



## 9 Tender Processes

### 9.1 Summary of the 33 allegations contained in the report submitted by the Public Protector entitled “*Derailed*”:

The “*derailed*” report included *inter alia* the following high level allegations relating to procurement in general, during our period of review:

- PRASA improperly cancelled all contracts for cleaning services on 15 March 2012 and improperly appointed another contractor. No advertising was conducted for these services, thereby contravening the Treasury Regulations and the SCM policy of PRASA for contracts exceeding the R350 000.00 threshold;
- The appointment of a contractor based on the GCEO’s close business associates;
- PRASA appointed a contractor at a higher rate in order to replace another contractor and subsequently improperly terminated the contract nine months thereafter, all on the instructions of the GCEO;
- The appointment of a contractor that did not meet the minimum requirements for appointment. The same contractor had done previous work for PRASA and allegedly overbilled them by R300 000.00 per month;
- The appointment of a contractor on the tender concerned was irregular, as its original contract was terminated by PRASA due to its underperformance on the contract deliverables;
- A tender was awarded to a certain contractor in 2009/2010 but was later improperly extended to other stations nationally, without following the proper tender processes;
- PRASA improperly incurred an upfront payment to a construction company, without going through the bidding process and without proper authorization;
- Fruitless and wasteful expenditure relating to upfront payments without proper approval; and
- PRASA OPEX budget overspend (R2.2b) in the period 2009/2010.



## 9.2 Oteo

### 9.2.1 Background to Oteo

According to its website, Oteo is an investments enterprise with interests in property development and investments, construction, programme and contract management, mining and resources, events management, and financial services<sup>42</sup>.

4Phase's is a Rail Engineering entity that specializes in Rail Engineering.

Oteo and 4Phase entered into a joint venture (hereinafter referred to as Oteo) and submitted a bid for tender number HO/INF/111/10/2011, which it won.

#### 9.2.1.1 Directors

From the statutory searches that we performed on publically available information, we found that Oteo, with registration number 2013/216108/07, had the following active directors at the time of its bid, 15 April 2014:

- Manci; and
- Ramatsea.

#### 9.2.1.2 Media

The following was identified in the media in respect of Manci and Ramatsea:

##### ***Manci***

- *"In November 2014, the Presidential Black Economic Empowerment Advisory Council was revealed by President Jacob Zuma. Manci was appointed as a member of the aforesaid Council"*<sup>43</sup>; and
- *"In June 2012, it was reported that Manci was being sued by the Ithala Development Finance Corporation for defaulting on loans he took to set up a Keg and Spear restaurant franchise at the Moses Mabhida Stadium in Durban. A working capital loan of R2 million was initially provided followed by a further loan of R580 000. Ithala was*

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<sup>42</sup> <https://www.linkedin.com/company/oteo-capital-pty-ltd>

<sup>43</sup> <http://www.engineeringnews.co.za/print-version/new-bee-advisory-council-appointed-2014-11-07>



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

*reportedly demanding payment of about R2.4 million in respect of the loans and the costs of the court action. The court case was adjourned indefinitely when it came before the court<sup>44</sup>.*

**Ramatsea:**

— *“In October 2015, President Jacob Zuma announced the appointment of new members of the National Planning Commission in the Department of Planning, Monitoring and Evaluation for a period of five years. This included the appointment of Ramatsea as a new member of the commission<sup>45</sup>.”*

**9.2.2 Background to the tender number HO/INF/111/10/2011**

On 19 October 2011, PRASA advertised an invitation to tender number HO/INF/111/10/2011 for a *“Stray Current Mitigation Project for the section of the railway line from Pretoria to Hartebeesspruit as well as from Pretoria to Fontaine<sup>46</sup>.”*

The Project Manager for this contract was initially Gow for a period of 3 months. Following Gow’s resignation at PRASA, Ramolefe was appointed as the Project Manager for this contract. Khuzwayo is listed as the contact person on this project, on Oteo’s Notice of Appointment. He was also on the BEC.

Based on interviews conducted and documentation reviewed, we found that the procurement for this tender originated at PRASA Corp, and that the current end user department for this tender is PRASA Tech.

According to Ramolefe, once Oteo was appointed, it’s primary responsibilities were to oversee and monitor the project and the design work and construction was performed by sub-contractors. Ramolefe further stated that when a main contractor (ie: in this case, Oteo) makes use of sub-contractors, the main contractor would need to declare the sub-contractors to PRASA and that PRASA reserves the right to approve or disapprove the use of such sub-contractors.

