50 million.

3.12.5. The threshold for Maintenance and material

CEO's of Subsidiaries: R20 million;

CFO: R20 million;

CPO: R10 million.

3.13. *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal (CCT 10/13) [2013] ZACC 49*

3.13.1. The Constitutional court has stated that section 195 of the Constitution imposes a positive duty on state functionaries to take steps to arrest in amending or apparent irregularity or unlawfulness, which duty primarily flows from the requirement of a high professional and ethical standard imposed by section 191(1)(f) and (g). In the case, Justice Skweyiya held that:

“Section 195 provides for a number of important values to guide decision makers in the context of public-sector employment. When, as in this case, a responsible functionary is enlightened of a potential irregularity, section 195 lays a compelling basis for the founding of a duty on the functionary to investigate and, if need be, to correct any unlawfulness through the appropriate avenues.

This duty is founded, inter alia, in the emphasis on accountability and transparency in section 195(1)(f) and (g) and the requirement of a high standard of professional ethics in section 195(1)(a). Read in the light of the founding value of the rule of law in section 1(c) of the Constitution, these provisions found not only standing in a public functionary who seeks to review through a court process a decision of its own department, but indeed they found an obligation to act to correct the unlawfulness, within the boundaries of the law and the interests of justice.

Public functionaries, as the arms of the state, are further vested with the responsibility, in terms of section 7(2) of the Constitution, to “respect, protect, promote and fulfil the rights in the Bill of Rights.” As bearers of this duty, and in performing their functions in the public interest, public functionaries must, where faced with an irregularity in the public administration, in the context of employment or otherwise, seek to redress it. This is the responsibility carried by those in the public sector as part of the privilege of serving the citizenry who invest their trust and taxes in the public administration”.

- 3.13.2. Accordingly, when considering entering into, extending and cancelling contracts, PRASA, was and still is required to exercise a high standard of professional ethics and act in accordance with the duty required of state functionary to correct an irregularity once it is brought to its attention.
- 3.13.3. It is also worth mentioning section 33 of the Constitution imposing a duty on any administrator to ensure just administrative action, incorporating among others, the right to be lawful, reasonable and procedurally fair. This duty is critical with regard to the cancellation of contracts. It does not mean of course that summary cancellation of contracts is prohibited where there are rational reasons and reasonable grounds. The permissibility of reasonable and rational deviations was

canvassed fully by the Constitutional Court in *Allpay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer of the South African Social Security Agency* discussed in detail below.

4. PRASA COMPLIANCE WITH SUPPLY CHAIN MANAGEMENT SYSTEM FOR CONTRACTS AWARDED

4.1. Overview

- 4.1.1. In this part of our report, we review and provide commentary in respect of certain contracts awarded by PRASA and the compliance with the SCM Policy requirements for contracts awarded with a tender value of above R10 million.
- 4.1.2. The aforementioned review applies to the procurement processes followed by PRASA in the award of certain contracts, as provided to us, with the aim to independently advise as to whether or not there has been any deviation from procedures and administrative standards, as alleged.
- 4.1.3. We note at the onset that we have not been provided with full version of the record for most of the contracts awarded by PRASA, in terms of its procurement system, and we therefore highlight the outstanding documents in our review below.

4.2. Siyaya Rail Infrastructure Solutions and Technology (Pty) Ltd⁹

<u>SCM Policy Clause</u>	<u>REQUIREMENTS</u>	<u>Tender Number – HO/INFRA(T) 301/01/2013</u> <u>Digital Railway Signalling Radio System</u> <u>Siyaya Rail Solutions</u>
CONFLICT OF INTEREST		
8.1	<p>A conflict of interest shall exist where any PRASA employee or employee’s Close Family Member, partner or associate:</p> <p>8.1.1 Has any business interest in any contract to be awarded by PRASA,</p> <p>8.1.2 Participates in any activity that might lead to the disclosure of PRASA’s proprietary information in relation to any contract to be awarded by PRASA, or</p> <p>8.1.3 Has any business relationship with any PRASA Contractor and/or supplier,</p> <p>That employee or role player must disclose that interest to the GCEO and withdraw from participating in any manner whatsoever in the process relating to that contract.</p>	<p>The Tender Evaluation Committee signed a “Declaration of Interest by Members” form and a “Confidentiality Agreement”, dated 24 April 2013. We have not had sight of one member’s Declaration of Interest, namely Takalani Mukwevho.</p> <p>Refer further to paragraph 9.6 for the appointment of the Bid Evaluation Committee and the signed declarations of interest.</p>
ROLES AND RESPONSIBILITIES		
SUPPLY CHAIN MANAGEMENT DEPARTMENT		
9.2	<p>SCM has the responsibility, authority and is accountable for, <i>inter alia</i>:</p> <p>9.2.1 The compilation of tender documents;</p> <p>9.2.2 Ensuring the completeness of tender documents;</p>	<p>The Briefing Session Attendance Register demonstrates that the briefing session held by PRASA on 5 February 2013, was attended by 19 different potential bidders.</p>

⁹ The documents provided by PRASA for Siyaya Rail Solutions is contained in Annexure A.

	<p>9.2.3 Arranging and managing tender briefing sessions and handling enquiries from tenderers;</p> <p>9.2.4 Ensuring that all potential suppliers are compliant with relevant legislation through ensuring the completion of background checks on these potential suppliers;</p> <p>9.2.5 Compiling a supplier recommendation report to the relevant adjudication committees;</p> <p>9.2.6 Ensuring that the tender process compiles with policies, procedures and regulations;</p> <p>9.2.7 Maintaining records to ensure the existence of an audit trail.</p>	<p>The Tender Collection Register demonstrates that 26 copies of the tender document were collected, and the payment of R1500 per tender document is accounted for by means of Electronic Funds Transfer receipts being recorded.</p> <p>The PRASA SCM Manager, M Mosholi received confirmation internally from the Head Group Corporate Security, indicating that after a security screening of Siyaya has been assessed and that there are no security reasons to indicate that Siyaya should not be awarded the tender. The internal memorandum is dated, 30 July 2013.</p>
GROUP CHIEF EXECUTIVE OFFICER		
9.3.9	The GCEO has the responsibility to approve tenders up to R100 000 000.00 (One Hundred Million), subject to the applicable Delegation of Authority from time to time.	A Recommendation Report was approved on 26 August 2013, for the award to Siyaya of the tender in the amount of R 69 985 033.00 by the GCEO.
9.4 CHIEF PROCUREMENT OFFICER		
9.4	<p>The CPO has the following responsibilities:</p> <p>9.4.1 Ensuring that PRASA's policies and procedures put in place for procurement are appropriate and in accordance with regulatory framework that regulates PRASA;</p> <p>9.4.2 Maximizing administrative and operational efficiency in the implementation and execution of the Supply Chain Management Policy;</p> <p>9.4.3 Overall management of the SCM function within PRASA;</p> <p>9.4.4 Ensure implementation of SCM Policies and Procedures.</p>	Please refer to paragraph 12.5.1 for the role undertaken by the Chief Procurement Officer for this tender.
9.5 BID SPECIFICATION COMMITTEE		
9.5	The members and chairperson of the BSC shall be appointed by the GCEO. The BSC shall have a minimum of five members, two of which shall be SCM officials. The chairperson shall be an SCM official. Depending on the tender(s) under review, officials from the end-user department and/ or suitably qualified specialists may be invited to be part of the BSC for their respective tenders.	There are no documents to demonstrate that a bid specification committee was established specifically for this tender.

	<p>The BSC has the following responsibilities:</p> <p>9.5.1 Review, approve or disapprove all tender specifications for procurement that is above R350 000.00;</p> <p>9.5.2 Take into account the PRASA preferential procurement targets when formulating specifications;</p> <p>9.5.3 Ensure that the specifications/tender documents are developed in an unbiased manner to allow all potential tenderers to offer their goods and services without favour or prejudice;</p> <p>9.5.4 Consider the method followed in procurement and disposal of goods and services, taking due cognizance as far as procedure, substance and value for money is concerned;</p> <p>9.5.5 Ensure that preference is given to those enterprises that enhance equality of employment opportunity, BEE, business skills and economic conditions of HDI's;</p> <p>9.5.6 Ensure that appropriate preference point system is determined for evaluation of the tender;</p> <p>9.5.7 Advise on the deliverables or performance indicators against which the tenderer awarded the contract will be assessed; and</p> <p>9.5.8 Ensure that specifications/tender documents comply with relevant legislation.</p>	
9.6 BID EVALUATION COMMITTEE		
<p>9.6</p>	<p>The Bid Evaluation Committee is a cross functional committee constituted of at least four members who are be appointed on a project by project basis. The members of the Bid Evaluation Committee shall be appointed by the CPO and shall be made up of a minimum of two officials from the SCM Department, one official from finance and one end-user. When it is deemed necessary, independent experts may also be co-opted to a Bid Evaluation Committee in an advisory capacity. Where such independent experts are sought, approval should be sought from the GCEO for corporate, Divisional CEO for the divisions, and Regional Manager for regions.</p>	<p>The Chief Procurement Officer appointed the Tender Evaluation Committee on 11 April 2013. We have had sight of the signed internal memorandum in this regard, as follows:</p> <ul style="list-style-type: none"> – T Mukwevho (SCM) – S Baltac (Strategic Asset Development) – M Tenza (Finance) – J Edwards (Strategic Asset Development) – L Bayi (Risk) <p>The Tender Evaluation Committee signed a “Declaration of Interest by Members” form and a “Confidentiality Agreement”, dated 24 April</p>

	<p>The Bid Evaluation Committees shall be established to perform the following functions:</p> <p>9.6.1 Conduct administrative compliance evaluation;</p> <p>9.6.2 Evaluate all tenders in accordance with the criteria specified in the bid documentations and the prescripts of the PPPFA;</p> <p>9.6.3 Ensure that all potential suppliers are compliant with all relevant legislation through ensuring the completion of background checks on potential vendors;</p> <p>9.6.4 Compile evaluation reports for submission to the applicable adjudication committees;</p> <p>9.6.5 Make recommendations to the applicable adjudication committee regarding the outcome of the evaluation process; and</p> <p>9.6.6 Maintain records to ensure the existence of an audit trail.</p> <p>The Bid Evaluation Committee, in performing their functions, also verifies the following:</p> <ul style="list-style-type: none"> – The capability/ability of the bidder to execute the contract, from a technical, managerial and financial perspective; – Whether the bid is to specification in respect of quality, functionality, dimensions, design, customer support, guarantee, etc.; – Whether a bid offers value for money; – Number of contracts awarded to bidder/s in contention during the preceding twelve months; – Allocation of preference points; – Representivity in the composition of the bidder and the possibility of fronting; – Success/failure in executing contracts awarded to a bidder previously; – Tax Clearance certificate issued by the SARS; and – The bidder/s is/are not on National Treasury’s Database of Restricted Suppliers. 	<p>2013. We have not had sight of one member’s Declaration of Interest, namely Takalani Mukwevho.</p> <p>Please refer to the commentary under paragraph 12.5.1 for a further analysis of the Tender Evaluation Committee’s functions in terms evaluating the tender.</p>
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9.7 FINANCE, CAPITAL INVESTMENT AND TENDER COMMITTEE (FCP)		
9.7.2	The members and the chairperson of the FCP shall be appointed by the BoC. The FCP shall have a minimum of three Non-Executive Directors and the GCEO. The chairperson shall be a Non-Executive Director. The FCP has the responsibility to consider recommendations from the GCEO for Board approval of tenders above R100 000 000.00 (One Hundred Million Rand).	Not applicable to this tender, the value of which is below R100 000 000.00.
9.8 Corporate Tender and Procurement Committee (CTPC)		
9.8.3	The CTPC is established with the objective to perform the functions as indicated below. The CTPC is a cross-functional committee appointed by the GCEO. It shall be comprised of at least six members each with an alternate member, and not more than eight of whom at least two members are SCM Practitioners and one from Finance. The chairperson of the CTPC shall be appointed by the GCEO. The CTPC's primary function is to adjudicate tenders that are above R10 000 000.00 (Ten Million Rand) but below R100 000 000.00 (One Hundred Million Rand).	<p>We have had sight of the Submission for Adjudication from the Tender Evaluation Committee, as signed by General Manager: SCM, undated, which seeks to request that the Corporate Tender Procurement Committee appoints Siyaya as the successful tenderer for an amount of R78 583 734.00.</p> <p>However, it is not clear why the amount presented to the CTPC differs from the contract awarded by the GCEO at R69 985 033.00.</p>
10. DEMAND MANAGEMENT		
10.1	Requisition for goods and services All requisitions for the issuing or acquisition of material and / or service shall be completed electronically.	There are no documents provided to demonstrate that a requisition or purchase order was generated for the tendered services.
10.2	Needs Assessment A need assessment will be performed for all purchasing by the End user at the beginning of each financial year and prior to embarking on the procurement process. The assessment will take due cognizance of: 10.2.1 Future and current need requirements; 10.2.2 Identification of critical delivery dates; 10.2.3 The frequency of need;	There are no documents provided to demonstrate that a needs assessment was conducted.

	<p>10.2.4 Budget availability; 10.2.5 Expenditure analysis(based on past expenditures); 10.2.6 Specifications; 10.2.7 Commodity analysis (checking for alternatives); 10.2.8 The strategic plan of PRASA; and 10.2.9 Industry analysis.</p>	
10.3	<p>Procurement Strategy SCM will develop a procurement strategy, taking due cognizance of the nature of the commodity or service required, the conditions of delivery, the prospective suppliers and the goals to be promoted as contemplated in the PPPFA and the BBBEE Act Procurement strategies might include, among others, the following: 10.3.1 Utilizing term contracts; 10.3.2 Local versus international buying; 10.3.3 Utilizing local black business with clear targets that reflect the – Targeted percentage of HDI’s owning local enterprises or SMME’s; and – Actual support of HDI and SMME’s; and 10.3.4 Utilising a paper-based tendering system, this may include obtaining quotations, inviting competitive tenders, prequalification of tenderers and two stage tendering.</p>	<p>There are no documents provided to demonstrate that a procurement strategy was developed for the particular services required in terms of this tender.</p>
10.4	<p>Specification of goods/works or services Standards and technical specifications quoted in tendering documents must promote the broadest possible competition, while assuring that critical elements of performance or other requirements for the goods, services and /or works being procured are achieved. Specifications must be based in relevant characteristics and/or performance requirement. References to brand names, catalogue</p>	<p>There are no documents provided which demonstrate the standard specifications employed for this tender.</p>

	numbers, or similar classifications should in all instances be avoided unless authorized as such by the CPO.	
11. MINIMUM REQUIREMENTS		
11.1	<p>Description Prescription for minimum requirements for tenders. All tenders shall meet the following requirements: (a) The evaluation criteria and the weighting thereof; (b) Indicate that minimum qualifying score for functionality; (c) Include the spread sheet that will be used for evaluation without the weighting thereof; (d) indicate the tender evaluation process to be followed; (e) indicate clearly the grounds for disqualification; and (f) list all compliance issues.</p>	The full tender document has not been provided and therefore compliance with the minimum requirements cannot be confirmed.
12. ACQUISITION MANAGEMENT		
12.2 Approved supplier database		
12.2.1	<p>SCM shall develop and maintain an Approved Supplier Database. In pursuance of this requirement, SCM shall:</p> <p>12.2.1.1 Categorize the suppliers on the database according to the goods / services they provide, HDI status, locality, and a record of past performance indicating whether the supplier has been restricted or not; 12.2.1.2 Ensure that the supplier database is kept up to date; 12.2.1.3 Annually, through newspapers commonly circulating locally, corporate website and any other appropriate ways, invite prospective suppliers of goods and services, construction works and consultancy services to apply for listing as accredited prospective suppliers; and 12.2.1.4 This database must be used for the purpose of obtaining quotations.</p> <p>Only in the event where none of the suppliers can meet the requirements of the quote should quotations be obtained from</p>	Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.

	outside the Approved Supplier Database. A motivation to obtain quotes from suppliers not on the database is lodged with the CPO for approval before sending the quotes to the suppliers.	
12.3 Tendering Methods		
12.3.1.	<p>Request for quotation</p> <p>A request for quotation is allowed for procurement not exceeding R350 000. 00 (Three Hundred and Fifty Thousand Rand). All requisitions above R350 000.00 shall be submitted for the invitation of tenders.</p> <p>In respect of procurement below R350 000.00, the following will apply:</p> <p>12.3.1.1 A minimum of three (3) written quotes should be obtained from suppliers on the database. In the event that potential suppliers are not available on the approval Supplier Database, quotations can be obtained from any other suppliers provided the authorization has been granted.</p> <p>12.3.1.2 Requests for quotations must be in writing by means of letter, facsimile or electronically (email), containing precise and detailed specifications from the onset as contained in the authorized Purchase Requisition.</p> <p>12.3.1.3 If it is not possible to obtain at least three (3) written price quotations, the reasons should be recorded and approved by the CPO or his / her delegate.</p>	Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.
12.3.2.	<p>Competitive tendering process</p> <p>A competitive tendering process is applicable when the estimated total value of the requirement is more than R350 000.00. This process must be followed irrespective of the type of service or product required.</p>	A competitive tender process appears to have been followed under reference number HO/INF(T)/245/02/2012, as advertised in various newspapers.

	<p>Exceptions for competitive tendering will only be considered in the following circumstances:</p> <p>12.3.2.1 In the case of emergency;</p> <p>12.3.2.2 In the case of a sole source; and</p> <p>12.3.2.3 In the case of confinements.</p>	
12.3.3	<p>Competitive Data Base</p> <p>The CPO shall procure, through an open tender process, a Competitive Data Base of professionals which shall be valid for three years and shall:</p> <p>12.3.3.1 Be procured with rates that professionals will charge over the three years;</p> <p>12.3.3.2 Have a minimum of five approved professional service providers per area of professional expertise; and</p> <p>12.3.3.3 The appointment of professionals shall be on a rotational basis to ensure equitable distribution of work and shall be approved by the CPO.</p> <p>The award of work to professionals on the Competitive Data Base shall be evaluated based on technical proposals each time professional services are required.</p>	Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.
12.3.4	<p>Non-Competitive Data Base</p> <p>The CPO shall bi-annually open for registration the data base for goods and services excluding professional services and the Non Competitive Data Base shall:</p> <p>12.3.4.1 Valid for period of 6 months;</p> <p>12.3.4.2 Shall be used for quotations for goods and services below R350 000.00 (Three hundred and Fifty Thousand Rand).</p>	Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.
12.3.5	<p>Unsolicited Tenders</p> <p>Unsolicited tenders are generally prohibited unless approved for consideration by the GCEO. In approving their consideration, the GCEO shall take the following into account:</p>	Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.

	<p>12.3.5.1 That the unsolicited tender is a unique concept offering; 12.3.5.2 That the offering of the tender cannot be provided efficiently through competitive tendering process; and 12.3.5.3 That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited tender.</p> <p>All unsolicited tenders must be tested in the market through Expression of Interest to ensure that indeed the concept is unique and is the only one available in the market.</p>	
12.3.6	<p>Emergency Purchases Purchases made for emergency “situations” where competitive tendering would be inappropriate is limited to the following types of situations: 12.3.6.1 Disasters (e.g. damage from cyclone, flood, fire, etc.); 12.3.6.2 System failures (including supporting items which could affect the system); and 12.3.6.3 Security risk. During emergencies, the required goods, works or services may be obtained by means of quotations by preferably making use of PRASA’s supplier database. A motivation of the emergency purchase should be submitted to the GCEO for ratification.</p>	Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.
12.3.7	<p>Sole Source Sole sourcing exists when there is only one source (supplier) available in the market. A sole source may make a special product or technology that no one else does. Where such a situation exists, competitive tendering is not advisable. All sole sourcing motivations demonstrating that there is no other supplier available in the market, must be submitted to the GCEO for approval prior to entering negotiations with the sole source.</p>	Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.

<p>12.3.8</p>	<p>Confinement This 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. Situations where this method is used include, but not limited to the following: 12.3.8.1 The task that represents a natural continuation of previous work carried out by the firm; 12.3.8.2 An assignment where only one or a limited number of firms are qualified or have experience of exceptional worth for the assignment; 12.3.8.3 Appointment of professional services such as legal, financial, technical contracts and security where unique expertise and/ or security are required; and 12.3.8.4 If it's an emergency as defined in clause 12.3.6 above. The decision to make use of the confinement process shall be motivated for approval and ratification by the GCEO.</p>	<p>Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.</p>
<p>12.4 Tender Administration</p>		
<p>12.4.1</p>	<p>Preparing quotes / tendering documents Tender documentation should be based on conditions of Contract and should at least include the following: 12.4.1.1 Tender conditions; 12.4.1.2 Specifications; 12.4.1.3 Data sheet/ drawing; 12.4.1.4 Invitation to Tender; 12.4.1.5 Pricing schedules; 12.4.1.6 A specific contract agreement stipulating delivery standards and requirements; 12.4.1.7 Preference claim forms;</p>	<p>SARS Tax Clearance Certificate of Good Standing issued to Siyaya Rail Infrastructure Solutions and Technology (Pty) Ltd under Tax Reference Number 9515516160, approved on 14 February 2013.</p> <p>We note that the documents provided for review do not include the full tender document and we therefore cannot confirm whether the tender documents required in terms of “12.4. Tender Administration” was properly prepared and provided to the bidders.</p>

	<p>12.4.1.8 Valid Tax clearance certificate;</p> <p>12.4.1.9 Declaration of interest;</p> <p>12.4.1.10 Declaration of tenderer's past supply chain management practice; and</p> <p>12.4.1.11 Any specific conditions applicable to the delivery of the service / product.</p>	
12.4.2	<p>Special Condition of Contract</p> <p>12.4.2.1 Must be clearly specified in the tender document;</p> <p>12.4.2.2 Take preference over general conditions of the contract;</p> <p>12.4.2.3 Must be referred to legal service in respect of the legality and enforceability;</p> <p>12.4.2.4 Must form part of the contract and be linked to the delivery and payment schedule of the contract; and</p> <p>12.4.2.5 Must be approved by the CPO.</p>	There are no documents providing the special conditions of contract.
12.4.4	<p>Evaluation criteria and weightings</p> <p>Evaluation criteria are those aspects of a tender that will be measured, quantitatively and qualitatively, to arrive at an integrated assessment as to which tender is likely to best meet the needs as described in the tender document.</p> <p>To compensate for important difference evaluation criteria, weights should be allocated to the criteria.</p> <p><i>The minimum evaluation threshold for bidders to pass the technical functionality assessment on all Prasa tenders is set, as a standard across all sourcing categories, at 80 %.</i></p>	<p>There are no documents indicating the evaluation and weightings published within the tender document and communicated to bidders.</p> <p>However, we note that the Tender Evaluation Committee undertook the Qualitative Assessment of the bids received, in terms of the evaluation of functionality criteria and the relevant weighting attached to such scoring. We have had sight of a signed copy of the assessment criteria evaluation. We cross refer to paragraph 12.5.1 below, in respect of the evaluation criteria.</p>
12.4.5	<p>Invitation of tenders</p> <p>Tenders will be advertised in the print media or any publication if and when is necessary.</p>	<p>Tender advertisement is demonstrated as follows:</p> <ul style="list-style-type: none"> – Dumisa Design Advertising quote for newspaper advertisement costs, with signed purchase order for advertisement, dated 24 January 2013;

	<p>Tenders will be closed at least three weeks after the date of publication. In exceptional circumstances; a short period may be stipulated. Where this is required; the approval of the GCEO must be sought.</p> <p>No late bids shall be considered as a rule.</p>	<p>– Various copies of newspaper advertisements in Cape Times, Pretoria News, The Star, Mercury, Sunday Times.</p>
12.5 Tender Evaluation		
<p>12.5.1</p>	<p>Evaluation phases</p> <p>Tender evaluations must be done in two phases by the BEC</p> <p>Phase one: Evaluate that all the tenders are compliant to critical criteria if any were stated in tender documents. Critical criteria or prerequisites are those aspects of the tender that, if not met in full, will automatically disqualify the tender from further evaluation.</p> <p>Phase two Evaluate each tender based on the response received in relation to the criteria and conditions stipulated in the tender document. Qualifying tenders are evaluated and scored against the criteria that were stipulated in the tender document.</p>	<p>Phase one: The Tender Evaluation Committee undertook an evaluation of the ‘critical criteria’ documents. The schedule is undated and signed by the members of the Tender Evaluation Committee.</p> <p>The schedule demonstrates that certain documents were outstanding from the bid responses received, i.e. Letter of Good Standing, BBBEE Certificate and Letter from Auditors for Transurb were not captured.</p> <p>Phase two: The Tender Evaluation Committee undertook the Qualitative Assessment of the bids received, in terms of the evaluation of functionality criteria and the relevant weighting attached to such scoring. We have had sight of a signed copy of the assessment criteria evaluation.</p> <p>A Recommendation Report was compiled by PRASA’s Chief Procurement Officer, addressed to the GCEO, which was approved on 26 August 2013.</p> <p>The Recommendation Report consists of the following:</p> <ol style="list-style-type: none"> 1. Introduction and Background – PRASA has identified the need to appoint a service provider for Technical Assistance and Supervision for the design, construction and implementation of a new digital railway signalling radio system project.

		<ol style="list-style-type: none">2. Scope of Work – inconsistency relates to the term of the contract, stating that the services are required for a period of four years, as opposed to five years as stated in “Contract / Delivery Period” below.3. Contract / Delivery Period – The contract shall be for a period of 60 months.4. Procedural – Tender advertised on 27 January 2013 in newspapers: The Star; Pretoria News; Cape Times; Mercury; Sunday Times; Briefing Session on 5 February 2013; and other indications relating to the closing date and time of the tender and the manner in which bids were received, with the bid validity period expiring on 31 July 2013.5. Bid received – on closing date, four tenders were received from “Royal; Siyaya; R&H; and Transurb / Rail Focus”.6. Tender Evaluation Team – appointed by the Chief Procurement Officer, and the proceedings of such meetings were to be recorded and that all proceedings were to be strictly confidential.7. Evaluation – Pricing Evaluation was set at 70%, with the BBBEE component weighted at 10%.8. Evaluation Process –<ol style="list-style-type: none">a. Compliance – all four tenders were compliant in the documents received;b. Technical Evaluation – Siyaya scored the highest (77.8%), with two tenders not achieving the 70% threshold and therefore eliminated from further evaluation.c. Financial Evaluation – Siyaya scored lower than the remaining tenderer, since its price was higher @ R69 985 033.00, scoring 90 points (Transurb / Rail Focus @ R69 985 033.00, scoring 79 points).d. BBBEE Evaluation – Siyaya scored 9 points and Transurb scored 3 points based on its consortium arrangement.
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		e. Final scoring – Siyaya scored 88 points and Transurb scored 93 points, with the latter ranking first.
12.6 Tender Adjudication		
12.6.1	After the Bid Evaluation Committee has evaluated the tender against the predetermined criteria, it will make a recommendation to the adjudication committee as to the preferred tenderer(s).	<p>A Recommendation Report was compiled by PRASA’s Chief Procurement Officer, addressed to the GCEO, which was approved on 26 August 2013, which recorded the following:</p> <ol style="list-style-type: none"> Motivation – The highest ranked bidder, Transurb, has a consortium agreement in place which lacks in substantive empowerment of its local partner in South Africa – the local partner’s share in the work is not substantial enough to be meaningful and may not assist in PRASA achieving the strategic aims of localisation and revitalising the industry. Recommendation – It is recommended that the GCEO approved the award of the tender to Siyaya. <p>We have not been provided with documents which record the adjudication of the tender, and instead, the GCEO has approved the appointment of Siyaya, after such bidder is recommended by the evaluation committee through the Chief Procurement Officer as the preferred bidder.</p>
12.6.2	<p>Awarding</p> <p>12.6.2.1 The final approval body for bids/tenders depends on the Delegation of Authority. The contract will be awarded to the tenderer who provides the best overall value to PRASA. PRASA may at its sole discretion award part, all or any of the business to any supplier to broaden and rationalise the distribution of work to HDI’s. Best overall value includes, but is not limited to, consideration of B-BBEE.</p> <p>12.6.2.2 Subject to the provisions of the Preferential Procurement Policy Framework Act (“PPFA”) PRASA may award the tender to a tenderer that did not score the highest number of points.</p>	
12.6.3	All tenderers will be notified of the outcome of the evaluation process once the tender has been awarded to a successful tenderer or the tender has been withdrawn by PRASA.	
		<p>PRASA addressed the Notice of Appointment to Siyaya Rail Solutions (“Siyaya”), on 04 September 2013, advising that Siyaya was successful in its tender response for the design, construction and implementation of a new digital railway signalling radio system project at the total contract amount of R69 985 033.00, incl. VAT.</p> <p>Siyaya responded to PRASA’s Notice of Appointment by means of an undated ‘Acceptance Letter’, indicating its willingness to proceed with the contract.</p>

		<p>Once the tender was awarded, PRASA addressed letters to following bidders:</p> <ul style="list-style-type: none"> – Royal Haskoning DHV on 12 September 2013 and 08 October 2013, – R&H Rail (Pty) Ltd on 08 October 2013; – Transurb / Focus on 08 October 2013; <p>advising that the tender responses were unsuccessful.</p>
12.6.4	<p>Debriefing session</p> <p>The debriefing session will be structured in a manner which will allow the supplier to gain an appreciation of the reasons for non-selection of their bid. This may include technical, operational or commercial detail but must not include divulgence of any commercial sensitive or proprietary information.</p> <p>All briefing must be documented and filed, and conducted by at least two PRASA representatives.</p>	<p>There are no documents demonstrating that a debriefing session was held.</p>
12.9 Preferential Procurement		
12.9.6	<p>Preferential Procurement</p> <p>All suppliers shall be subjected to verification process to confirm their BEE status. The verification will cover the following elements, namely:</p> <ul style="list-style-type: none"> 12.9.6.1 Equity Ownership; 12.9.6.2 Management Control; 12.9.6.3 Employment Equity; 12.9.6.4 Skills Development; 12.9.6.5 Preferential Procurement; 12.9.6.6 Enterprise Development; and 12.9.6.7 Residual. 	<p>There are no documents provided that demonstrate that a BEE status verification procedure was followed in terms of the PRASA SCM Policy for this tender.</p>

	<p>The verification process will consist of the following:</p> <p>12.9.6.8 Information Gathering A BEE questionnaire will be sent to the suppliers for completion and attachment of supporting documentation;</p> <p>12.9.6.9 Desktop Evaluation The submitted questionnaire and supporting documents including company documents, shareholders agreements, sale of shares agreement, share certificates etc will be checked and a paper evaluation performed based on the information gathered from the questionnaires;</p> <p>12.9.6.10 Secondary Source Verification The information in the questionnaire and supporting documentation will be verified with secondary sources like the company registrar, South African Revenue Services, the employment equity registry, etc. The company's BEE suppliers will also be contracted to determine their relationship with the supplier and their status;</p> <p>12.9.6.11 On site, evaluations Interview will be conducted with owners, managers and other stakeholders of all companies. The companies will be sent a confirmation of the proceedings of the site evaluation and provided an opportunity to highlight any inconsistencies.</p>	
12.10 Contract Administration		
12.10.3	Contracts must be awarded for a period of not more than three years, except tenders for a lease agreement for immovable property, which may be awarded for a period of not more than 5 years.	A Recommendation Report was approved on 26 August 2013, for the award to Siyaya of the tender in the amount of R 69 985 033.00 by the GCEO, for a period of 60 months i.e. 5 years.

	Special circumstances for long-term contracts and strategic partnerships should be motivated for approval by the GCEO.	
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4.3. Abakali Quantity Surveyors¹⁰

<u>SCM Policy Clause</u>	<u>REQUIREMENTS</u>	<u>Contract Number – 4600004298</u> <u>Abakali Quantity Surveyors – Berea Road Station, Deckling Platform, Works and Rail Infrastructure</u>
CONFLICT OF INTEREST		
8.1	A conflict of interest shall exist where any PRASA employee or employee's Close Family Member, partner or associate: 8.1.1 Has any business interest in any contract to be awarded by PRASA, 8.1.2 Participates in any activity that might lead to the disclosure of PRASA's proprietary information in relation to any contract to be awarded by PRASA, or 8.1.3 Has any business relationship with any PRASA Contractor and/or supplier, That employee or role player must disclose that interest to the GCEO and withdraw from participating in any manner whatsoever in the process relating to that contract.	There are no documents that impact upon or verify the requirements relating to conflicts of interest.
ROLES AND RESPONSIBILITIES		
SUPPLY CHAIN MANAGEMENT DEPARTMENT		
9.2	SCM has the responsibility, authority and is accountable for, <i>inter alia</i> : 9.2.1 The compilation of tender documents; 9.2.2 Ensuring the completeness of tender documents;	On 15 May 2012, the Group Chief Executive Officer, Mr Lucky Montana approved the Panel of Emerging Professional (<i>sic</i>) In the Construction Industry Recommendation Report which was intended to introduce a Supplier Database.

¹⁰ The documents provided by PRASA for Abakali Quantity Surveyors is contained in Annexure B.

	<p>9.2.3 Arranging and managing tender briefing sessions and handling enquiries from tenderers;</p> <p>9.2.4 Ensuring that all potential suppliers are compliant with relevant legislation through ensuring the completion of background checks on these potential suppliers;</p> <p>9.2.5 Compiling a supplier recommendation report to the relevant adjudication committees;</p> <p>9.2.6 Ensuring that the tender process compiles with policies, procedures and regulations;</p> <p>9.2.7 Maintaining records to ensure the existence of an audit trail;</p>	<p>In Tender Number HO/SCM/226/22/2011, also described as an expression of interest, professionals in the following disciplines :</p> <ul style="list-style-type: none"> • Quantity Surveying Services; • Architectural Services; • Project Management Services; • Civil and Structural Engineering Services; • Mechanical Engineering Services; • Health and Safety Services; • Construction Services; • Multi-disciplinary Services ; and • Electrical Engineering Services. <p>The companies were not invited to provide services for a specific contract but merely for the inclusion into the supplier database.</p> <p>Abakali was successful in its inclusion into the database, and it has been placed in the Quantity Surveying category of companies.</p> <p>As part of this tendering process the bidder was required to be compliant in so far as the following are concerned:</p> <ul style="list-style-type: none"> • Tax Clearance; • Company Registration documents; • BBBEE verification; • Registration with professional body; • Proof of professional indemnity insurance; • CIBD grading; • COID; and • Annual turnover <p>There are two documents that are subject to this review. Firstly a contract was awarded to Abakali, that did not follow the competitive process- as a result of it being a part of the database</p>
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		and secondly, a request for ratification for the appointment of the professional team by the Project Implementing Agent, Abakali.
GROUP CHIEF EXECUTIVE OFFICER		
9.3.9	The GCEO has the responsibility to approve tenders up to R100 000 000.00 (One Hundred Million), subject to the applicable Delegation of Authority from time to time.	<p>Abakali was advised to select a professional team that it would use to complete the work.</p> <p>On 24 February 2014, the General Manager of Supply Chain Management at PRASA, Mr Takalani Mukwevho issued to the GCEO a Request for the Ratification of the Appointment of the Professional Team- Berea Station. The GCEO approved the appointments, albeit with conditions.</p> <p>Firstly, the GCEO requested that the process by which Abakali was appointed be verified. No further comment regarding the reasons for the request, however, the issues around selection criteria alluded to above raise concern.</p> <p>Secondly, he requested that an explanation regarding the reasons why a competitive process was not followed in the selection of professional teams. The issue herein is that the rigorous process of verification of the PIA was not necessarily applied to the professional teams. By way of example, it is not clear whether the same stringent rules around preferential procurement were adhered to.</p> <p>Thirdly, The GCEO commented that the Project Manager approving the appointment of Abakali without GCEO approval should be subjected to disciplinary proceedings.</p>

9.4 CHIEF PROCUREMENT OFFICER		
9.4	<p>The CPO has the following responsibilities:</p> <p>9.4.1 Ensuring that PRASA's policies and procedures put in place for procurement are appropriate and in accordance with regulatory framework that regulates PRASA;</p> <p>9.4.2 Maximizing administrative and operational efficiency in the implementation and execution of the Supply Chain Management Policy;</p> <p>9.4.3 Overall management of the SCM function within PRASA;</p> <p>9.4.4 Ensure implementation of SCM Policies and Procedures;</p>	<p>The two issues pertaining to the office of the CPO are :</p> <ul style="list-style-type: none"> • Abakali was selected from a database of suppliers without the competitive process being followed. The SCM Policy provides for a database selection of suppliers on a rotational basis. It is not evident whether Abakali was selected solely as a result of rotation or whether there were other proposals received. • The second issue is that Abakali sought to appoint a team of professionals from the various disciplines to fulfil functions specific to their industry. A number of the selected companies were also on the database. These include but are not limited to : <ul style="list-style-type: none"> ○ Sakhisizwe Architects; ○ Map Africa CC.
9.5 BID SPECIFICATION COMMITTEE		
9.5	<p>The members and chairperson of the BSC shall be appointed by the GCEO. The BSC shall have a minimum of five members, two of which shall be SCM officials. The chairperson shall be an SCM official. Depending on the tender(s) under review, officials from the end-user department and/ or suitably qualified specialists may be invited to be part of the BSC for their respective tenders.</p> <p>The BSC has the following responsibilities:</p> <p>9.5.1 Review, approve or disapprove all tender specifications for procurement that is above R350 000.00;</p> <p>9.5.2 Take into account the PRASA preferential procurement targets when formulating specifications;</p> <p>9.5.3 Ensure that the specifications/tender documents are developed in an unbiased manner to allow all potential tenderers to offer their goods and services without favour or prejudice;</p> <p>9.5.4 Consider the method followed in procurement and disposal of goods and services, taking due cognizance as far as procedure, substance and value for money is concerned;</p>	<p>There are no documents to demonstrate that a bid specification committee was established specifically for this tender.</p>

	<p>9.5.5 Ensure that preference is given to those enterprises that enhance equality of employment opportunity, BEE, business skills and economic conditions of HDI's;</p> <p>9.5.6 Ensure that appropriate preference point system is determined for evaluation of the tender;</p> <p>9.5.7 Advise on the deliverables or performance indicators against which the tenderer awarded the contract will be assessed; and</p> <p>9.5.8 Ensure that specifications/tender documents comply with relevant legislation.</p>	
9.6 BID EVALUATION COMMITTEE		
<p>9.6</p>	<p>The Bid Evaluation Committee is a cross functional committee constituted of at least four members who are be appointed on a project by project basis. The members of the Bid Evaluation Committee shall be appointed by the CPO and shall be made up of a minimum of two officials from the SCM Department, one official from finance and one end-user. When it is deemed necessary, independent experts may also be co-opted to a Bid Evaluation Committee in an advisory capacity. Where such independent experts are sought, approval should be sought from the GCEO for corporate, Divisional CEO for the divisions, and Regional Manager for regions.</p> <p>The Bid Evaluation Committees shall be established to perform the following functions:</p> <p>9.6.1 Conduct administrative compliance evaluation;</p> <p>9.6.2 Evaluate all tenders in accordance with the criteria specified in the bid documentations and the prescripts of the PPPFA;</p> <p>9.6.3 Ensure that all potential suppliers are compliant with all relevant legislation through ensuring the completion of background checks on potential vendors;</p> <p>9.6.4 Compile evaluation reports for submission to the applicable adjudication committees;</p>	<p>There are no documents to demonstrate that a bid evaluation committee was established specifically for this tender.</p>