<sup>44</sup> <http://www.iol.co.za/mercury/manci-in-court-over-keg-debt-1317004>

<sup>45</sup> <http://www.thepresidency.gov.za/pebble.asp?relid=20602&t=107>

<sup>46</sup> Refer to Exhibit 20 - Oteo Advertisement, 19 September 2011



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

We have not seen any declaration of sub-contractors by Oteo to PRASA. We are therefore unable to determine whether PRASA was aware of the sub-contractors appointed by Oteo, in the bidding stage of this tender. However, Ramolefe also stated that *"the BOC does not care how the work is done, as long as it doesn't exceed the budget"*.

According to Mhishi, Senior Contracts Manager representing Oteo, and Khuzwayo, the appointment of a contractor for the Stray Current Mitigation Project started as a confined tender issued by PRASA to Bombardier, an independent service provider. Khuzwayo was unable to provide us with dates or specific details surrounding this tender as this was prior to his involvement. Bombardier was the only supplier that was requested to submit a bid for this project at that stage. Khuzwayo informed us that to his knowledge Bombardier's estimated bid value was however, too high and was therefore not awarded the tender. We were not provided with Bombardier's estimated bid value.

Mhishi and Khuzwayo further indicated that PRASA subsequently confined the tender to another service provider, Tubular Track. However, they were unable to provide us with dates or specific details surrounding this tender. The Board however questioned the reason for the confined tender which resulted in PRASA commencing with this open tender process for which Oteo was ultimately appointed.

We noted that Tubular Track formed part of a consortium named TTT Consortium that entered a bid in competition to Oteo, for this open tender process.

During our consultation with Mhishi, he questioned the fairness of the overall tender process due to the fact that there were two confined processes prior to PRASA embarking on an open tender process. He also stated that PRASA did not allocate enough time to the bidders in order for them to submit an adequate pricing schedule, which had a significant impact on Oteo's ability to conclude accurate scoping/planning for bid submission purposes.

We noted that the tender was advertised on 19 October 2011 and a closing date of 18 November 2011, which allowed one month for bidders to submit their prices.



### 9.2.3 Tender process followed

Based on the documentation provided to us, and consultations performed, the tender process which resulted in the awarding of the contract to Oteo is summarized in the table below:

<b>Advertisement date</b>		19 October 2011			
<b>Closing date and time</b>		18 November 2011 (no time indicated)			
<b>Number of bidders at briefing meeting held on 28 October 2011</b>					8
<b>Number of tenders sold/issued</b>					5
<b>Number of bids received at tender closing</b>					2
<b>Bidders that submitted bids at tender closing</b>					
Oteo					
TTT Consortium					
<b>Bidders that complied with pre-qualification criteria</b>					
Oteo					
TTT Consortium					
<b>Scores awarded to shortlisted bidders by BEC</b>					
<b>Bidder name</b>	<b>Bid amount R Including VAT</b>	<b>Pricing score (maximum 30)</b>	<b>B-BBEE score (maximum 20)</b>	<b>Technical score (maximum 50)</b>	<b>Total Score (maximum 100)</b>
Oteo	R121 117 151.10	30	17.5	47.62	95.23
TTT Consortium	R128 247 952.84	28.23	9	42	79.23
<b>Eliminated Tenders</b>					
None					
<b>Bidder selected for award per the BEC recommendation report dated 1 February 2012</b>					
Oteo – R121 117 151.10					
<b>Bidder selected for award per the CTPC recommendation report dated 19 July 2013</b>					



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

Oteo – R121 117 151.10
<b>Bidder selected for award per the FCIP and Board, 31 July 2013</b>
Oteo – R121 117 151.10
<b>Notice to proceed dated 2 September 2013</b>
Oteo – R121 117 151.10
<b>Contractual value dated 15 April 2014</b>
Oteo – R121 117 151.10