	<p>9.6.5 Make recommendations to the applicable adjudication committee regarding the outcome of the evaluation process; and</p> <p>9.6.6 Maintain records to ensure the existence of an audit trail.</p> <p>The Bid Evaluation Committee, in performing their functions, also verifies the following:</p> <ul style="list-style-type: none"> – The capability/ability of the bidder to execute the contract, from a technical, managerial and financial perspective; – Whether the bid is to specification in respect of quality, functionality, dimensions, design, customer support, guarantee, etc.; – Whether a bid offers value for money; – Number of contracts awarded to bidder/s in contention during the preceding twelve months; – Allocation of preference points; – Representivity in the composition of the bidder and the possibility of fronting; – Success/failure in executing contracts awarded to a bidder previously; – Tax Clearance certificate issued by the SARS; and – The bidder/s is/are not on National Treasury’s Database of Restricted Suppliers. 	
9.7 FINANCE, CAPITAL INVESTMENT AND TENDER COMMITTEE (FCP)		
9.7.2	The members and the chairperson of the FCP shall be appointed by the BoC. The FCP shall have a minimum of three Non-Executive Directors and the GCEO. The chairperson shall be a Non-Executive Director. The FCP has the responsibility to consider recommendations from the GCEO for Board approval of tenders above R100 000 000.00 (One Hundred Million Rand);	Not applicable to this tender, the value of which is below R100 000 000.00.
9.8 Corporate Tender and Procurement Committee (CTPC)		
9.8.3	The CTPC is established with the objective to perform the functions as indicated below. The CTPC is a cross-functional	There are no documents to demonstrate that a bid specification committee was established specifically for this tender.

	committee appointed by the GCEO. It shall be comprised of at least six members each with an alternate member, and not more than eight of whom at least two members are SCM Practitioners and one from Finance. The chairperson of the CTPC shall be appointed by the GCEO. The CTPC's primary function is to adjudicate tenders that are above R10 000 000.00 (Ten Million Rand) but below R100 000 000.00 (One Hundred Million Rand).	As regards the two issues stated above, it is not evident whether the CTPC was established to either select Abakali as the PIA or the selection of the members to the professional teams.
10. DEMAND MANAGEMENT		
10.1	Requisition for goods and services All requisitions for the issuing or acquisition of material and / or service shall be completed electronically.	There are no document provided to demonstrate that a requisition or purchase order was generated for the tendered services.
10.2	Needs Assessment A need assessment will be performed for all purchasing by the End user at the beginning of each financial year and prior to embarking on the procurement process. The assessment will take due cognizance of: 10.2.1 Future and current need requirements; 10.2.2 Identification of critical delivery dates; 10.2.3 The frequency of need; 10.2.4 Budget availability; 10.2.5 Expenditure analysis(based on past expenditures); 10.2.6 Specifications; 10.2.7 Commodity analysis (checking for alternatives); 10.2.8 The strategic plan of PRASA; and 10.2.9 Industry analysis.	There are no documents provided to demonstrate that a needs assessment was conducted.
10.3	Procurement Strategy SCM will develop a procurement strategy, taking due cognizance of the nature of the commodity or service required, the conditions of delivery, the prospective suppliers and the goals to be promoted as contemplated in the PPPFA and the BBBEE Act	The decision to implement a database of suppliers for PRASA constitutes a procurement strategy.

	<p>Procurement strategies might include, among others, the following:</p> <p>10.3.1 Utilizing term contracts;</p> <p>10.3.2 Local versus international buying;</p> <p>10.3.3 Utilizing local black business with clear targets that reflect the</p> <ul style="list-style-type: none"> – Targeted percentage of HDI's owning local enterprises or SMME's; and – Actual support of HDI and SMME's; and <p>10.3.4 Utilising a paper-based tendering system, this may include obtaining quotations, inviting competitive tenders, prequalification of tenderers and two stage tendering.</p>	<p>The reasons advanced for this decision are that the system would encourage participation of emerging professionals in the provision of these particular services.</p> <p>The strategy was implemented to stimulate growth and competition between emerging companies.</p> <p>The term for being on the database was initially set at one year.</p> <p>Contracts would be awarded on a rotational basis. In the Request for Ratification, the GCEO noted that the supportive / ancillary professional teams were being selected without following the competitive method. In addition, the power to select the professional teams rested squarely on the PIA. The possible effects hereof is that some smaller entities who have not interacted with the more established emerging companies, may find themselves at the bottom of the rotation and without work in the interim.</p>
<p>10.4</p>	<p>Specification of goods/works or services</p> <p>Standards and technical specifications quoted in tendering documents must promote the broadest possible competition, while assuring that critical elements of performance or other requirements for the goods, services and /or works being procured are achieved.</p> <p>Specifications must be based in relevant characteristics and/or performance requirement. References to brand names, catalogue numbers, or similar classifications should in all instances be avoided unless authorized as such by the CPO.</p>	<p>It can be gleaned from the Request for Ratification document that the competitive process was not followed.</p>
11. MINIMUM REQUIREMENTS		
<p>11.1</p>	<p>Description</p> <p>Prescription for minimum requirements for tenders.</p> <p>All tenders shall meet the following requirements:</p> <p>(a) The evaluation criteria and the weighting thereof;</p>	<p>There are no documents to suggest that the project was put out to tender.</p>

	<p>(b) Indicate that minimum qualifying score for functionality; (c) Include the spread sheet that will be used for evaluation without the weighting thereof; (d) indicate the tender evaluation process to be followed; (e) indicate clearly the grounds for disqualification; and (f) list all compliance issues.</p>	
12. ACQUISITION MANAGEMENT		
12.2 Approved supplier database		
<p>12.2.1</p>	<p>SCM shall develop and maintain an Approved Supplier Database. In pursuance of this requirement, SCM shall:</p> <p>12.2.1.1 Categorize the suppliers on the database according to the goods / services they provide, HDI status, locality, and a record of past performance indicating whether the supplier has been restricted or not; 12.2.1.2 Ensure that the supplier database is kept up to date; 12.2.1.3 Annually, through newspapers commonly circulating locally, corporate website and any other appropriate ways, invite prospective suppliers of goods and services, construction works and consultancy services to apply for listing as accredited prospective suppliers; and 12.2.1.4 This database must be used for the purpose of obtaining quotations.</p> <p>Only in the event where none of the suppliers can meet the requirements of the quote should quotations be obtained from outside the Approved Supplier Database. A motivation to obtain quotes from suppliers not on the database is lodged with the CPO for approval before sending the quotes to the suppliers.</p>	<p>Abakali was selected from the supplier database, as it had complied fully with the requirements for the bid.</p>

12.3 Tendering Methods		
12.3.1.	<p>Request for quotation</p> <p>A request for quotation is allowed for procurement not exceeding R350 000. 00 (Three Hundred and Fifty Thousand Rand). All requisitions above R350 000.00 shall be submitted for the invitation of tenders.</p> <p>In respect of procurement below R350 000.00, the following will apply:</p> <p>12.3.1.1 A minimum of three (3) written quotes should be obtained from suppliers on the database. In the event that potential suppliers are not available on the approval Supplier Database, quotations can be obtained from any other suppliers provided the authorization has been granted.</p> <p>12.3.1.2 Requests for quotations must be in writing by means of letter, facsimile or electronically (email), containing precise and detailed specifications from the onset as contained in the authorized Purchase Requisition.</p> <p>12.3.1.3 If it is not possible to obtain at least three (3) written price quotations, the reasons should be recorded and approved by the CPO or his / her delegate.</p>	This is not applicable to the agreement.
12.3.2.	<p>Competitive tendering process</p> <p>A competitive tendering process is applicable when the estimated total value of the requirement is more than R350 000.00. This process must be followed irrespective of the type of service or product required.</p> <p>Exceptions for competitive tendering will only be considered in the following circumstances:</p> <p>12.3.2.1 In the case of emergency;</p> <p>12.3.2.2 In the case of a sole source; and</p> <p>12.3.2.3 In the case of confinements.</p>	<p>Abakali was appointed through selection from the PRASA supplier database.</p> <p>The supplier in turn appointed its professional team, some of whom were selected from the same database.</p> <p>The act amounted to empowering private service providers to appoint professional teams to complete large projects, be indirectly contracted to the state without having to comply with onerous statutory requirements.</p>

		There is no indication that the project and need for services was publicly advertised.
12.3.3	<p>Competitive Data Base The CPO shall procure, through an open tender process, a Competitive Data Base of professionals which shall be valid for three years and shall:</p> <p>12.3.3.1 Be procured with rates that professionals will charge over the three years; 12.3.3.2 Have a minimum of five approved professional service providers per area of professional expertise; and 12.3.3.3 The appointment of professionals shall be on a rotational basis to ensure equitable distribution of work and shall be approved by the CPO.</p> <p>The award of work to professionals on the Competitive Data Base shall be evaluated based on technical proposals each time professional services are required.</p>	<p>Abakali was appointed as a professional body for inclusion in the database.</p> <p>It is unclear whether Abakali was selected solely as part of a rotation or whether they submitted the best quotation.</p>
12.3.4	<p>Non-Competitive Data Base The CPO shall bi-annually open for registration the data base for goods and services excluding professional services and the Non Competitive Data Base shall:</p> <p>12.3.4.1 Valid for period of 6 months; 12.3.4.2 Shall be used for quotations for goods and services below R350 000.00 (Three hundred and Fifty Thousand Rand).</p>	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.
12.3.5	<p>Unsolicited Tenders Unsolicited tenders are generally prohibited unless approved for consideration by the GCEO. In approving their consideration, the GCEO shall take the following into account:</p>	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.

	<p>12.3.5.1 That the unsolicited tender is a unique concept offering; 12.3.5.2 That the offering of the tender cannot be provided efficiently through competitive tendering process; and 12.3.5.3 That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited tender.</p> <p>All unsolicited tenders must be tested in the market through Expression of Interest to ensure that indeed the concept is unique and is the only one available in the market.</p>	
12.3.6	<p>Emergency Purchases Purchases made for emergency “situations” where competitive tendering would be inappropriate is limited to the following types of situations: 12.3.6.1 Disasters (e.g. damage from cyclone, flood, fire, etc.); 12.3.6.2 System failures (including supporting items which could affect the system); and 12.3.6.3 Security risk. During emergencies, the required goods, works or services may be obtained by means of quotations by preferably making use of PRASA’s supplier database. A motivation of the emergency purchase should be submitted to the GCEO for ratification.</p>	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.
12.3.7	<p>Sole Source Sole sourcing exists when there is only one source (supplier) available in the market. A sole source may make a special product or technology that no one else does. Where such a situation exists, competitive tendering is not advisable. All sole sourcing motivations demonstrating that there is no other supplier available in the market, must be submitted to the GCEO for approval prior to entering negotiations with the sole source.</p>	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.

<p>12.3.8</p>	<p>Confinement This 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. Situations where this method is used include, but not limited to the following: 12.3.8.1 The task that represents a natural continuation of previous work carried out by the firm; 12.3.8.2 An assignment where only one or a limited number of firms are qualified or have experience of exceptional worth for the assignment; 12.3.8.3 Appointment of professional services such as legal, financial, technical contracts and security where unique expertise and/ or security are required; and 12.3.8.4 If it's an emergency as defined in clause 12.3.6 above. The decision to make use of the confinement process shall be motivated for approval and ratification by the GCEO.</p>	<p>Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.</p>
<p>12.4 Tender Administration</p>		
<p>12.4.1</p>	<p>Preparing quotes / tendering documents Tender documentation should be based on conditions of Contract and should at least include the following: 12.4.1.1 Tender conditions; 12.4.1.2 Specifications; 12.4.1.3 Data sheet/ drawing; 12.4.1.4 Invitation to Tender; 12.4.1.5 Pricing schedules; 12.4.1.6 A specific contract agreement stipulating delivery standards and requirements; 12.4.1.7 Preference claim forms; 12.4.1.8 Valid Tax clearance certificate;</p>	<p>Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.</p>

	<p>12.4.1.9 Declaration of interest;</p> <p>12.4.1.10 Declaration of tenderer's past supply chain management practice; and</p> <p>12.4.1.11 Any specific conditions applicable to the delivery of the service / product.</p>	
12.4.2	<p>Special Condition of Contract</p> <p>12.4.2.1 Must be clearly specified in the tender document;</p> <p>12.4.2.2 Take preference over general conditions of the contract;</p> <p>12.4.2.3 Must be referred to legal service in respect of the legality and enforceability;</p> <p>12.4.2.4 Must form part of the contract and be linked to the delivery and payment schedule of the contract; and</p> <p>12.4.2.5 Must be approved by the CPO.</p>	There are no documents provided to indicate that special conditions of contract were relevant or imposed.
12.4.4	<p>Evaluation criteria and weightings</p> <p>Evaluation criteria are those aspects of a tender that will be measured, quantitatively and qualitatively, to arrive at an integrated assessment as to which tender is likely to best meet the needs as described in the tender document.</p> <p>To compensate for important difference evaluation criteria, weights should be allocated to the criteria.</p> <p><i>The minimum evaluation threshold for bidders to pass the technical functionality assessment on all Prasa tenders is set, as a standard across all sourcing categories, at 80 %.</i></p>	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.
12.4.5	<p>Invitation of tenders</p> <p>Tenders will be advertised in the print media or any publication if and when is necessary.</p> <p>Tenders will be closed at least three weeks after the date of publication. In exceptional circumstances; a short period may be</p>	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.

	<p>stipulated. Where this is required; the approval of the GCEO must be sought.</p> <p>No late bids shall be considered as a rule.</p>	
12.5 Tender Evaluation		
12.5.1	<p>Evaluation phases Tender evaluations must be done in two phases by the BEC</p> <p>Phase one: Evaluate that all the tenders are compliant to critical criteria if any were stated in tender documents. Critical criteria or prerequisites are those aspects of the tender that, if not met in full, will automatically disqualify the tender from further evaluation.</p> <p>Phase two Evaluate each tender based on the response received in relation to the criteria and conditions stipulated in the tender document. Qualifying tenders are evaluated and scored against the criteria that were stipulated in the tender document.</p>	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.
12.6 Tender Adjudication		
12.6.1	After the Bid Evaluation Committee has evaluated the tender against the predetermined criteria, it will make a recommendation to the adjudication committee as to the preferred tenderer(s).	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.
12.6.2	<p>Awarding 12.6.2.1 The final approval body for bids/tenders depends on the Delegation of Authority. The contract will be awarded to the tenderer who provides the best overall value to PRASA. PRASA may at its sole discretion award part, all or any of the business to any supplier to broaden and rationalise the distribution of work to HDI's. Best overall value includes, but is not limited to, consideration of B-BBEE.</p>	

	12.6.2.2 Subject to the provisions of the Preferential Procurement Policy Framework Act (“PPFA”) PRASA may award the tender to a tenderer that did not score the highest number of points.	
12.6.3	All tenderers will be notified of the outcome of the evaluation process once the tender has been awarded to a successful tenderer or the tender has been withdrawn by PRASA.	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.
12.6.4	<p>Debriefing session</p> <p>The debriefing session will be structured in a manner which will allow the supplier to gain an appreciation of the reasons for non-selection of their bid. This may include technical, operational or commercial detail but must not include divulgence of any commercial sensitive or proprietary information.</p> <p>All briefing must be documented and filed, and conducted by at least two PRASA representatives.</p>	There are no documents demonstrating that a debriefing session was held.
12.9 Preferential Procurement		
12.9.6	<p>Preferential Procurement</p> <p>All suppliers shall be subjected to verification process to confirm their BEE status. The verification will cover the following elements, namely:</p> <p>12.9.6.1 Equity Ownership; 12.9.6.2 Management Control; 12.9.6.3 Employment Equity; 12.9.6.4 Skills Development; 12.9.6.5 Preferential Procurement; 12.9.6.6 Enterprise Development; and 12.9.6.7 Residual.</p>	There are no documents provided that demonstrate that a verification procedure was followed in terms of the PRASA SCM Policy for this tender. Furthermore, there was no indication that the professional teams were subjected to the same principles of preferential procurement.

	<p>The verification process will consist of the following:</p> <p>12.9.6.8 Information Gathering A BEE questionnaire will be sent to the suppliers for completion and attachment of supporting documentation;</p> <p>12.9.6.9 Desktop Evaluation The submitted questionnaire and supporting documents including company documents, shareholders agreements, sale of shares agreement, share certificates etc will be checked and a paper evaluation performed based on the information gathered from the questionnaires;</p> <p>12.9.6.10 Secondary Source Verification The information in the questionnaire and supporting documentation will be verified with secondary sources like the company registrar, South African Revenue Services, the employment equity registry, etc. The company's BEE suppliers will also be contracted to determine their relationship with the supplier and their status;</p> <p>12.9.6.11 On site, evaluations Interview will be conducted with owners, managers and other stakeholders of all companies. The companies will be sent a confirmation of the proceedings of the site evaluation and provided an opportunity to highlight any inconsistencies.</p>	
12.10 Contract Administration		
12.10.3	Contracts must be awarded for a period of not more than three years, except tenders for a lease agreement for immovable property, which may be awarded for a period of not more than 5 years.	The term of inclusion in the database is for a period of 2 years. In addition, the ratification of the appointment of the professional teams was set to endure until the completion of the work.

	Special circumstances for long-term contracts and strategic partnerships should be motivated for approval by the GCEO.	
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4.4. Crane Registered Quantity Surveyors ¹¹

<u>SCM Policy Clause</u>	<u>REQUIREMENTS</u>	<u>Tender Number:HO/SCM/226/2011 Crane Registered Quantity Surveyors</u>
CONFLICT OF INTEREST		
8.1	<p>A conflict of interest shall exist where any PRASA employee or employee's Close Family Member, partner or associate:</p> <p>8.1.1 Has any business interest in any contract to be awarded by PRASA,</p> <p>8.1.2 Participates in any activity that might lead to the disclosure of PRASA's proprietary information in relation to any contract to be awarded by PRASA, or</p> <p>8.1.3 Has any business relationship with any PRASA Contractor and/or supplier,</p> <p>That employee or role player must disclose that interest to the GCEO and withdraw from participating in any manner whatsoever in the process relating to that contract.</p>	There are no documents that allege a potential conflict of interest.
ROLES AND RESPONSIBILITIES		
SUPPLY CHAIN MANAGEMENT DEPARTMENT		
9.2	<p>SCM has the responsibility, authority and is accountable for, <i>inter alia</i>:</p> <p>9.2.1 The compilation of tender documents;</p> <p>9.2.2 Ensuring the completeness of tender documents;</p>	On 15 May 2012, the Group Chief Executive Officer ("GCEO") Mr Lucky Montana approved the Panel of Emerging Professional (<i>sic</i>) In the Construction Industry Recommendation Report which was intended to introduce a Supplier Database.

¹¹ The documents provided by PRASA for Crane Registered Quantity Surveyors is contained in Annexure C.

	<p>9.2.3 Arranging and managing tender briefing sessions and handling enquiries from tenderers;</p> <p>9.2.4 Ensuring that all potential suppliers are compliant with relevant legislation through ensuring the completion of background checks on these potential suppliers;</p> <p>9.2.5 Compiling a supplier recommendation report to the relevant adjudication committees;</p> <p>9.2.6 Ensuring that the tender process compiles with policies, procedures and regulations;</p> <p>9.2.7 Maintaining records to ensure the existence of an audit trail;</p>	<p>In Tender Number HO/SCM/226/22/2011, also described as an expression of interest, professionals in the following disciplines :</p> <ul style="list-style-type: none"> • Quantity Surveying Services; • Architectural Services; • Project Management Services; • Civil and Structural Engineering Services; • Mechanical Engineering Services; • Health and Safety Services; • Construction Services; • Multi-disciplinary Services ; and • Electrical Engineering Services. <p>The companies were not invited to provide services for a specific contract but merely for the inclusion into the supplier database.</p> <p>Crane was successful in its inclusion into the database, and it has been placed in the Quantity Surveying category of companies.</p> <p>As part of this tendering process the bidder was required to be compliant in so far as the following are concerned :</p> <ul style="list-style-type: none"> • Tax Clearance; • Company Registration documents; • BBBEE verification; • Registration with professional body; • Proof of professional indemnity insurance; • CIBD grading; • COID; and • Annual turnover <p>There is one document that is the subject of this report. A copy of the contract was not submitted.</p>
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GROUP CHIEF EXECUTIVE OFFICER		
9.3.9	The GCEO has the responsibility to approve tenders up to R100 000 000.00 (One Hundred Million), subject to the applicable Delegation of Authority from time to time.	The value of the contract was set align with the Government Gazette Rates / Tariff of Professional Fees and is capped at 15 % of the final construction costs.
9.4 CHIEF PROCUREMENT OFFICER		
9.4	<p>The CPO has the following responsibilities:</p> <p>9.4.1 Ensuring that PRASA’s policies and procedures put in place for procurement are appropriate and in accordance with regulatory framework that regulates PRASA;</p> <p>9.4.2 Maximizing administrative and operational efficiency in the implementation and execution of the Supply Chain Management Policy;</p> <p>9.4.3 Overall management of the SCM function within PRASA;</p> <p>9.4.4 Ensure implementation of SCM Policies and Procedures;</p>	The two issue pertaining to the office of the CPO is that Crane was selected as a supplier without a competitive process being followed.

9.5 BID SPECIFICATION COMMITTEE		
9.5	<p>The members and chairperson of the BSC shall be appointed by the GCEO. The BSC shall have a minimum of five members, two of which shall be SCM officials. The chairperson shall be an SCM official. Depending on the tender(s) under review, officials from the end-user department and/ or suitably qualified specialists may be invited to be part of the BSC for their respective tenders.</p> <p>The BSC has the following responsibilities:</p> <p>9.5.1 Review, approve or disapprove all tender specifications for procurement that is above R350 000.00;</p> <p>9.5.2 Take into account the PRASA preferential procurement targets when formulating specifications;</p> <p>9.5.3 Ensure that the specifications/tender documents are developed in an unbiased manner to allow all potential tenderers to offer their goods and services without favour or prejudice;</p> <p>9.5.4 Consider the method followed in procurement and disposal of goods and services, taking due cognizance as far as procedure, substance and value for money is concerned;</p> <p>9.5.5 Ensure that preference is given to those enterprises that enhance equality of employment opportunity, BEE, business skills and economic conditions of HDI's;</p> <p>9.5.6 Ensure that appropriate preference point system is determined for evaluation of the tender;</p> <p>9.5.7 Advise on the deliverables or performance indicators against which the tenderer awarded the contract will be assessed; and</p> <p>9.5.8 Ensure that specifications/tender documents comply with relevant legislation.</p>	<p>There are no documents to demonstrate that a bid specification committee was established specifically for this tender. The automatic selection from the database, one that stipulates that companies are selected on a rotational basis, suggests the database usurped the functions of BSC.</p>
9.6 BID EVALUATION COMMITTEE		
9.6	<p>The Bid Evaluation Committee is a cross functional committee constituted of at least four members who are be appointed on a project by project basis. The members of the Bid Evaluation Committee shall be appointed by the CPO and shall be made up of a minimum of two officials from the SCM Department, one official</p>	<p>There are no documents to demonstrate that a bid evaluation committee was established specifically for this tender.</p>

	<p>from finance and one end-user. When it is deemed necessary, independent experts may also be co-opted to a Bid Evaluation Committee in an advisory capacity. Where such independent experts are sought, approval should be sought from the GCEO for corporate, Divisional CEO for the divisions, and Regional Manager for regions.</p> <p>The Bid Evaluation Committees shall be established to perform the following functions:</p> <p>9.6.1 Conduct administrative compliance evaluation;</p> <p>9.6.2 Evaluate all tenders in accordance with the criteria specified in the bid documentations and the prescripts of the PPPFA;</p> <p>9.6.3 Ensure that all potential suppliers are compliant with all relevant legislation through ensuring the completion of background checks on potential vendors;</p> <p>9.6.4 Compile evaluation reports for submission to the applicable adjudication committees;</p> <p>9.6.5 Make recommendations to the applicable adjudication committee regarding the outcome of the evaluation process; and</p> <p>9.6.6 Maintain records to ensure the existence of an audit trail.</p> <p>The Bid Evaluation Committee, in performing their functions, also verifies the following:</p> <ul style="list-style-type: none">– The capability/ability of the bidder to execute the contract, from a technical, managerial and financial perspective;– Whether the bid is to specification in respect of quality, functionality, dimensions, design, customer support, guarantee, etc.;– Whether a bid offers value for money;– Number of contracts awarded to bidder/s in contention during the preceding twelve months;– Allocation of preference points;	
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	<ul style="list-style-type: none"> – Representivity in the composition of the bidder and the possibility of fronting; – Success/failure in executing contracts awarded to a bidder previously; – Tax Clearance certificate issued by the SARS; and – The bidder/s is/are not on National Treasury’s Database of Restricted Suppliers. 	
9.7 FINANCE, CAPITAL INVESTMENT AND TENDER COMMITTEE (FCP)		
9.7.2	The members and the chairperson of the FCP shall be appointed by the BoC. The FCP shall have a minimum of three Non-Executive Directors and the GCEO. The chairperson shall be a Non-Executive Director. The FCP has the responsibility to consider recommendations from the GCEO for Board approval of tenders above R100 000 000.00 (One Hundred Million Rand);	Not applicable to this tender, the value of which is below R100 000 000.00.
9.8 Corporate Tender and Procurement Committee (CTPC)		
9.8.3	The CTPC is established with the objective to perform the functions as indicated below. The CTPC is a cross-functional committee appointed by the GCEO. It shall be comprised of at least six members each with an alternate member, and not more than eight of whom at least two members are SCM Practitioners and one from Finance. The chairperson of the CTPC shall be appointed by the GCEO. The CTPC’s primary function is to adjudicate tenders that are above R10 000 000.00 (Ten Million Rand) but below R100 000 000.00 (One Hundred Million Rand).	<p>There are no documents to demonstrate that a bid specification committee was established specifically for this tender.</p> <p>The use of a database suggests that there was no adjudication on the award of the tender.</p>
10. DEMAND MANAGEMENT		
10.1	Requisition for goods and services All requisitions for the issuing or acquisition of material and / or service shall be completed electronically.	There are no document provided to demonstrate that a requisition or purchase order was generated for the tendered services.
10.2	Needs Assessment A need assessment will be performed for all purchasing by the End user at the beginning of each financial year and prior to embarking	There are no documents provided to demonstrate that a needs assessment was conducted.

	<p>on the procurement process. The assessment will take due cognizance of:</p> <ul style="list-style-type: none"> 10.2.1 Future and current need requirements; 10.2.2 Identification of critical delivery dates; 10.2.3 The frequency of need; 10.2.4 Budget availability; 10.2.5 Expenditure analysis(based on past expenditures); 10.2.6 Specifications; 10.2.7 Commodity analysis (checking for alternatives); 10.2.8 The strategic plan of PRASA; and 10.2.9 Industry analysis. 	
<p>10.3</p>	<p>Procurement Strategy</p> <p>SCM will develop a procurement strategy, taking due cognizance of the nature of the commodity or service required, the conditions of delivery, the prospective suppliers and the goals to be promoted as contemplated in the PPPFA and the BBBEE Act</p> <p>Procurement strategies might include, among others, the following:</p> <ul style="list-style-type: none"> 10.3.1 Utilizing term contracts; 10.3.2 Local versus international buying; 10.3.3 Utilizing local black business with clear targets that reflect the <ul style="list-style-type: none"> – Targeted percentage of HDI’s owning local enterprises or SMME’s; and – Actual support of HDI and SMME’s; and 10.3.4 Utilising a paper-based tendering system, this may include obtaining quotations, inviting competitive tenders, prequalification of tenderers and two stage tendering. 	<p>The decision to implement a database of suppliers for PRASA constitutes a procurement strategy.</p> <p>The reasons advanced for this decision are that the system would encourage participation of emerging professionals in the provision of these particular services.</p> <p>The strategy was implemented to stimulate growth and competition between emerging companies.</p> <p>The term for being on the database was initially set at one year.</p> <p>Contracts would be awarded on a rotational basis.</p> <p>In the correspondence issued to Crane, PRASA requested Crane to identify its consultants that would form part of the consortium. This amounts to a delegation of power. Although this is common practice, the rationale for the creation of a database must be borne in mind. The strategy is to create greater opportunities for emerging professionals- however, awarding contracts in a non- competitive manner is at variance with this rationale.</p>

10.4	<p>Specification of goods/works or services</p> <p>Standards and technical specifications quoted in tendering documents must promote the broadest possible competition, while assuring that critical elements of performance or other requirements for the goods, services and /or works being procured are achieved.</p> <p>Specifications must be based in relevant characteristics and/or performance requirement. References to brand names, catalogue numbers, or similar classifications should in all instances be avoided unless authorized as such by the CPO.</p>	The documents reviewed indicate that the competitive tendering process was not followed.
11. MINIMUM REQUIREMENTS		
11.1	<p>Description</p> <p>Prescription for minimum requirements for tenders.</p> <p>All tenders shall meet the following requirements:</p> <p>(a) The evaluation criteria and the weighting thereof;</p> <p>(b) Indicate that minimum qualifying score for functionality;</p> <p>(c) Include the spread sheet that will be used for evaluation without the weighting thereof;</p> <p>(d) indicate the tender evaluation process to be followed;</p> <p>(e) indicate clearly the grounds for disqualification; and</p> <p>(f) list all compliance issues.</p>	There are no documents to suggest that the project was put out to tender.
12. ACQUISITION MANAGEMENT		
12.2 Approved supplier database		
12.2.1	<p>SCM shall develop and maintain an Approved Supplier Database. In pursuance of this requirement, SCM shall:</p> <p>12.2.1.1 Categorize the suppliers on the database according to the goods / services they provide, HDI status, locality, and a record of past performance indicating whether the supplier has been restricted or not;</p> <p>12.2.1.2 Ensure that the supplier database is kept up to date;</p> <p>12.2.1.3 Annually, through newspapers commonly circulating locally, corporate website and any other appropriate ways, invite</p>	Crane was selected from the supplier database, as it had complied fully with the requirements for the bid.

	<p>prospective suppliers of goods and services, construction works and consultancy services to apply for listing as accredited prospective suppliers; and</p> <p>12.2.1.4 This database must be used for the purpose of obtaining quotations.</p> <p>Only in the event where none of the suppliers can meet the requirements of the quote should quotations be obtained from outside the Approved Supplier Database. A motivation to obtain quotes from suppliers not on the database is lodged with the CPO for approval before sending the quotes to the suppliers.</p>	
12.3 Tendering Methods		
<p>12.3.1.</p>	<p>Request for quotation</p> <p>A request for quotation is allowed for procurement not exceeding R350 000. 00 (Three Hundred and Fifty Thousand Rand). All requisitions above R350 000.00 shall be submitted for the invitation of tenders.</p> <p>In respect of procurement below R350 000.00, the following will apply:</p> <p>12.3.1.1 A minimum of three (3) written quotes should be obtained from suppliers on the database. In the event that potential suppliers are not available on the approval Supplier Database, quotations can be obtained from any other suppliers provided the authorization has been granted.</p> <p>12.3.1.2 Requests for quotations must be in writing by means of letter, facsimile or electronically (email), containing precise and detailed specifications from the onset as contained in the authorized Purchase Requisition.</p> <p>12.3.1.3 If it is not possible to obtain at least three (3) written price quotations, the reasons should be recorded and approved by the CPO or his / her delegate.</p>	<p>This is not applicable to the agreement.</p>

<p>12.3.2.</p>	<p>Competitive tendering process</p> <p>A competitive tendering process is applicable when the estimated total value of the requirement is more than R350 000.00. This process must be followed irrespective of the type of service or product required.</p> <p>Exceptions for competitive tendering will only be considered in the following circumstances:</p> <p>12.3.2.1 In the case of emergency;</p> <p>12.3.2.2 In the case of a sole source; and</p> <p>12.3.2.3 In the case of confinements.</p>	<p>Crane was appointed through selection from the PRASA supplier database.</p> <p>The supplier in turn appointed its professional team, some of whom were selected from the same database.</p> <p>The act amounted to empowering private service providers to appoint professional teams to complete large projects, be indirectly contracted to the state without having to comply with onerous statutory requirements.</p> <p>There is no indication that the project and need for services was publicly advertised.</p> <p>Furthermore, the rationale for deviating from the ordinary course in terms of this clause were not cited.</p>
<p>12.3.3</p>	<p>Competitive Data Base</p> <p>The CPO shall procure, through an open tender process, a Competitive Data Base of professionals which shall be valid for three years and shall:</p> <p>12.3.3.1 Be procured with rates that professionals will charge over the three years;</p> <p>12.3.3.2 Have a minimum of five approved professional service providers per area of professional expertise; and</p> <p>12.3.3.3 The appointment of professionals shall be on a rotational basis to ensure equitable distribution of work and shall be approved by the CPO.</p> <p>The award of work to professionals on the Competitive Data Base shall be evaluated based on technical proposals each time professional services are required.</p>	<p>Crane was appointed as a professional body for inclusion in the database.</p> <p>It is unclear whether Crane was selected solely as part of a rotation or whether they submitted the best quotation.</p>

<p>12.3.4</p>	<p>Non-Competitive Data Base The CPO shall bi-annually open for registration the data base for goods and services excluding professional services and the Non Competitive Data Base shall: 12.3.4.1 Valid for period of 6 months; 12.3.4.2 Shall be used for quotations for goods and services below R350 000.00 (Three hundred and Fifty Thousand Rand).</p>	<p>Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.</p>
<p>12.3.5</p>	<p>Unsolicited Tenders Unsolicited tenders are generally prohibited unless approved for consideration by the GCEO. In approving their consideration, the GCEO shall take the following into account:</p> <p>12.3.5.1 That the unsolicited tender is a unique concept offering; 12.3.5.2 That the offering of the tender cannot be provided efficiently through competitive tendering process; and 12.3.5.3 That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited tender.</p> <p>All unsolicited tenders must be tested in the market through Expression of Interest to ensure that indeed the concept is unique and is the only one available in the market.</p>	<p>Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.</p>
<p>12.3.6</p>	<p>Emergency Purchases Purchases made for emergency “situations” where competitive tendering would be inappropriate is limited to the following types of situations: 12.3.6.1 Disasters (e.g. damage from cyclone, flood, fire, etc.); 12.3.6.2 System failures (including supporting items which could affect the system); and 12.3.6.3 Security risk.</p>	<p>Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.</p>

	<p>During emergencies, the required goods, works or services may be obtained by means of quotations by preferably making use of PRASA's supplier database.</p> <p>A motivation of the emergency purchase should be submitted to the GCEO for ratification.</p>	
12.3.7	<p>Sole Source</p> <p>Sole sourcing exists when there is only one source (supplier) available in the market. A sole source may make a special product or technology that no one else does. Where such a situation exists, competitive tendering is not advisable.</p> <p>All sole sourcing motivations demonstrating that there is no other supplier available in the market, must be submitted to the GCEO for approval prior to entering negotiations with the sole source.</p>	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.
12.3.8	<p>Confinement</p> <p>This 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.</p> <p>Situations where this method is used include, but not limited to the following:</p> <p>12.3.8.1 The task that represents a natural continuation of previous work carried out by the firm;</p> <p>12.3.8.2 An assignment where only one or a limited number of firms are qualified or have experience of exceptional worth for the assignment;</p> <p>12.3.8.3 Appointment of professional services such as legal, financial, technical contracts and security where unique expertise and/ or security are required; and</p> <p>12.3.8.4 If it's an emergency as defined in clause 12.3.6 above.</p> <p>The decision to make use of the confinement process shall be motivated for approval and ratification by the GCEO.</p>	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.

12.4 Tender Administration		
12.4.1	<p>Preparing quotes / tendering documents Tender documentation should be based on conditions of Contract and should at least include the following:</p> <ul style="list-style-type: none"> 12.4.1.1 Tender conditions; 12.4.1.2 Specifications; 12.4.1.3 Data sheet/ drawing; 12.4.1.4 Invitation to Tender; 12.4.1.5 Pricing schedules; 12.4.1.6 A specific contract agreement stipulating delivery standards and requirements; 12.4.1.7 Preference claim forms; 12.4.1.8 Valid Tax clearance certificate; 12.4.1.9 Declaration of interest; 12.4.1.10 Declaration of tenderer's past supply chain management practice; and 12.4.1.11 Any specific conditions applicable to the delivery of the service / product. 	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.
12.4.2	<p>Special Condition of Contract</p> <ul style="list-style-type: none"> 12.4.2.1 Must be clearly specified in the tender document; 12.4.2.2 Take preference over general conditions of the contract; 12.4.2.3 Must be referred to legal service in respect of the legality and enforceability; 12.4.2.4 Must form part of the contract and be linked to the delivery and payment schedule of the contract; and 12.4.2.5 Must be approved by the CPO. 	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.
12.4.4	<p>Evaluation criteria and weightings Evaluation criteria are those aspects of a tender that will be measured, quantitatively and qualitatively, to arrive at an</p>	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.

	<p>integrated assessment as to which tender is likely to best meet the needs as described in the tender document.</p> <p>To compensate for important difference evaluation criteria, weights should be allocated to the criteria. <i>The minimum evaluation threshold for bidders to pass the technical functionality assessment on all Prasa tenders is set, as a standard across all sourcing categories, at 80 %.</i></p>	
12.4.5	<p>Invitation of tenders</p> <p>Tenders will be advertised in the print media or any publication if and when is necessary.</p> <p>Tenders will be closed at least three weeks after the date of publication. In exceptional circumstances; a short period may be stipulated. Where this is required; the approval of the GCEO must be sought.</p> <p>No late bids shall be considered as a rule.</p>	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.
12.5 Tender Evaluation		
12.5.1	<p>Evaluation phases</p> <p>Tender evaluations must be done in two phases by the BEC</p> <p>Phase one: Evaluate that all the tenders are compliant to critical criteria if any were stated in tender documents. Critical criteria or prerequisites are those aspects of the tender that, if not met in full, will automatically disqualify the tender from further evaluation.</p> <p>Phase two Evaluate each tender based on the response received in relation to the criteria and conditions stipulated in the tender document. Qualifying tenders are evaluated and scored against the criteria that were stipulated in the tender document.</p>	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.

12.6.1	After the Bid Evaluation Committee has evaluated the tender against the predetermined criteria, it will make a recommendation to the adjudication committee as to the preferred tenderer(s).	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.
12.6.2	<p>Awarding</p> <p>12.6.2.1 The final approval body for bids/tenders depends on the Delegation of Authority. The contract will be awarded to the tenderer who provides the best overall value to PRASA. PRASA may at its sole discretion award part, all or any of the business to any supplier to broaden and rationalise the distribution of work to HDI's. Best overall value includes, but is not limited to, consideration of B-BBEE.</p> <p>12.6.2.2 Subject to the provisions of the Preferential Procurement Policy Framework Act ("PPPFA") PRASA may award the tender to a tenderer that did not score the highest number of points.</p>	
12.6.3	All tenderers will be notified of the outcome of the evaluation process once the tender has been awarded to a successful tenderer or the tender has been withdrawn by PRASA.	Not applicable to this tender, as a specific database selection process for the required services appears to have been followed.
12.6.4	<p>Debriefing session</p> <p>The debriefing session will be structured in a manner which will allow the supplier to gain an appreciation of the reasons for non-selection of their bid. This may include technical, operational or commercial detail but must not include divulgence of any commercial sensitive or proprietary information.</p> <p>All briefing must be documented and filed, and conducted by at least two PRASA representatives.</p>	There are no documents demonstrating that a debriefing session was held.