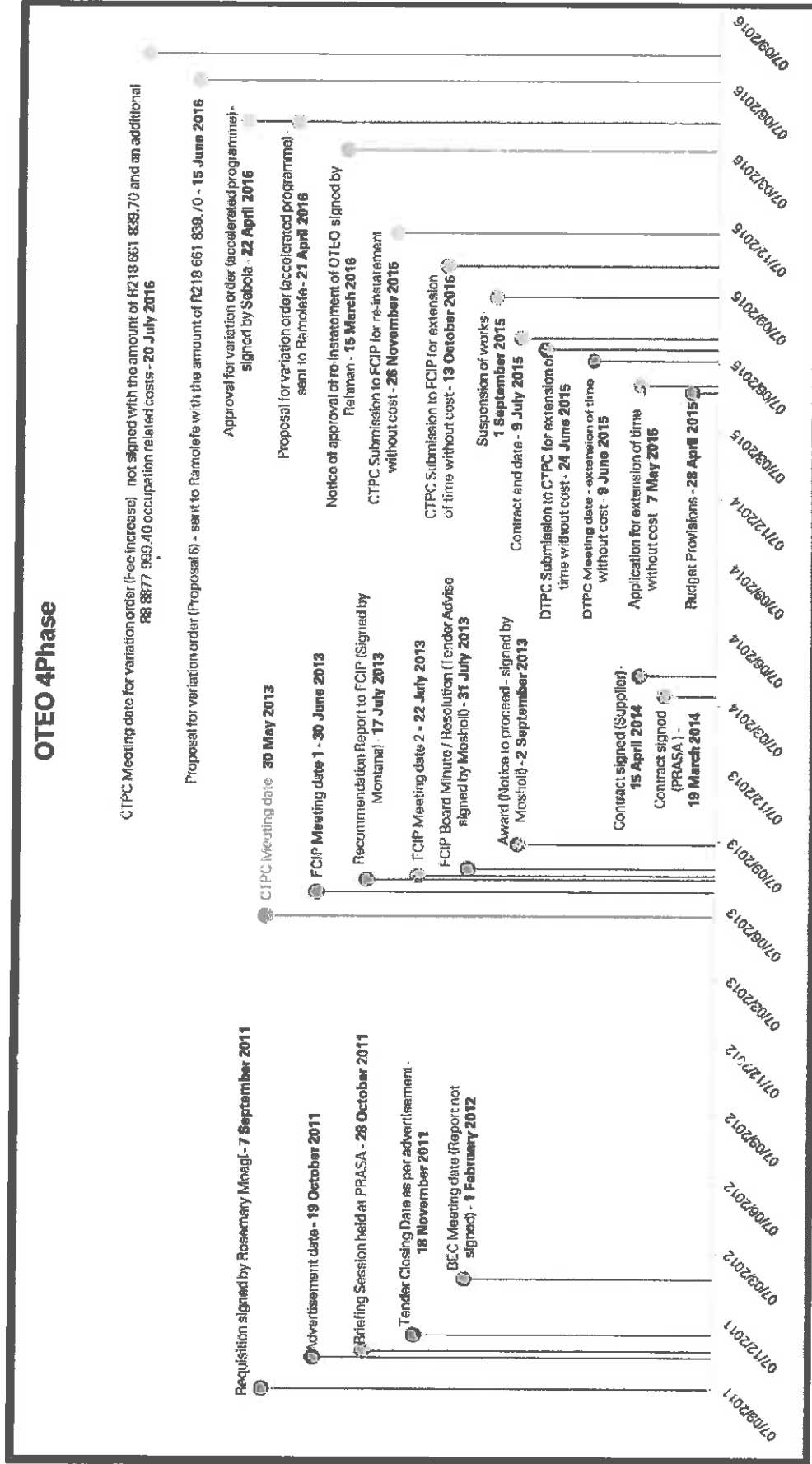
To date of this report, the following documents remain outstanding:

- Budget approval
- Signed confidentiality agreements for CTPC and FCIP
- Scoring sheets for all BEC members



**National Treasury**  
 Forensic investigation into PRASA contracts and payments  
 31 October 2016

A timeline depicting the tender process is reflected below:





**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

**9.2.3.1 Budget**

A cost estimate of R100 000 000.00 is reflected on a purchase requisition dated 7 September 2011 for this tender. This amount, according to Khuzwayo, was merely a “thumb sucked amount” and according to Ramolefe, the budget amount is only a “...rough estimate as per the tender documents, only to give them an idea of what they should expect to price on”.

Ramolefe further stated that the EPMO would have budgeted for the R121 117 151.10, based on the contractual value, that was ultimately awarded but that Gow “was looking at the figure of R150 000 000.00”.

We have not been provided with any evidence of EPMO approval of R100 000 000.00 or R121 117 151.10 for this contract.

**9.2.3.2 Bid closing**

Bids were received from the following suppliers:

- Oteo; and
- TTT Consortium

There were no disqualified suppliers based on the pre-qualification criteria, and both bids were evaluated by the BEC.