12.9 Preferential Procurement		
12.9.6	<p>Preferential Procurement</p> <p>All suppliers shall be subjected to verification process to confirm their BEE status. The verification will cover the following elements, namely:</p> <p>12.9.6.1 Equity Ownership; 12.9.6.2 Management Control; 12.9.6.3 Employment Equity; 12.9.6.4 Skills Development; 12.9.6.5 Preferential Procurement; 12.9.6.6 Enterprise Development; and 12.9.6.7 Residual.</p> <p>The verification process will consist of the following:</p> <p>12.9.6.8 Information Gathering A BEE questionnaire will be sent to the suppliers for completion and attachment of supporting documentation;</p> <p>12.9.6.9 Desktop Evaluation The submitted questionnaire and supporting documents including company documents, shareholders agreements, sale of shares agreement, share certificates etc will be checked and a paper evaluation performed based on the information gathered from the questionnaires;</p> <p>12.9.6.10 Secondary Source Verification The information in the questionnaire and supporting documentation will be verified with secondary sources like the company registrar, South African Revenue Services, the employment equity registry, etc. The company's BEE suppliers will</p>	<p>There are no documents provided that demonstrate that a verification procedure was followed in terms of the PRASA SCM Policy for this tender.</p> <p>Furthermore, there was no indication that the professional teams were subjected to the same principles of preferential procurement.</p>

	<p>also be contracted to determine their relationship with the supplier and their status;</p> <p>12.9.6.11 On site, evaluations Interview will be conducted with owners, managers and other stakeholders of all companies. The companies will be sent a confirmation of the proceedings of the site evaluation and provided an opportunity to highlight any inconsistencies.</p>	
12.10 Contract Administration		
12.10.3	<p>Contracts must be awarded for a period of not more than three years, except tenders for a lease agreement for immovable property, which may be awarded for a period of not more than 5 years.</p> <p>Special circumstances for long-term contracts and strategic partnerships should be motivated for approval by the GCEO.</p>	The term of inclusion in the database is for a period of 2 years. In addition, the ratification of the appointment of the professional teams was set to endure until the completion of the work.

4.5. Prodigy Business Services¹²

<u>SCM Policy Clause</u>	<u>REQUIREMENTS</u>	<u>Prodigy Business Service MyStation Programme</u>
CONFLICT OF INTEREST		
8.1	<p>A conflict of interest shall exist where any PRASA employee or employee's Close Family Member, partner or associate:</p> <p>8.1.1 Has any business interest in any contract to be awarded by PRASA,</p>	There is no indication from the documents we have received that there are signed declarations of interest.

¹² The documents provided by PRASA for Prodigy Business Services is contained in Annexure D.

	<p>8.1.2 Participates in any activity that might lead to the disclosure of PRASA's proprietary information in relation to any contract to be awarded by PRASA, or</p> <p>8.1.3 Has any business relationship with any PRASA Contractor and/or supplier,</p> <p>That employee or role player must disclose that interest to the GCEO and withdraw from participating in any manner whatsoever in the process relating to that contract.</p>	
ROLES AND RESPONSIBILITIES		
SUPPLY CHAIN MANAGEMENT DEPARTMENT		
9.2	<p>SCM has the responsibility, authority and is accountable for, <i>inter alia</i>:</p> <p>9.2.1 The compilation of tender documents;</p> <p>9.2.2 Ensuring the completeness of tender documents;</p> <p>9.2.3 Arranging and managing tender briefing sessions and handling enquiries from tenderers;</p> <p>9.2.4 Ensuring that all potential suppliers are compliant with relevant legislation through ensuring the completion of background checks on these potential suppliers;</p> <p>9.2.5 Compiling a supplier recommendation report to the relevant adjudication committees;</p> <p>9.2.6 Ensuring that the tender process complies with policies, procedures and regulations;</p> <p>9.2.7 Maintaining records to ensure the existence of an audit trail;</p>	<p>There is no indication from the documents we have received that –</p> <ul style="list-style-type: none"> • the tender documents were complete; • there were briefing sessions and enquiries; • all potential suppliers are compliant with relevant legislation; • a supplier recommendation report was compiled; • there are records to ensure the existence of an audit trail.
GROUP CHIEF EXECUTIVE OFFICER		
9.3.9	<p>The GCEO has the responsibility to approve tenders up to R100 000 000.00 (One Hundred Million), subject to the applicable Delegation of Authority from time to time.</p>	<p>There is no indication from the documents we have received that specifies the tender threshold amount. We are thus not in a position to comment on whether the tender award ought to have been approved by GCEO.</p>

9.4 CHIEF PROCUREMENT OFFICER		
9.4	<p>The CPO has the following responsibilities:</p> <p>9.4.1 Ensuring that PRASA's policies and procedures put in place for procurement are appropriate and in accordance with regulatory framework that regulates PRASA;</p> <p>9.4.2 Maximizing administrative and operational efficiency in the implementation and execution of the Supply Chain Management Policy;</p> <p>9.4.3 Overall management of the SCM function within PRASA;</p> <p>9.4.4 Ensure implementation of SCM Policies and Procedures.</p>	<p>There is no indication from the documents we have received that the CPO fulfilled these responsibilities.</p>
9.5 BID SPECIFICATION COMMITTEE		
9.5	<p>The members and chairperson of the BSC shall be appointed by the GCEO. The BSC shall have a minimum of five members, two of which shall be SCM officials. The chairperson shall be an SCM official. Depending on the tender(s) under review, officials from the end-user department and/ or suitably qualified specialists may be invited to be part of the BSC for their respective tenders.</p> <p>The BSC has the following responsibilities:</p> <p>9.5.1 Review, approve or disapprove all tender specifications for procurement that is above R350 000.00;</p> <p>9.5.2 Take into account the PRASA preferential procurement targets when formulating specifications;</p> <p>9.5.3 Ensure that the specifications/tender documents are developed in an unbiased manner to allow all potential tenderers to offer their goods and services without favour or prejudice;</p> <p>9.5.4 Consider the method followed in procurement and disposal of goods and services, taking due cognizance as far as procedure, substance and value for money is concerned;</p> <p>9.5.5 Ensure that preference is given to those enterprises that enhance equality of employment opportunity, BEE, business skills and economic conditions of HDI's;</p>	<p>There are no documents to demonstrate that a bid specification committee was established specifically for this tender.</p>

	<p>9.5.6 Ensure that appropriate preference point system is determined for evaluation of the tender;</p> <p>9.5.7 Advise on the deliverables or performance indicators against which the tenderer awarded the contract will be assessed; and</p> <p>9.5.8 Ensure that specifications/tender documents comply with relevant legislation.</p>	
9.6 BID EVALUATION COMMITTEE		
<p>9.6</p>	<p>The Bid Evaluation Committee is a cross functional committee constituted of at least four members who are be appointed on a project by project basis. The members of the Bid Evaluation Committee shall be appointed by the CPO and shall be made up of a minimum of two officials from the SCM Department, one official from finance and one end-user. When it is deemed necessary, independent experts may also be co-opted to a Bid Evaluation Committee in an advisory capacity. Where such independent experts are sought, approval should be sought from the GCEO for corporate, Divisional CEO for the divisions, and Regional Manager for regions.</p> <p>The Bid Evaluation Committees shall be established to perform the following functions:</p> <p>9.6.1 Conduct administrative compliance evaluation;</p> <p>9.6.2 Evaluate all tenders in accordance with the criteria specified in the bid documentations and the prescripts of the PPPFA;</p> <p>9.6.3 Ensure that all potential suppliers are compliant with all relevant legislation through ensuring the completion of background checks on potential vendors;</p> <p>9.6.4 Compile evaluation reports for submission to the applicable adjudication committees;</p> <p>9.6.5 Make recommendations to the applicable adjudication committee regarding the outcome of the evaluation process; and</p> <p>9.6.6 Maintain records to ensure the existence of an audit trail.</p>	<p>There is no indication from the documents we have received that the Bid Evaluation Committee fulfilled these responsibilities.</p>

	<p>The Bid Evaluation Committee, in performing their functions, also verifies the following:</p> <ul style="list-style-type: none"> – The capability/ability of the bidder to execute the contract, from a technical, managerial and financial perspective; – Whether the bid is to specification in respect of quality, functionality, dimensions, design, customer support, guarantee, etc.; – Whether a bid offers value for money; – Number of contracts awarded to bidder/s in contention during the preceding twelve months; – Allocation of preference points; – Representivity in the composition of the bidder and the possibility of fronting; – Success/failure in executing contracts awarded to a bidder previously; – Tax Clearance certificate issued by the SARS; and – The bidder/s is/are not on National Treasury’s Database of Restricted Suppliers. 	
9.7 FINANCE, CAPITAL INVESTMENT AND TENDER COMMITTEE (FCP)		
9.7.2	<p>The members and the chairperson of the FCP shall be appointed by the BoC. The FCP shall have a minimum of three Non-Executive Directors and the GCEO. The chairperson shall be a Non-Executive Director. The FCP has the responsibility to consider recommendations from the GCEO for Board approval of tenders above R100 000 000.00 (One Hundred Million Rand).</p>	<p>There is no indication from the documents we have received that specifies the tender award amount. We are thus not in a position to comment on whether the FCP ought to have made a recommendation for the Board.</p>
9.8 Corporate Tender and Procurement Committee (CTPC)		
9.8.3	<p>The CTPC is established with the objective to perform the functions as indicated below. The CTPC is a cross-functional committee appointed by the GCEO. It shall be comprised of at least six members each with an alternate member, and not more than eight of whom at least two members are SCM Practitioners and</p>	<p>There is no indication from the documents we have received that specifies the tender award amount. We are thus not in a position to comment on whether the CTPC ought to have adjudicated this tender.</p>

	one from Finance. The chairperson of the CTPC shall be appointed by the GCEO. The CTPC's primary function is to adjudicate tenders that are above R10 000 000.00 (Ten Million Rand) but below R100 000 000.00 (One Hundred Million Rand).	
10. DEMAND MANAGEMENT		
10.1	Requisition for goods and services All requisitions for the issuing or acquisition of material and / or service shall be completed electronically.	There are no documents provided to demonstrate that a requisition or purchase order was generated for the tendered services.
10.2	Needs Assessment A need assessment will be performed for all purchasing by the End user at the beginning of each financial year and prior to embarking on the procurement process. The assessment will take due cognizance of: 10.2.1 Future and current need requirements; 10.2.2 Identification of critical delivery dates; 10.2.3 The frequency of need; 10.2.4 Budget availability; 10.2.5 Expenditure analysis (based on past expenditures); 10.2.6 Specifications; 10.2.7 Commodity analysis (checking for alternatives); 10.2.8 The strategic plan of PRASA; and 10.2.9 Industry analysis.	There is no indication from the documents we have received that a future needs analysis was conducted.
10.3	Procurement Strategy SCM will develop a procurement strategy, taking due cognizance of the nature of the commodity or service required, the conditions of delivery, the prospective suppliers and the goals to be promoted as contemplated in the PPPFA and the BBBEE Act Procurement strategies might include, among others, the following: 10.3.1 Utilizing term contracts;	There are no documents provided to demonstrate that a procurement strategy was developed for the particular services required in terms of this tender.

	<p>10.3.2 Local versus international buying;</p> <p>10.3.3 Utilizing local black business with clear targets that reflect the</p> <ul style="list-style-type: none"> – Targeted percentage of HDI's owning local enterprises or SMME's; and – Actual support of HDI and SMME's; and <p>10.3.4 Utilising a paper-based tendering system, this may include obtaining quotations, inviting competitive tenders, prequalification of tenderers and two stage tendering.</p>	
10.4	<p>Specification of goods/works or services</p> <p>Standards and technical specifications quoted in tendering documents must promote the broadest possible competition, while assuring that critical elements of performance or other requirements for the goods, services and /or works being procured are achieved.</p> <p>Specifications must be based in relevant characteristics and/or performance requirement. References to brand names, catalogue numbers, or similar classifications should in all instances be avoided unless authorized as such by the CPO.</p>	There are no documents provided which demonstrate the standard specifications employed for this tender.
11. MINIMUM REQUIREMENTS		
11.1	<p>Description</p> <p>Prescription for minimum requirements for tenders.</p> <p>All tenders shall meet the following requirements:</p> <ul style="list-style-type: none"> (a) The evaluation criteria and the weighting thereof; (b) Indicate that minimum qualifying score for functionality; (c) Include the spread sheet that will be used for evaluation without the weighting thereof; (d) indicate the tender evaluation process to be followed; (e) indicate clearly the grounds for disqualification; and (f) list all compliance issues. 	The full tender document has not been provided and therefore compliance with the minimum requirements cannot be confirmed.

12. ACQUISITION MANAGEMENT		
12.2 Approved supplier database		
12.2.1	<p>SCM shall develop and maintain an Approved Supplier Database. In pursuance of this requirement, SCM shall:</p> <p>12.2.1.1 Categorize the suppliers on the database according to the goods / services they provide, HDI status, locality, and a record of past performance indicating whether the supplier has been restricted or not;</p> <p>12.2.1.2 Ensure that the supplier database is kept up to date;</p> <p>12.2.1.3 Annually, through newspapers commonly circulating locally, corporate website and any other appropriate ways, invite prospective suppliers of goods and services, construction works and consultancy services to apply for listing as accredited prospective suppliers; and</p> <p>12.2.1.4 This database must be used for the purpose of obtaining quotations.</p> <p>Only in the event where none of the suppliers can meet the requirements of the quote should quotations be obtained from outside the Approved Supplier Database. A motivation to obtain quotes from suppliers not on the database is lodged with the CPO for approval before sending the quotes to the suppliers.</p>	<p>There is no indication from the documents we have received that the appointed consultants are included as suppliers in an Approved Supplier Database that is up to date or that consultants were invited through a relevant form of advertising.</p>
12.3 Tendering Methods		
12.3.1.	<p>Request for quotation</p> <p>A request for quotation is allowed for procurement not exceeding R350 000. 00 (Three Hundred and Fifty Thousand Rand). All requisitions above R350 000.00 shall be submitted for the invitation of tenders.</p> <p>In respect of procurement below R350 000.00, the following will apply:</p>	<p>There is no indication from the documents we have received that indicates the tender award amount. We are thus not able to comment on whether a request or quotation following the prescripts of the PPPFA and its associated Regulations should have been or was indeed applied.</p>

	<p>12.3.1.1 A minimum of three (3) written quotes should be obtained from suppliers on the database. In the event that potential suppliers are not available on the approval Supplier Database, quotations can be obtained from any other suppliers provided the authorization has been granted.</p> <p>12.3.1.2 Requests for quotations must be in writing by means of letter, facsimile or electronically (email), containing precise and detailed specifications from the onset as contained in the authorized Purchase Requisition.</p> <p>12.3.1.3 If it is not possible to obtain at least three (3) written price quotations, the reasons should be recorded and approved by the CPO or his / her delegate.</p>	
<p>12.3.2.</p>	<p>Competitive tendering process</p> <p>A competitive tendering process is applicable when the estimated total value of the requirement is more than R350 000.00. This process must be followed irrespective of the type of service or product required.</p> <p>Exceptions for competitive tendering will only be considered in the following circumstances:</p> <p>12.3.2.1 In the case of emergency;</p> <p>12.3.2.2 In the case of a sole source; and</p> <p>12.3.2.3 In the case of confinements.</p>	<p>It is indicated in correspondence from Teddy Nhlanhla Phoma (SCM Compliance Officer) that all consultants were not appointed through a competitive tendering process.</p> <p>There is no indication from the documents we have received that the appointment of consultants was a case of emergency, sole source or confinement.</p>
<p>12.3.3</p>	<p>Competitive Data Base</p> <p>The CPO shall procure, through an open tender process, a Competitive Data Base of professionals which shall be valid for three years and shall:</p> <p>12.3.3.1 Be procured with rates that professionals will charge over the three years;</p>	<p>There is no indication from the documents we have received that an open tender process involving a Competitive Database of professionals was adhered to in the appointment of consultants.</p>

	<p>12.3.3.2 Have a minimum of five approved professional service providers per area of professional expertise; and</p> <p>12.3.3.3 The appointment of professionals shall be on a rotational basis to ensure equitable distribution of work and shall be approved by the CPO.</p> <p>The award of work to professionals on the Competitive Data Base shall be evaluated based on technical proposals each time professional services are required.</p>	
12.3.4	<p>Non-Competitive Data Base</p> <p>The CPO shall bi-annually open for registration the data base for goods and services excluding professional services and the Non Competitive Data Base shall:</p> <p>12.3.4.1 Valid for period of 6 months;</p> <p>12.3.4.2 Shall be used for quotations for goods and services below R350 000.00 (Three hundred and Fifty Thousand Rand).</p>	There is no indication from the documents we have received that consultants were registered in the non competitive database.
12.3.5	<p>Unsolicited Tenders</p> <p>Unsolicited tenders are generally prohibited unless approved for consideration by the GCEO. In approving their consideration, the GCEO shall take the following into account:</p> <p>12.3.5.1 That the unsolicited tender is a unique concept offering;</p> <p>12.3.5.2 That the offering of the tender cannot be provided efficiently through competitive tendering process; and</p> <p>12.3.5.3 That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited tender.</p> <p>All unsolicited tenders must be tested in the market through Expression of Interest to ensure that indeed the concept is unique and is the only one available in the market.</p>	There is no indication from the documents we have received that PRASA received an unsolicited tender from consultants.

<p>12.3.6</p>	<p>Emergency Purchases Purchases made for emergency “situations” where competitive tendering would be inappropriate is limited to the following types of situations: 12.3.6.1 Disasters (e.g. damage from cyclone, flood, fire, etc.); 12.3.6.2 System failures (including supporting items which could affect the system); and 12.3.6.3 Security risk. During emergencies, the required goods, works or services may be obtained by means of quotations by preferably making use of PRASA’s supplier database. A motivation of the emergency purchase should be submitted to the GCEO for ratification.</p>	<p>There is no indication from the documents we have received that the appointment of consultants was due to a disaster, system failure or security risk.</p>
<p>12.3.7</p>	<p>Sole Source Sole sourcing exists when there is only one source (supplier) available in the market. A sole source may make a special product or technology that no one else does. Where such a situation exists, competitive tendering is not advisable. All sole sourcing motivations demonstrating that there is no other supplier available in the market, must be submitted to the GCEO for approval prior to entering negotiations with the sole source.</p>	<p>There is no indication from the documents we have received that consultants are the sole suppliers of the procured services.</p>
<p>12.3.8</p>	<p>Confinement This 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. Situations where this method is used include, but not limited to the following: 12.3.8.1 The task that represents a natural continuation of previous work carried out by the firm;</p>	<p>There is no indication from the documents we have received that consultants were appointed according to prescripts of confinement.</p>

	<p>12.3.8.2 An assignment where only one or a limited number of firms are qualified or have experience of exceptional worth for the assignment;</p> <p>12.3.8.3 Appointment of professional services such as legal, financial, technical contracts and security where unique expertise and/ or security are required; and</p> <p>12.3.8.4 If it's an emergency as defined in clause 12.3.6 above. The decision to make use of the confinement process shall be motivated for approval and ratification by the GCEO.</p>	
12.4 Tender Administration		
12.4.1	<p>Preparing quotes / tendering documents Tender documentation should be based on conditions of Contract and should at least include the following:</p> <p>12.4.1.1 Tender conditions; 12.4.1.2 Specifications; 12.4.1.3 Data sheet/ drawing; 12.4.1.4 Invitation to Tender; 12.4.1.5 Pricing schedules; 12.4.1.6 A specific contract agreement stipulating delivery standards and requirements; 12.4.1.7 Preference claim forms; 12.4.1.8 Valid Tax clearance certificate; 12.4.1.9 Declaration of interest; 12.4.1.10 Declaration of tenderer's past supply chain management practice; and 12.4.1.11 Any specific conditions applicable to the delivery of the service / product.</p>	There is no indication from the documents we have received that any of these conditions of Contract have been met.
12.4.2	<p>Special Condition of Contract 12.4.2.1 Must be clearly specified in the tender document; 12.4.2.2 Take preference over general conditions of the contract;</p>	There is no indication from the documents we have received that any of these special conditions of Contract are applicable.

	<p>12.4.2.3 Must be referred to legal service in respect of the legality and enforceability;</p> <p>12.4.2.4 Must form part of the contract and be linked to the delivery and payment schedule of the contract; and</p> <p>12.4.2.5 Must be approved by the CPO.</p>	
12.4.4	<p>Evaluation criteria and weightings</p> <p>Evaluation criteria are those aspects of a tender that will be measured, quantitatively and qualitatively, to arrive at an integrated assessment as to which tender is likely to best meet the needs as described in the tender document.</p> <p>To compensate for important difference evaluation criteria, weights should be allocated to the criteria.</p> <p><i>The minimum evaluation threshold for bidders to pass the technical functionality assessment on all Prasa tenders is set, as a standard across all sourcing categories, at 80 %.</i></p>	There is no indication from the documents we have received that these evaluation criteria were applied
12.4.5	<p>Invitation of tenders</p> <p>Tenders will be advertised in the print media or any publication if and when is necessary.</p> <p>Tenders will be closed at least three weeks after the date of publication. In exceptional circumstances; a short period may be stipulated. Where this is required; the approval of the GCEO must be sought.</p> <p>No late bids shall be considered as a rule.</p>	There is no indication from the documents we have received that any of the tenders was advertised.
12.5 Tender Evaluation		
12.5.1	<p>Evaluation phases</p> <p>Tender evaluations must be done in two phases by the BEC</p> <p>Phase one:</p>	There is no indication from the documents we have received that any evaluation phases were established.

	<p>Evaluate that all the tenders are compliant to critical criteria if any were stated in tender documents. Critical criteria or prerequisites are those aspects of the tender that, if not met in full, will automatically disqualify the tender from further evaluation.</p> <p>Phase two Evaluate each tender based on the response received in relation to the criteria and conditions stipulated in the tender document. Qualifying tenders are evaluated and scored against the criteria that were stipulated in the tender document.</p>	
12.6 Tender Adjudication		
12.6.1	After the Bid Evaluation Committee has evaluated the tender against the predetermined criteria, it will make a recommendation to the adjudication committee as to the preferred tenderer(s).	There is no indication from the documents we have received that the Bid Evaluation Committee made a recommendation as to a preferred tenderer.
12.6.2	<p>Awarding</p> <p>12.6.2.1 The final approval body for bids/tenders depends on the Delegation of Authority. The contract will be awarded to the tenderer who provides the best overall value to PRASA. PRASA may at its sole discretion award part, all or any of the business to any supplier to broaden and rationalise the distribution of work to HDI's. Best overall value includes, but is not limited to, consideration of B-BBEE.</p> <p>12.6.2.2 Subject to the provisions of the Preferential Procurement Policy Framework Act ("PPFA") PRASA may award the tender to a tenderer that did not score the highest number of points.</p>	
12.6.3	All tenderers will be notified of the outcome of the evaluation process once the tender has been awarded to a successful tenderer or the tender has been withdrawn by PRASA.	There is no indication from the documents we have received that notification of outcome was done.

<p>12.6.4</p>	<p>Debriefing session</p> <p>The debriefing session will be structured in a manner which will allow the supplier to gain an appreciation of the reasons for non-selection of their bid. This may include technical, operational or commercial detail but must not include divulgence of any commercial sensitive or proprietary information.</p> <p>All briefing must be documented and filed, and conducted by at least two PRASA representatives.</p>	<p>There is no indication from the documents we have received that a debriefing session was carried out.</p>
<p>12.9 Preferential Procurement</p>		
<p>12.9.6</p>	<p>Preferential Procurement</p> <p>All suppliers shall be subjected to verification process to confirm their BEE status. The verification will cover the following elements, namely:</p> <p>12.9.6.1 Equity Ownership; 12.9.6.2 Management Control; 12.9.6.3 Employment Equity; 12.9.6.4 Skills Development; 12.9.6.5 Preferential Procurement; 12.9.6.6 Enterprise Development; and 12.9.6.7 Residual.</p> <p>The verification process will consist of the following:</p> <p>12.9.6.8 Information Gathering A BEE questionnaire will be sent to the suppliers for completion and attachment of supporting documentation;</p> <p>12.9.6.9 Desktop Evaluation The submitted questionnaire and supporting documents including company documents, shareholders agreements, sale of shares</p>	<p>There are no documents provided that demonstrate that a verification procedure was followed in terms of the PRASA SCM Policy for this tender.</p>

	<p>agreement, share certificates etc will be checked and a paper evaluation performed based on the information gathered from the questionnaires;</p> <p>12.9.6.10 Secondary Source Verification The information in the questionnaire and supporting documentation will be verified with secondary sources like the company registrar, South African Revenue Services, the employment equity registry, etc. The company's BEE suppliers will also be contracted to determine their relationship with the supplier and their status;</p> <p>12.9.6.11 On site, evaluations Interview will be conducted with owners, managers and other stakeholders of all companies. The companies will be sent a confirmation of the proceedings of the site evaluation and provided an opportunity to highlight any inconsistencies.</p>	
12.10 Contract Administration		
12.10.3	<p>Contracts must be awarded for a period of not more than three years, except tenders for a lease agreement for immovable property, which may be awarded for a period of not more than 5 years.</p> <p>Special circumstances for long-term contracts and strategic partnerships should be motivated for approval by the GCEO.</p>	<p>A Recommendation Report was approved on 12 December 2012 by the GCEO extending the MyStation Programme for a further 2 financial years in the amount of R 30 100 000.00.</p>

Engineering Consultants, Illiso Consulting and Molemo Consulting¹³

REQUIREMENTS	<u>Development and Engineering Consultants (Pty) Ltd, Illiso Consulting (Pty) Ltd and Molemo Consulting Engineering (Pty) Ltd</u>
CONFLICT OF INTEREST	
<p>Conflict of interest shall exist where any PRASA employee or close Family Member, partner or associate:</p> <ul style="list-style-type: none"> has a business interest in any contract to be awarded by PRASA; participates in any activity that might lead to the disclosure of proprietary information in relation to any contract to be awarded by PRASA, or has a business relationship with any PRASA Contractor and/or Supplier. <p>The Contractor or role player must disclose that interest to the GCEO and refrain from participating in any manner whatsoever in the awarding of that contract.</p>	<p>There is no indication from the documents we have received that there are signed declarations of interest.</p>
ROLES AND RESPONSIBILITIES	
SUPPLY CHAIN MANAGEMENT DEPARTMENT	
<p>The Contractor's responsibility, authority and is accountable for, <i>inter alia</i>:</p> <ul style="list-style-type: none"> the compilation of tender documents; the completeness of tender documents; organising and managing tender briefing sessions and handling enquiries from tenderers; ensuring that all potential suppliers are compliant with relevant legislation through ensuring the completion of background checks on potential suppliers. 	<p>There is no indication from the documents we have received that –</p> <ul style="list-style-type: none"> the tender documents were complete; there were briefing sessions and enquiries; all potential suppliers are compliant with relevant legislation; a supplier recommendation report was compiled;

	<p>9.2.5 Compiling a supplier recommendation report to the relevant adjudication committees;</p> <p>9.2.6 Ensuring that the tender process complies with policies, procedures and regulations;</p> <p>9.2.7 Maintaining records to ensure the existence of an audit trail;</p>	<ul style="list-style-type: none"> • there are records to ensure the existence of an audit trail.
GROUP CHIEF EXECUTIVE OFFICER		
9.3.9	The GCEO has the responsibility to approve tenders up to R100 000 000.00 (One Hundred Million), subject to the applicable Delegation of Authority from time to time.	There is no indication from the documents we have received that specifies the tender threshold amount. We are thus not in a position to comment on whether the tender award ought to have been approved by GCEO.
9.4 CHIEF PROCUREMENT OFFICER		
9.4	<p>The CPO has the following responsibilities:</p> <p>9.4.1 Ensuring that PRASA's policies and procedures put in place for procurement are appropriate and in accordance with regulatory framework that regulates PRASA;</p> <p>9.4.2 Maximizing administrative and operational efficiency in the implementation and execution of the Supply Chain Management Policy;</p> <p>9.4.3 Overall management of the SCM function within PRASA;</p> <p>9.4.4 Ensure implementation of SCM Policies and Procedures.</p>	There is no indication from the documents we have received that the CPO fulfilled these responsibilities.
9.5 BID SPECIFICATION COMMITTEE		
9.5	<p>The members and chairperson of the BSC shall be appointed by the GCEO. The BSC shall have a minimum of five members, two of which shall be SCM officials. The chairperson shall be an SCM official. Depending on the tender(s) under review, officials from the end-user department and/ or suitably qualified specialists may be invited to be part of the BSC for their respective tenders.</p> <p>The BSC has the following responsibilities:</p>	There are no documents to demonstrate that a bid specification committee was established specifically for this tender.

	<p>9.5.1 Review, approve or disapprove all tender specifications for procurement that is above R350 000.00;</p> <p>9.5.2 Take into account the PRASA preferential procurement targets when formulating specifications;</p> <p>9.5.3 Ensure that the specifications/tender documents are developed in an unbiased manner to allow all potential tenderers to offer their goods and services without favour or prejudice;</p> <p>9.5.4 Consider the method followed in procurement and disposal of goods and services, taking due cognizance as far as procedure, substance and value for money is concerned;</p> <p>9.5.5 Ensure that preference is given to those enterprises that enhance equality of employment opportunity, BEE, business skills and economic conditions of HDI's;</p> <p>9.5.6 Ensure that appropriate preference point system is determined for evaluation of the tender;</p> <p>9.5.7 Advise on the deliverables or performance indicators against which the tenderer awarded the contract will be assessed; and</p> <p>9.5.8 Ensure that specifications/tender documents comply with relevant legislation.</p>	
9.6 BID EVALUATION COMMITTEE		
<p>9.6</p>	<p>The Bid Evaluation Committee is a cross functional committee constituted of at least four members who are to be appointed on a project by project basis. The members of the Bid Evaluation Committee shall be appointed by the CPO and shall be made up of a minimum of two officials from the SCM Department, one official from finance and one end-user. When it is deemed necessary, independent experts may also be co-opted to a Bid Evaluation Committee in an advisory capacity. Where such independent experts are sought, approval should be sought from the GCEO for corporate, Divisional CEO for the divisions, and Regional Manager for regions.</p>	<p>There is no indication from the documents we have received that the Bid Evaluation Committee fulfilled these responsibilities.</p>

	<p>The Bid Evaluation Committees shall be established to perform the following functions:</p> <p>9.6.1 Conduct administrative compliance evaluation;</p> <p>9.6.2 Evaluate all tenders in accordance with the criteria specified in the bid documentations and the prescripts of the PPPFA;</p> <p>9.6.3 Ensure that all potential suppliers are compliant with all relevant legislation through ensuring the completion of background checks on potential vendors;</p> <p>9.6.4 Compile evaluation reports for submission to the applicable adjudication committees;</p> <p>9.6.5 Make recommendations to the applicable adjudication committee regarding the outcome of the evaluation process; and</p> <p>9.6.6 Maintain records to ensure the existence of an audit trail.</p> <p>The Bid Evaluation Committee, in performing their functions, also verifies the following:</p> <ul style="list-style-type: none">– The capability/ability of the bidder to execute the contract, from a technical, managerial and financial perspective;– Whether the bid is to specification in respect of quality, functionality, dimensions, design, customer support, guarantee, etc.;– Whether a bid offers value for money;– Number of contracts awarded to bidder/s in contention during the preceding twelve months;– Allocation of preference points;– Representivity in the composition of the bidder and the possibility of fronting;– Success/failure in executing contracts awarded to a bidder previously;– Tax Clearance certificate issued by the SARS; and– The bidder/s is/are not on National Treasury’s Database of Restricted Suppliers.	
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9.7 FINANCE, CAPITAL INVESTMENT AND TENDER COMMITTEE (FCP)		
9.7.2	The members and the chairperson of the FCP shall be appointed by the BoC. The FCP shall have a minimum of three Non-Executive Directors and the GCEO. The chairperson shall be a Non-Executive Director. The FCP has the responsibility to consider recommendations from the GCEO for Board approval of tenders above R100 000 000.00 (One Hundred Million Rand).	There is no indication from the documents we have received that specifies the tender award amount. We are thus not in a position to comment on whether the FCP ought to have made a recommendation for the Board.
9.8 Corporate Tender and Procurement Committee (CTPC)		
9.8.3	The CTPC is established with the objective to perform the functions as indicated below. The CTPC is a cross-functional committee appointed by the GCEO. It shall be comprised of at least six members each with an alternate member, and not more than eight of whom at least two members are SCM Practitioners and one from Finance. The chairperson of the CTPC shall be appointed by the GCEO. The CTPC's primary function is to adjudicate tenders that are above R10 000 000.00 (Ten Million Rand) but below R100 000 000.00 (One Hundred Million Rand).	There is no indication from the documents we have received that specifies the tender award amount. We are thus not in a position to comment on whether the CTPC ought to have adjudicated this tender.
10. DEMAND MANAGEMENT		
10.1	Requisition for goods and services All requisitions for the issuing or acquisition of material and / or service shall be completed electronically.	There are no documents provided to demonstrate that a requisition or purchase order was generated for the tendered services.
10.2	Needs Assessment A need assessment will be performed for all purchasing by the End user at the beginning of each financial year and prior to embarking on the procurement process. The assessment will take due cognizance of: 10.2.1 Future and current need requirements; 10.2.2 Identification of critical delivery dates; 10.2.3 The frequency of need; 10.2.4 Budget availability;	There is no indication from the documents we have received that a future needs analysis was conducted.

	<p>10.2.5 Expenditure analysis (based on past expenditures);</p> <p>10.2.6 Specifications;</p> <p>10.2.7 Commodity analysis (checking for alternatives);</p> <p>10.2.8 The strategic plan of PRASA; and</p> <p>10.2.9 Industry analysis.</p>	
10.3	<p>Procurement Strategy</p> <p>SCM will develop a procurement strategy, taking due cognizance of the nature of the commodity or service required, the conditions of delivery, the prospective suppliers and the goals to be promoted as contemplated in the PPPFA and the BBBEE Act</p> <p>Procurement strategies might include, among others, the following:</p> <p>10.3.1 Utilizing term contracts;</p> <p>10.3.2 Local versus international buying;</p> <p>10.3.3 Utilizing local black business with clear targets that reflect the</p> <ul style="list-style-type: none"> – Targeted percentage of HDI's owning local enterprises or SMME's; and – Actual support of HDI and SMME's; and <p>10.3.4 Utilising a paper-based tendering system, this may include obtaining quotations, inviting competitive tenders, prequalification of tenderers and two stage tendering.</p>	<p>There are no documents provided to demonstrate that a procurement strategy was developed for the particular services required in terms of this tender.</p>
10.4	<p>Specification of goods/works or services</p> <p>Standards and technical specifications quoted in tendering documents must promote the broadest possible competition, while assuring that critical elements of performance or other requirements for the goods, services and /or works being procured are achieved.</p> <p>Specifications must be based in relevant characteristics and/or performance requirement. References to brand names, catalogue numbers, or similar classifications should in all instances be avoided unless authorized as such by the CPO.</p>	<p>There are no documents provided which demonstrate the standard specifications employed for this tender.</p>

11. MINIMUM REQUIREMENTS		
11.1	<p>Description</p> <p>Prescription for minimum requirements for tenders. All tenders shall meet the following requirements:</p> <ul style="list-style-type: none"> (a) The evaluation criteria and the weighting thereof; (b) Indicate that minimum qualifying score for functionality; (c) Include the spread sheet that will be used for evaluation without the weighting thereof; (d) indicate the tender evaluation process to be followed; (e) indicate clearly the grounds for disqualification; and (f) list all compliance issues. 	The full tender document has not been provided and therefore compliance with the minimum requirements cannot be confirmed.
12. ACQUISITION MANAGEMENT		
12.2 Approved supplier database		
12.2.1	<p>SCM shall develop and maintain an Approved Supplier Database. In pursuance of this requirement, SCM shall:</p> <p>12.2.1.1 Categorize the suppliers on the database according to the goods / services they provide, HDI status, locality, and a record of past performance indicating whether the supplier has been restricted or not;</p> <p>12.2.1.2 Ensure that the supplier database is kept up to date;</p> <p>12.2.1.3 Annually, through newspapers commonly circulating locally, corporate website and any other appropriate ways, invite prospective suppliers of goods and services, construction works and consultancy services to apply for listing as accredited prospective suppliers; and</p> <p>12.2.1.4 This database must be used for the purpose of obtaining quotations.</p> <p>Only in the event where none of the suppliers can meet the requirements of the quote should quotations be obtained from outside the Approved Supplier Database. A motivation to obtain</p>	There is no indication from the documents we have received that the appointed consultants are included as suppliers in an Approved Supplier Database that is up to date or that consultants were invited through a relevant form of advertising.

	quotes from suppliers not on the database is lodged with the CPO for approval before sending the quotes to the suppliers.	
12.3 Tendering Methods		
12.3.1.	<p>Request for quotation</p> <p>A request for quotation is allowed for procurement not exceeding R350 000. 00 (Three Hundred and Fifty Thousand Rand). All requisitions above R350 000.00 shall be submitted for the invitation of tenders.</p> <p>In respect of procurement below R350 000.00, the following will apply:</p> <p>12.3.1.1 A minimum of three (3) written quotes should be obtained from suppliers on the database. In the event that potential suppliers are not available on the approval Supplier Database, quotations can be obtained from any other suppliers provided the authorization has been granted.</p> <p>12.3.1.2 Requests for quotations must be in writing by means of letter, facsimile or electronically (email), containing precise and detailed specifications from the onset as contained in the authorized Purchase Requisition.</p> <p>12.3.1.3 If it is not possible to obtain at least three (3) written price quotations, the reasons should be recorded and approved by the CPO or his / her delegate.</p>	<p>There is no indication from the documents we have received that indicates the tender award amount. We are thus not able to comment on whether a request or quotation following the prescripts of the PPPFA and its associated Regulations should have been or was indeed applied.</p>
12.3.2.	<p>Competitive tendering process</p> <p>A competitive tendering process is applicable when the estimated total value of the requirement is more than R350 000.00. This process must be followed irrespective of the type of service or product required.</p> <p>Exceptions for competitive tendering will only be considered in the following circumstances:</p>	<p>It is indicated in correspondence from Teddy Nhlanhla Phoma (SCM Compliance Officer) that all consultants were not appointed through a competitive tendering process.</p> <p>There is no indication from the documents we have received that the appointment of consultants was a case of emergency, sole source or confinement.</p>

	<p>12.3.2.1 In the case of emergency;</p> <p>12.3.2.2 In the case of a sole source; and</p> <p>12.3.2.3 In the case of confinements.</p>	
12.3.3	<p>Competitive Data Base</p> <p>The CPO shall procure, through an open tender process, a Competitive Data Base of professionals which shall be valid for three years and shall:</p> <p>12.3.3.1 Be procured with rates that professionals will charge over the three years;</p> <p>12.3.3.2 Have a minimum of five approved professional service providers per area of professional expertise; and</p> <p>12.3.3.3 The appointment of professionals shall be on a rotational basis to ensure equitable distribution of work and shall be approved by the CPO.</p> <p>The award of work to professionals on the Competitive Data Base shall be evaluated based on technical proposals each time professional services are required.</p>	There is no indication from the documents we have received that an open tender process involving a Competitive Database of professionals was adhered to in the appointment of consultants.
12.3.4	<p>Non-Competitive Data Base</p> <p>The CPO shall bi-annually open for registration the data base for goods and services excluding professional services and the Non Competitive Data Base shall:</p> <p>12.3.4.1 Valid for period of 6 months;</p> <p>12.3.4.2 Shall be used for quotations for goods and services below R350 000.00 (Three hundred and Fifty Thousand Rand).</p>	There is no indication from the documents we have received that consultants were registered in the non-competitive database.
12.3.5	<p>Unsolicited Tenders</p> <p>Unsolicited tenders are generally prohibited unless approved for consideration by the GCEO. In approving their consideration, the GCEO shall take the following into account:</p>	There is no indication from the documents we have received that PRASA received an unsolicited tender from consultants.

	<p>12.3.5.1 That the unsolicited tender is a unique concept offering; 12.3.5.2 That the offering of the tender cannot be provided efficiently through competitive tendering process; and 12.3.5.3 That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited tender.</p> <p>All unsolicited tenders must be tested in the market through Expression of Interest to ensure that indeed the concept is unique and is the only one available in the market.</p>	
12.3.6	<p>Emergency Purchases Purchases made for emergency “situations” where competitive tendering would be inappropriate is limited to the following types of situations: 12.3.6.1 Disasters (e.g. damage from cyclone, flood, fire, etc.); 12.3.6.2 System failures (including supporting items which could affect the system); and 12.3.6.3 Security risk. During emergencies, the required goods, works or services may be obtained by means of quotations by preferably making use of PRASA’s supplier database. A motivation of the emergency purchase should be submitted to the GCEO for ratification.</p>	There is no indication from the documents we have received that the appointment of consultants was due to a disaster, system failure or security risk.
12.3.7	<p>Sole Source Sole sourcing exists when there is only one source (supplier) available in the market. A sole source may make a special product or technology that no one else does. Where such a situation exists, competitive tendering is not advisable. All sole sourcing motivations demonstrating that there is no other supplier available in the market, must be submitted to the GCEO for approval prior to entering negotiations with the sole source.</p>	There is no indication from the documents we have received that consultants are the sole suppliers of the procured services.

<p>12.3.8</p>	<p>Confinement This 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. Situations where this method is used include, but not limited to the following: 12.3.8.1 The task that represents a natural continuation of previous work carried out by the firm; 12.3.8.2 An assignment where only one or a limited number of firms are qualified or have experience of exceptional worth for the assignment; 12.3.8.3 Appointment of professional services such as legal, financial, technical contracts and security where unique expertise and/ or security are required; and 12.3.8.4 If it's an emergency as defined in clause 12.3.6 above. The decision to make use of the confinement process shall be motivated for approval and ratification by the GCEO.</p>	<p>There is no indication from the documents we have received that consultants were appointed according to prescripts of confinement.</p>
12.4 Tender Administration		
<p>12.4.1</p>	<p>Preparing quotes / tendering documents Tender documentation should be based on conditions of Contract and should at least include the following: 12.4.1.1 Tender conditions; 12.4.1.2 Specifications; 12.4.1.3 Data sheet/ drawing; 12.4.1.4 Invitation to Tender; 12.4.1.5 Pricing schedules; 12.4.1.6 A specific contract agreement stipulating delivery standards and requirements; 12.4.1.7 Preference claim forms; 12.4.1.8 Valid Tax clearance certificate;</p>	<p>There is no indication from the documents we have received that any of these conditions of Contract have been met.</p>

	<p>12.4.1.9 Declaration of interest;</p> <p>12.4.1.10 Declaration of tenderer's past supply chain management practice; and</p> <p>12.4.1.11 Any specific conditions applicable to the delivery of the service / product.</p>	
12.4.2	<p>Special Condition of Contract</p> <p>12.4.2.1 Must be clearly specified in the tender document;</p> <p>12.4.2.2 Take preference over general conditions of the contract;</p> <p>12.4.2.3 Must be referred to legal service in respect of the legality and enforceability;</p> <p>12.4.2.4 Must form part of the contract and be linked to the delivery and payment schedule of the contract; and</p> <p>12.4.2.5 Must be approved by the CPO.</p>	There is no indication from the documents we have received that any of these special conditions of Contract are applicable.
12.4.4	<p>Evaluation criteria and weightings</p> <p>Evaluation criteria are those aspects of a tender that will be measured, quantitatively and qualitatively, to arrive at an integrated assessment as to which tender is likely to best meet the needs as described in the tender document.</p> <p>To compensate for important difference evaluation criteria, weights should be allocated to the criteria.</p> <p><i>The minimum evaluation threshold for bidders to pass the technical functionality assessment on all Prasa tenders is set, as a standard across all sourcing categories, at 80 %.</i></p>	There is no indication from the documents we have received that these evaluation criteria were applied
12.4.5	<p>Invitation of tenders</p> <p>Tenders will be advertised in the print media or any publication if and when is necessary.</p> <p>Tenders will be closed at least three weeks after the date of publication. In exceptional circumstances; a short period may be</p>	There is no indication from the documents we have received that any of the tenders was advertised.

	<p>stipulated. Where this is required; the approval of the GCEO must be sought.</p> <p>No late bids shall be considered as a rule.</p>	
12.5 Tender Evaluation		
12.5.1	<p>Evaluation phases</p> <p>Tender evaluations must be done in two phases by the BEC</p> <p>Phase one: Evaluate that all the tenders are compliant to critical criteria if any were stated in tender documents. Critical criteria or prerequisites are those aspects of the tender that, if not met in full, will automatically disqualify the tender from further evaluation.</p> <p>Phase two Evaluate each tender based on the response received in relation to the criteria and conditions stipulated in the tender document. Qualifying tenders are evaluated and scored against the criteria that were stipulated in the tender document.</p>	<p>There is no indication from the documents we have received that any evaluation phases were established.</p>
12.6 Tender Adjudication		
12.6.1	<p>After the Bid Evaluation Committee has evaluated the tender against the predetermined criteria, it will make a recommendation to the adjudication committee as to the preferred tenderer(s).</p>	<p>There is no indication from the documents we have received that the Bid Evaluation Committee made a recommendation as to a preferred tenderer.</p>
12.6.2	<p>Awarding</p> <p>12.6.2.1 The final approval body for bids/tenders depends on the Delegation of Authority. The contract will be awarded to the tenderer who provides the best overall value to PRASA. PRASA may at its sole discretion award part, all or any of the business to any supplier to broaden and rationalise the distribution of work to HDI's. Best overall value includes, but is not limited to, consideration of B-BBEE.</p>	

	12.6.2.2 Subject to the provisions of the Preferential Procurement Policy Framework Act (“ PPPFA ”) PRASA may award the tender to a tenderer that did not score the highest number of points.	
12.6.3	All tenderers will be notified of the outcome of the evaluation process once the tender has been awarded to a successful tenderer or the tender has been withdrawn by PRASA.	<p>PRASA addressed the Notice of Appointment to all three entities in the consortium as follows:</p> <ol style="list-style-type: none"> 1. Development & Engineering Consultants (“DEC”), on 10 July 2012, signed by the GCPO, advising that DEC was successful in its tender response for the modernisation project (station improvements to become universal access compliant), with tender reference number HO/SCM/226/2011. <p>DEC responded to PRASA’s Notice of Appointment by means of an ‘Acceptance Letter’ dated 23 July 2012, signed by its duly authorised representative, Dhavelin Reddy.</p> <ol style="list-style-type: none"> 2. Iliso Consulting (Pty) Ltd (“Iliso”), on 16 July 2012, signed by the GCPO, advising that Iliso was successful in its tender response for the modernisation project (station improvements to become universal access compliant), with tender reference number HO/SCM/226/2011. <p>Iliso responded to PRASA’s Notice of Appointment by means of an ‘Acceptance Letter’ dated 5 December 2012, signed by its duly authorised representative.</p> <ol style="list-style-type: none"> 3. Molemo Consulting Engineers (“Molemo”), on 10 July 2012, signed by the GCPO, advising that Molemo was successful in its tender response for the modernisation

		project (station improvements to become universal access compliant), with tender reference number HO/SCM/226/2011.
12.6.4	<p>Debriefing session</p> <p>The debriefing session will be structured in a manner which will allow the supplier to gain an appreciation of the reasons for non-selection of their bid. This may include technical, operational or commercial detail but must not include divulgence of any commercial sensitive or proprietary information.</p> <p>All briefing must be documented and filed, and conducted by at least two PRASA representatives.</p>	There is no indication from the documents we have received that a debriefing session was carried out.
12.9 Preferential Procurement		
12.9.6	<p>Preferential Procurement</p> <p>All suppliers shall be subjected to verification process to confirm their BEE status. The verification will cover the following elements, namely:</p> <p>12.9.6.1 Equity Ownership; 12.9.6.2 Management Control; 12.9.6.3 Employment Equity; 12.9.6.4 Skills Development; 12.9.6.5 Preferential Procurement; 12.9.6.6 Enterprise Development; and 12.9.6.7 Residual.</p> <p>The verification process will consist of the following:</p> <p>12.9.6.8 Information Gathering A BEE questionnaire will be sent to the suppliers for completion and attachment of supporting documentation;</p>	There are no documents provided that demonstrate that a verification procedure was followed in terms of the PRASA SCM Policy for this tender.

	<p>12.9.6.9 Desktop Evaluation The submitted questionnaire and supporting documents including company documents, shareholders agreements, sale of shares agreement, share certificates etc will be checked and a paper evaluation performed based on the information gathered from the questionnaires;</p> <p>12.9.6.10 Secondary Source Verification The information in the questionnaire and supporting documentation will be verified with secondary sources like the company registrar, South African Revenue Services, the employment equity registry, etc. The company's BEE suppliers will also be contracted to determine their relationship with the supplier and their status;</p> <p>12.9.6.11 On site, evaluations Interview will be conducted with owners, managers and other stakeholders of all companies. The companies will be sent a confirmation of the proceedings of the site evaluation and provided an opportunity to highlight any inconsistencies.</p>	
12.10 Contract Administration		
12.10.3	<p>Contracts must be awarded for a period of not more than three years, except tenders for a lease agreement for immovable property, which may be awarded for a period of not more than 5 years. Special circumstances for long-term contracts and strategic partnerships should be motivated for approval by the GCEO.</p>	<p>A Recommendation Report was approved on 12 December 2012 by the GCEO extending the MyStation Programme for a further 2 financial years in the amount of R 30 100 000.00.</p>

4.7. Inyani Civil Works and Plant Hire CC¹⁴

<u>SCM Policy Clause</u>	<u>REQUIREMENTS</u>	<u>Tender Number – HO/INFRA/ /061/06/2011 Erection of Optic Fibre Agreement Inyani Civil Works and Plant Hire CC</u>
CONFLICT OF INTEREST		
<p>8.1</p>	<p>A conflict of interest shall exist where any PRASA employee or employee's Close Family Member, partner or associate:</p> <p>8.1.1 Has any business interest in any contract to be awarded by PRASA,</p> <p>8.1.2 Participates in any activity that might lead to the disclosure of PRASA's proprietary information in relation to any contract to be awarded by PRASA, or</p> <p>8.1.3 Has any business relationship with any PRASA Contractor and/or supplier,</p> <p>That employee or role player must disclose that interest to the GCEO and withdraw from participating in any manner whatsoever in the process relating to that contract.</p>	<p>The Tender Evaluation Committee signed "Confidentiality Agreements" and "Declaration of Interests" on the 30th of August 2011.</p>
ROLES AND RESPONSIBILITIES		
SUPPLY CHAIN MANAGEMENT DEPARTMENT		
<p>9.2</p>	<p>SCM has the responsibility, authority and is accountable for, <i>inter alia</i>:</p> <p>9.2.1 The compilation of tender documents;</p> <p>9.2.2 Ensuring the completeness of tender documents;</p> <p>9.2.3 Arranging and managing tender briefing sessions and handling enquiries from tenderers;</p> <p>9.2.4 Ensuring that all potential suppliers are compliant with relevant legislation through ensuring the completion of background checks on these potential suppliers;</p>	<p>During the Briefing session held at PRASA on 21 June 2011 ,3 people signed the Tender Briefing / Site Inspection Attendance Register, 30 people signed the Attendance Register and 19 people signed the Tender Collection Register.</p> <p>The PRASA Head of Corporate Security conducted a security screening on Inyani Civil Works and Plant Hire CC and concluded in a report dated 23 September 2011 that there was no reason of not granting Inyani the tender.</p>

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The documents provided by PRASA for Inyani Civil Works and Plant Hire CC is contained in Annexure F.

	<p>9.2.5 Compiling a supplier recommendation report to the relevant adjudication committees;</p> <p>9.2.6 Ensuring that the tender process compiles with policies, procedures and regulations;</p> <p>9.2.7 Maintaining records to ensure the existence of an audit trail;</p>	
GROUP CHIEF EXECUTIVE OFFICER		
9.3.9	The GCEO has the responsibility to approve tenders up to R100 000 000.00 (One Hundred Million), subject to the applicable Delegation of Authority from time to time.	A Recommendation Report was approved on 31 July 2012, for the award to Inyani of the tender in the amount of R 82 640 158. 00 by the GCEO
9.4 CHIEF PROCUREMENT OFFICER		
9.4	<p>The CPO has the following responsibilities:</p> <p>9.4.1 Ensuring that PRASA's policies and procedures put in place for procurement are appropriate and in accordance with regulatory framework that regulates PRASA;</p> <p>9.4.2 Maximizing administrative and operational efficiency in the implementation and execution of the Supply Chain Management Policy;</p> <p>9.4.3 Overall management of the SCM function within PRASA;</p> <p>9.4.4 Ensure implementation of SCM Policies and Procedures.</p>	Please refer to paragraph 12.5.1 for the role undertaken by the Chief Procurement Officer for this tender.
9.5 BID SPECIFICATION COMMITTEE		
9.5	<p>The members and chairperson of the BSC shall be appointed by the GCEO. The BSC shall have a minimum of five members, two of which shall be SCM officials. The chairperson shall be an SCM official. Depending on the tender(s) under review, officials from the end-user department and/ or suitably qualified specialists may be invited to be part of the BSC for their respective tenders.</p> <p>The BSC has the following responsibilities:</p> <p>9.5.1 Review, approve or disapprove all tender specifications for procurement that is above R350 000.00;</p>	There are no documents to demonstrate that a bid specification committee was established specifically for this tender.

	<p>9.5.2 Take into account the PRASA preferential procurement targets when formulating specifications;</p> <p>9.5.3 Ensure that the specifications/tender documents are developed in an unbiased manner to allow all potential tenderers to offer their goods and services without favour or prejudice;</p> <p>9.5.4 Consider the method followed in procurement and disposal of goods and services, taking due cognizance as far as procedure, substance and value for money is concerned;</p> <p>9.5.5 Ensure that preference is given to those enterprises that enhance equality of employment opportunity, BEE, business skills and economic conditions of HDI's;</p> <p>9.5.6 Ensure that appropriate preference point system is determined for evaluation of the tender;</p> <p>9.5.7 Advise on the deliverables or performance indicators against which the tenderer awarded the contract will be assessed; and</p> <p>9.5.8 Ensure that specifications/tender documents comply with relevant legislation.</p>	
9.6 BID EVALUATION COMMITTEE		
<p>9.6</p>	<p>The Bid Evaluation Committee is a cross functional committee constituted of at least four members who are to be appointed on a project by project basis. The members of the Bid Evaluation Committee shall be appointed by the CPO and shall be made up of a minimum of two officials from the SCM Department, one official from finance and one end-user. When it is deemed necessary, independent experts may also be co-opted to a Bid Evaluation Committee in an advisory capacity. Where such independent experts are sought, approval should be sought from the GCEO for corporate, Divisional CEO for the divisions, and Regional Manager for regions.</p> <p>The Bid Evaluation Committees shall be established to perform the following functions:</p> <p>9.6.1 Conduct administrative compliance evaluation;</p>	<p>The Chief Procurement Officer appointed the Tender Evaluation Committee on 17 August 2011. We have had sight of the signed internal memorandum in this regard, as follows:</p> <ul style="list-style-type: none"> – Kevin Mabona (Chairperson) – Matshidiso Mosholi (SCM) – Mlungisi Tenza (Finance) – Albert Mdluli (SCM) – Solly Kekana (Strategic Network Planning) – Thaodi Mapodile (ICT) <p>The Tender Evaluation Committee signed a “Declaration of Interest by Members” form and a “Confidentiality Agreement”, dated 24 August 2011.</p>

	<p>9.6.2 Evaluate all tenders in accordance with the criteria specified in the bid documentations and the prescripts of the PPPFA;</p> <p>9.6.3 Ensure that all potential suppliers are compliant with all relevant legislation through ensuring the completion of background checks on potential vendors;</p> <p>9.6.4 Compile evaluation reports for submission to the applicable adjudication committees;</p> <p>9.6.5 Make recommendations to the applicable adjudication committee regarding the outcome of the evaluation process; and</p> <p>9.6.6 Maintain records to ensure the existence of an audit trail.</p> <p>The Bid Evaluation Committee, in performing their functions, also verifies the following:</p> <ul style="list-style-type: none"> – The capability/ability of the bidder to execute the contract, from a technical, managerial and financial perspective; – Whether the bid is to specification in respect of quality, functionality, dimensions, design, customer support, guarantee, etc.; – Whether a bid offers value for money; – Number of contracts awarded to bidder/s in contention during the preceding twelve months; – Allocation of preference points; – Representivity in the composition of the bidder and the possibility of fronting; – Success/failure in executing contracts awarded to a bidder previously; – Tax Clearance certificate issued by the SARS; and – The bidder/s is/are not on National Treasury’s Database of Restricted Suppliers. 	<p>Please refer to the commentary under paragraph 12.5.1 for a further analysis of the Tender Evaluation Committee’s functions in terms evaluating the tender.</p>
9.7 FINANCE, CAPITAL INVESTMENT AND TENDER COMMITTEE (FCP)		
9.7.2	The members and the chairperson of the FCP shall be appointed by the BoC. The FCP shall have a minimum of three Non-Executive	Not applicable to this tender, the value of which is below R100 000 000.00.

	Directors and the GCEO. The chairperson shall be a Non-Executive Director. The FCP has the responsibility to consider recommendations from the GCEO for Board approval of tenders above R100 000 000.00 (One Hundred Million Rand).	
9.8 Corporate Tender and Procurement Committee (CTPC)		
9.8.3	The CTPC is established with the objective to perform the functions as indicated below. The CTPC is a cross-functional committee appointed by the GCEO. It shall be comprised of at least six members each with an alternate member, and not more than eight of whom at least two members are SCM Practitioners and one from Finance. The chairperson of the CTPC shall be appointed by the GCEO. The CTPC's primary function is to adjudicate tenders that are above R10 000 000.00 (Ten Million Rand) but below R100 000 000.00 (One Hundred Million Rand).	<p>We have had sight of the Submission for Adjudication and a Notice to Proceed from the Tender Evaluation Committee, as signed by General Manager: SCM, undated, which seeks to request that the Corporate Tender Procurement Committee appoints Inyani as the successful tenderer for an amount of R82 640 158.00</p> <p>Please note that 7 companies responded to the tender and only 2 of the 7 were shortlisted because they scored a threshold of 175 according to the technical evaluation criteria.</p>
10. DEMAND MANAGEMENT		
10.1	Requisition for goods and services All requisitions for the issuing or acquisition of material and / or service shall be completed electronically.	There are no document provided to demonstrate that a requisition or purchase order was generated for the tendered services.
10.2	Needs Assessment A need assessment will be performed for all purchasing by the End user at the beginning of each financial year and prior to embarking on the procurement process. The assessment will take due cognizance of: 10.2.1 Future and current need requirements; 10.2.2 Identification of critical delivery dates; 10.2.3 The frequency of need; 10.2.4 Budget availability; 10.2.5 Expenditure analysis(based on past expenditures);	There are no documents provided to demonstrate that a needs assessment was conducted.

	<p>10.2.6 Specifications;</p> <p>10.2.7 Commodity analysis (checking for alternatives);</p> <p>10.2.8 The strategic plan of PRASA; and</p> <p>10.2.9 Industry analysis.</p>	
10.3	<p>Procurement Strategy</p> <p>SCM will develop a procurement strategy, taking due cognizance of the nature of the commodity or service required, the conditions of delivery, the prospective suppliers and the goals to be promoted as contemplated in the PPPFA and the BBBEE Act</p> <p>Procurement strategies might include, among others, the following:</p> <p>10.3.1 Utilizing term contracts;</p> <p>10.3.2 Local versus international buying;</p> <p>10.3.3 Utilizing local black business with clear targets that reflect the</p> <ul style="list-style-type: none"> – Targeted percentage of HDI's owning local enterprises or SMME's; and – Actual support of HDI and SMME's; and <p>10.3.4 Utilising a paper-based tendering system, this may include obtaining quotations, inviting competitive tenders, prequalification of tenderers and two stage tendering.</p>	<p>There are no documents provided to demonstrate that a procurement strategy was developed for the particular services required in terms of this tender.</p>
10.4	<p>Specification of goods/works or services</p> <p>Standards and technical specifications quoted in tendering documents must promote the broadest possible competition, while assuring that critical elements of performance or other requirements for the goods, services and /or works being procured are achieved. Specifications must be based in relevant characteristics and/or performance requirement. References to brand names, catalogue numbers, or similar classifications should in all instances be avoided unless authorized as such by the CPO.</p>	<p>There are no documents provided which demonstrate the standard specifications employed for this tender.</p>

11. MINIMUM REQUIREMENTS		
11.1	<p>Description Prescription for minimum requirements for tenders. All tenders shall meet the following requirements: (a) The evaluation criteria and the weighting thereof; (b) Indicate that minimum qualifying score for functionality; (c) Include the spread sheet that will be used for evaluation without the weighting thereof; (d) indicate the tender evaluation process to be followed; (e) indicate clearly the grounds for disqualification; and (f) list all compliance issues.</p>	<p>The Technical Evaluation Committee designed a criterion that looks at: -experience/work of similar nature -project duration -technical solution-maps/layouts-materials and technique -BEE compliance</p> <p>It is against this criterion that the other 5 companies were disqualified and we have also been provided with technical score reports on each of the bidders.</p>
12. ACQUISITION MANAGEMENT		
12.2 Approved supplier database		
12.2.1	<p>SCM shall develop and maintain an Approved Supplier Database. In pursuance of this requirement, SCM shall:</p> <p>12.2.1.1 Categorize the suppliers on the database according to the goods / services they provide, HDI status, locality, and a record of past performance indicating whether the supplier has been restricted or not; 12.2.1.2 Ensure that the supplier database is kept up to date; 12.2.1.3 Annually, through newspapers commonly circulating locally, corporate website and any other appropriate ways, invite prospective suppliers of goods and services, construction works and consultancy services to apply for listing as accredited prospective suppliers; and 12.2.1.4 This database must be used for the purpose of obtaining quotations.</p> <p>Only in the event where none of the suppliers can meet the requirements of the quote should quotations be obtained from</p>	<p>Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.</p>

	outside the Approved Supplier Database. A motivation to obtain quotes from suppliers not on the database is lodged with the CPO for approval before sending the quotes to the suppliers.	
12.3 Tendering Methods		
12.3.1.	<p>Request for quotation A request for quotation is allowed for procurement not exceeding R350 000. 00 (Three Hundred and Fifty Thousand Rand). All requisitions above R350 000.00 shall be submitted for the invitation of tenders. In respect of procurement below R350 000.00, the following will apply:</p> <p>12.3.1.1 A minimum of three (3) written quotes should be obtained from suppliers on the database. In the event that potential suppliers are not available on the approval Supplier Database, quotations can be obtained from any other suppliers provided the authorization has been granted.</p> <p>12.3.1.2 Requests for quotations must be in writing by means of letter, facsimile or electronically (email), containing precise and detailed specifications from the onset as contained in the authorized Purchase Requisition.</p> <p>12.3.1.3 If it is not possible to obtain at least three (3) written price quotations, the reasons should be recorded and approved by the CPO or his / her delegate.</p>	Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.
12.3.2.	<p>Competitive tendering process A competitive tendering process is applicable when the estimated total value of the requirement is more than R350 000.00. This process must be followed irrespective of the type of service or product required.</p>	A competitive tender process appears to have been followed under reference number HO/INFRA/061/06/2011, as advertised in various newspapers

	<p>Exceptions for competitive tendering will only be considered in the following circumstances:</p> <p>12.3.2.1 In the case of emergency;</p> <p>12.3.2.2 In the case of a sole source; and</p> <p>12.3.2.3 In the case of confinements.</p>	
12.3.3	<p>Competitive Data Base</p> <p>The CPO shall procure, through an open tender process, a Competitive Data Base of professionals which shall be valid for three years and shall:</p> <p>12.3.3.1 Be procured with rates that professionals will charge over the three years;</p> <p>12.3.3.2 Have a minimum of five approved professional service providers per area of professional expertise; and</p> <p>12.3.3.3 The appointment of professionals shall be on a rotational basis to ensure equitable distribution of work and shall be approved by the CPO.</p> <p>The award of work to professionals on the Competitive Data Base shall be evaluated based on technical proposals each time professional services are required.</p>	Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.
12.3.4	<p>Non-Competitive Data Base</p> <p>The CPO shall bi-annually open for registration the data base for goods and services excluding professional services and the Non Competitive Data Base shall:</p> <p>12.3.4.1 Valid for period of 6 months;</p> <p>12.3.4.2 Shall be used for quotations for goods and services below R350 000.00 (Three hundred and Fifty Thousand Rand).</p>	Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.

<p>12.3.5</p>	<p>Unsolicited Tenders Unsolicited tenders are generally prohibited unless approved for consideration by the GCEO. In approving their consideration, the GCEO shall take the following into account:</p> <p>12.3.5.1 That the unsolicited tender is a unique concept offering; 12.3.5.2 That the offering of the tender cannot be provided efficiently through competitive tendering process; and 12.3.5.3 That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited tender.</p> <p>All unsolicited tenders must be tested in the market through Expression of Interest to ensure that indeed the concept is unique and is the only one available in the market.</p>	<p>Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.</p>
<p>12.3.6</p>	<p>Emergency Purchases Purchases made for emergency “situations” where competitive tendering would be inappropriate is limited to the following types of situations:</p> <p>12.3.6.1 Disasters (e.g. damage from cyclone, flood, fire, etc.); 12.3.6.2 System failures (including supporting items which could affect the system); and 12.3.6.3 Security risk.</p> <p>During emergencies, the required goods, works or services may be obtained by means of quotations by preferably making use of PRASA’s supplier database. A motivation of the emergency purchase should be submitted to the GCEO for ratification.</p>	<p>Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.</p>
<p>12.3.7</p>	<p>Sole Source Sole sourcing exists when there is only one source (supplier) available in the market. A sole source may make a special product or</p>	<p>Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.</p>

	<p>technology that no one else does. Where such a situation exists, competitive tendering is not advisable.</p> <p>All sole sourcing motivations demonstrating that there is no other supplier available in the market, must be submitted to the GCEO for approval prior to entering negotiations with the sole source.</p>	
12.3.8	<p>Confinement</p> <p>This 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.</p> <p>Situations where this method is used include, but not limited to the following:</p> <p>12.3.8.1 The task that represents a natural continuation of previous work carried out by the firm;</p> <p>12.3.8.2 An assignment where only one or a limited number of firms are qualified or have experience of exceptional worth for the assignment;</p> <p>12.3.8.3 Appointment of professional services such as legal, financial, technical contracts and security where unique expertise and/ or security are required; and</p> <p>12.3.8.4 If it's an emergency as defined in clause 12.3.6 above.</p> <p>The decision to make use of the confinement process shall be motivated for approval and ratification by the GCEO.</p>	Not applicable to this tender, as a specific open bidding process for the required services appears to have been followed.
12.4 Tender Administration		
12.4.1	<p>Preparing quotes / tendering documents</p> <p>Tender documentation should be based on conditions of Contract and should at least include the following:</p> <p>12.4.1.1 Tender conditions;</p> <p>12.4.1.2 Specifications;</p> <p>12.4.1.3 Data sheet/ drawing;</p>	<p>SARS Tax Clearance Certificate of Good Standing issued to Inyani Civil Works and Plant Hire CC under Tax Reference Number 9002262872, approved on 08 December 2010.</p> <p>We note that the documents provided for review do not include the full tender document and we therefore cannot confirm whether the</p>

	<p>12.4.1.4 Invitation to Tender; 12.4.1.5 Pricing schedules; 12.4.1.6 A specific contract agreement stipulating delivery standards and requirements; 12.4.1.7 Preference claim forms; 12.4.1.8 Valid Tax clearance certificate; 12.4.1.9 Declaration of interest; 12.4.1.10 Declaration of tenderer's past supply chain management practice; and 12.4.1.11 Any specific conditions applicable to the delivery of the service / product.</p>	<p>tender documents required in terms of "12.4. Tender Administration" was properly prepared and provided to the bidders.</p>
<p>12.4.2</p>	<p>Special Condition of Contract 12.4.2.1 Must be clearly specified in the tender document; 12.4.2.2 Take preference over general conditions of the contract; 12.4.2.3 Must be referred to legal service in respect of the legality and enforceability; 12.4.2.4 Must form part of the contract and be linked to the delivery and payment schedule of the contract; and 12.4.2.5 Must be approved by the CPO.</p>	<p>There are no documents providing the special conditions of contract.</p>
<p>12.4.4</p>	<p>Evaluation criteria and weightings Evaluation criteria are those aspects of a tender that will be measured, quantitatively and qualitatively, to arrive at an integrated assessment as to which tender is likely to best meet the needs as described in the tender document.</p> <p>To compensate for important difference evaluation criteria, weights should be allocated to the criteria. <i>The minimum evaluation threshold for bidders to pass the technical functionality assessment on all Prasa tenders is set, as a standard across all sourcing categories, at 80 %.</i></p>	<p>We have been provided with documents highlighting the evaluation and weightings compiled by the technical evaluation committee. What we were not provided with is whether the criteria were communicated to the bidders for transparency reasons.</p> <p>Against these evaluation and weightings, the Tender Evaluation Committee undertook the Qualitative Assessment of the bids received, in terms of the evaluation of functionality criteria and the relevant weighting attached to such scoring. We have had sight of a signed copy of the assessment criteria evaluation.</p>

<p>12.4.5</p>	<p>Invitation of tenders Tenders will be advertised in the print media or any publication if and when is necessary. Tenders will be closed at least three weeks after the date of publication. In exceptional circumstances; a short period may be stipulated. Where this is required; the approval of the GCEO must be sought. No late bids shall be considered as a rule.</p>	<p>We have been given a copy of the Tender newspaper advertisement it is not clear which newspaper published it between the City Press and The City.</p>
<p>12.5 Tender Evaluation</p>		
<p>12.5.1</p>	<p>Evaluation phases Tender evaluations must be done in two phases by the BEC Phase one: Evaluate that all the tenders are compliant to critical criteria if any were stated in tender documents. Critical criteria or prerequisites are those aspects of the tender that, if not met in full, will automatically disqualify the tender from further evaluation. Phase two Evaluate each tender based on the response received in relation to the criteria and conditions stipulated in the tender document. Qualifying tenders are evaluated and scored against the criteria that were stipulated in the tender document.</p>	<p>Phase one: The Tender Evaluation Committee undertook an evaluation of the ‘critical criteria’ documents. They proceeded to disqualify those bidders who had not complied with and submitted the necessary documents. Phase two: The Tender Evaluation Committee undertook the Qualitative Assessment of the bids received, in terms of the evaluation of functionality criteria and the relevant weighting attached to such scoring. We have had sight of a signed copy of the assessment criteria evaluation. A Recommendation Report was compiled by PRASA’s Chief Procurement Officer, addressed to the GCEO, which was approved on 31 July 2012. The Recommendation Report consists of the following: 9. Introduction and Background – PRASA installed a typical Dark Fibre backbone the past two years on all regions, but not all lines were able to be designed in a ring topology format under the budget allocation. The ring topology allows PRASA to have a safe network design, especially in</p>

		<p>the area of signalling, as far as the safe running and managing of trains is concerned.</p> <ol style="list-style-type: none"> 10. Scope of Work – Designing and installing fibre in a ring topology configuration in Gauteng South, Gauteng North, Durban, and Cape Town. 11. Contract / Delivery Period – The contract shall be for a period of 6 months 12. Procedural – Tender advertised in the Cape Time & The Star and City Press newspapers, no date provided; Briefing Session on 26 July 2011; and other indications relating to the closing date and time of the tender and the manner in which bids were received, with the bid validity period expiring on 31 May 2012. 13. Bid received – on closing date, seven tenders were received from “Inyani, Siemens, F&A Civils, Mylira/ Nungu JV, Xuma, C & S Marketing and Ginami” 14. Tender Evaluation Team – appointed by the Chief Procurement Officer, and the proceedings of such meetings were to be recorded and that all proceedings were to be strictly confidential. 15. Evaluation – Pricing Evaluation was set at 20%, with the BBBEE component weighted at 20% and the technical capability at 60%. 16. Evaluation Process – <ol style="list-style-type: none"> a. Compliance – two tenders were not compliant in the documents received; b. Technical Evaluation – Inyanis scored 41.2 and Siemens scored 44. c. Financial Evaluation – Inyani scored 3.94% and Siemens scored 0.59 way below Inyani. d. BBBEE Evaluation – Inyani scored 17.5 points and Siemens scored 9.5 points.
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		e. Final scoring – Inyani scored 62.64 points and Siemens scored 54.09 points.
12.6 Tender Adjudication		
12.6.1	After the Bid Evaluation Committee has evaluated the tender against the predetermined criteria, it will make a recommendation to the adjudication committee as to the preferred tenderer(s).	<p>A Recommendation Report was compiled by PRASA’s Chief Procurement Officer, addressed to the GCEO, which was approved on 31 July 2012, which recorded the following:</p> <p>3. Motivation – Inyani had passed the security clearance, had achieved a “C” bank rating and had a good BEE standing in respect of equity ownership and employment equity. Also, Inyani is a level three procurement recognition and 100% black equity shareholding. They have been evaluated as a Qualifying Small Enterprise.</p> <p>4. Recommendation – It is reported that the GCEO approved the award of the tender to Inyani.</p> <p>We have not been provided with documents which record the adjudication of the tender, and instead, the GCEO has approved the appointment of Inyani, after such bidder is recommended by the evaluation committee through the Chief Procurement Officer as the preferred bidder.</p>
12.6.2	<p>Awarding</p> <p>12.6.2.1 The final approval body for bids/tenders depends on the Delegation of Authority. The contract will be awarded to the tenderer who provides the best overall value to PRASA. PRASA may at its sole discretion award part, all or any of the business to any supplier to broaden and rationalise the distribution of work to HDI’s. Best overall value includes, but is not limited to, consideration of B-BBEE.</p> <p>12.6.2.2 Subject to the provisions of the Preferential Procurement Policy Framework Act (“PPPFA”) PRASA may award the tender to a tenderer that did not score the highest number of points.</p>	
12.6.3	All tenderers will be notified of the outcome of the evaluation process once the tender has been awarded to a successful tenderer or the tender has been withdrawn by PRASA.	PRASA addressed the Notice of Appointment to Inyani on 03 August 2012, advising that Inyani that it was successful in its tender response for erection of self-supporting optical fibre cable on traction masts, optical fibre accessories, trenching of optical fibre cable for installations in the PRASA rail environment at the amount of R82 640 158.00 Vat inclusive.

		<p>Please note that a Notice to Proceed was granted by PRASA in respect of fibre extension requirements to provide for A1 corridors (ring topology).</p> <p>Inyani responded to PRASA's Notice of Appointment by means of a dated 'Acceptance Letter' on 3 September 2012, indicating its willingness to proceed with the contract.</p> <p>Once the tender was awarded, PRASA addressed five letters to:</p> <ul style="list-style-type: none"> – Xuma Technologies, Malyra Solutions (Pty)Ltd & Nungu Group Holdings (Pty)Ltd, Siemens Ltd, C&S Marketing, and F&A Civils CC on 8 August 2012; <p>advising that the tender responses were unsuccessful.</p>
12.6.4	<p>Debriefing session</p> <p>The debriefing session will be structured in a manner which will allow the supplier to gain an appreciation of the reasons for non-selection of their bid. This may include technical, operational or commercial detail but must not include divulgence of any commercial sensitive or proprietary information.</p> <p>All briefing must be documented and filed, and conducted by at least two PRASA representatives.</p>	<p>There are no documents demonstrating that a debriefing session was held.</p>
12.9 Preferential Procurement		
12.9.6	<p>Preferential Procurement</p> <p>All suppliers shall be subjected to verification process to confirm their BEE status. The verification will cover the following elements, namely:</p> <ul style="list-style-type: none"> 12.9.6.1 Equity Ownership; 12.9.6.2 Management Control; 12.9.6.3 Employment Equity; 12.9.6.4 Skills Development; 	<p>There are no documents provided that demonstrate that a verification procedure was followed in terms of the PRASA SCM Policy for this tender.</p>

	<p>12.9.6.5 Preferential Procurement; 12.9.6.6 Enterprise Development; and 12.9.6.7 Residual.</p> <p>The verification process will consist of the following:</p> <p>12.9.6.8 Information Gathering A BEE questionnaire will be sent to the suppliers for completion and attachment of supporting documentation;</p> <p>12.9.6.9 Desktop Evaluation The submitted questionnaire and supporting documents including company documents, shareholders agreements, sale of shares agreement, share certificates etc will be checked and a paper evaluation performed based on the information gathered from the questionnaires;</p> <p>12.9.6.10 Secondary Source Verification The information in the questionnaire and supporting documentation will be verified with secondary sources like the company registrar, South African Revenue Services, the employment equity registry, etc. The company's BEE suppliers will also be contracted to determine their relationship with the supplier and their status;</p> <p>12.9.6.11 On site, evaluations Interview will be conducted with owners, managers and other stakeholders of all companies. The companies will be sent a confirmation of the proceedings of the site evaluation and provided an opportunity to highlight any inconsistencies.</p>	
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12.10 Contract Administration		
12.10.3	Contracts must be awarded for a period of not more than three years, except tenders for a lease agreement for immovable property, which may be awarded for a period of not more than 5 years. Special circumstances for long-term contracts and strategic partnerships should be motivated for approval by the GCEO.	A Recommendation Report was approved on 31 July 2012, for the award to Inyani of the tender in the amount of R 82 640 158.00 by the GCEO, for a period of 6 months.

5. Conclusion

- 5.1. Our investigation into the supply chain management and contract award irregularities by PRASA has been limited to the documents provided to us by PRASA. The documents and information provided by PRASA has not sufficiently demonstrated that PRASA followed or met the requirements of section 217 of the Constitution, the PFMA, the National Treasury Regulations and the PRASA SCM Policy for the procurement of goods and services.
- 5.2. The contract awards investigated and reviewed in this Report demonstrate that PRASA has systematically failed to comply with the PRASA SCM Policy, particularly involving the failure to plan for demand management, database procurement, testing the market appropriately for competitive pricing and to manage contracts, which will necessarily lead to a the implication that PRASA incurred irregular expenditure for want of compliance with the prescripts of the Constitution and section 51 of the PFMA. Further, if due and reasonable care were exercised in the proper demand management and acquisition management processes as stipulated in the PRASA SCM Policy, PRASA may not have incurred fruitless and wasteful expenditure relating to the appointment of suppliers that have not been properly vetted who, in turn, supply services that were not adequately tested within the market.
- 5.3. As stated by the Public Protector in *Derailed*, there appears to be a culture of poor information and document management by PRASA, and even more concerning, the purposeful retention of information that could provide evidence of maladministration and other forms of improper conduct.
- 5.4. Based on the evidence presented to us, it is our conclusion that the contracts awarded by PRASA as set out in part 4 of this Report, were awarded without proper compliance with the PRASA SCM Policy, which has resulted PRASA incurrence of the irregular expenditure and / or fruitless and wasteful expenditure.
- 5.5. We recommend that the National Treasury conduct exercise its powers in terms of Chapter 10 of the PFMA to address the financial misconduct of PRASA, for failing to adhere to the prescribed procurement processes stipulated in the PRASA SCM Policy, and particularly, section 51(1)(a) and (b) of the PFMA.