Although the closing date, 18 November 2011 is reflected on the tender opening register for bids received, there is no time reflected on the register to indicate the time that the bids were submitted<sup>47</sup>.

**9.2.3.3 Tender Evaluation**

The BEC recommendation submission dated 1 February 2012 lists the appointment of members of the BEC as follows:

- Baloyi (Senior Manager Station and Facilities, PRASA SAD, Infrastructure);
- Gow (Infrastructure Department);

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<sup>47</sup> Refer to Exhibit 21 - Oteo Supply Chain Management - Tender Opening Register, 6 December 2011





**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

- Kekana (SNP Department);
- Khuzwayo (SCM Department);
- Kondlo (Infrastructure Department);
- Maboza;
- Malope (Infrastructure Department);
- Moagi (SCM Department); and
- Ntene.

We have not been provided with the signed declaration of interest for Khuzwayo or Moagi. Therefore it is unclear whether these two individuals had any conflicts in evaluating this tender.

In addition, the following additional members signed the attendance register, but do not appear on the recommendation report as having evaluated the tender<sup>48</sup>:

- Joseph Magoro; and
- Pieter Swart.

The BEC recommendation to the CTPC which recommended Oteo for the award is unsigned<sup>49</sup>. Despite numerous requests, we were not provided with the signed copy nor reasons why there was only an unsigned copy.

**Scoring**

We only received a consolidated scoring sheet for the BEC meeting. Therefore we were unable to analyse the individual scores awarded by the individual BEC members for the two bids.

Oteo had an overall score of 95% for its technical functionality. This is in line with the prescribed minimum requirements as set out in clause 11.1 of the 2014 SCM policy.

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<sup>48</sup> Refer to Exhibit 22 - Oteo BEC attendance register, 1 February 2012

<sup>49</sup> Refer to Exhibit 23 - Oteo BEC Recommendation report, not dated



#### 9.2.3.4 *Tender adjudication*

Four months after the BEC evaluation, on 11 June 2012, a letter was issued by Mosholi, Procurement Manager – Supply Chain Management at PRASA, to both bidders, requesting an extension of the validity period of their proposal until 13 May 2013. The tender validity period was subsequently further extended in a second letter of extension, to 31 August 2013. Reference was made, in the request for the second extension, to the letter issued for the initial extension. However the letter requesting the initial extension, was not included in the documentation provided to us by PRASA.

##### ***CTPC Recommendation – 30 May 2013***

In a CTPC extraordinary meeting dated 30 May 2013, the CTPC approved that Oteo be recommended to the FCIP for the award of the tender, subject to additional information required before submitting the recommendation to the FCIP.

Based on a tender advice signed by Mosholi, on 28 June 2013, Montana supported the CTPC recommendation subject to the proviso that the Group CFO and Group Executive: SAD be consulted “*to ensure that the shortfall is provided for before the recommendation goes to the FCIP*”. Based on the submissions provided with these documents, it is unclear whether the additional information referred to in the minutes of the CTPC meeting dated 30 May 2013 was provided. In an extract of an FCIP memorandum dated 30 June 2013, it is stated under the PRASA Tech divisional analysis that there had been a shortfall in spending for the year to date, which was only 31% (R167million) of the R5,4billion for the year. This appears to have catered for the shortfall referred to in the tender advice dated 28 June 2013.

In a further tender advice signed by Mosholi, on 19 July 2013, Montana supported the CTPC approval, with a comment “*To serve at the FCIP for the approval*”

##### ***FCIP Recommendation – 19 July 2013***

Following the CTPC approval, on 19 July 2013, Mbatha, on behalf of the FCIP recommended the award to Oteo. Montana supported this recommendation on the same day, subject to “*the memo addressing the matter of the tender validity issue. The FCIP would be concerned with a tender issued in 2011.*” As indicated above, the tender validity period was therefore subsequently further extended in a second letter of extension, to 31 August 2013.



It appears that one of the deciding factors in awarding this tender to Oteo, related to the pricing submitted by the two bidders. The following extract of the CTPC recommendation submission dated 19 July 2013 is relevant.

*“TTT Consortium (TTT) changed the issued based schedule specified by the RFP by reducing quantities provided to quote on (e.g. 100% reduction on the track formation quantities estimated at 8000m vs. 3908m quoted). Their quote also excluded the main center drainage pipe estimate at a length of 4000m. In view of this example, the actual tender price is much higher when using the quantities as per the issued base schedule that is required for this tender”.*

It appears that this resulted in TTT Consortium having received a decreased scoring of 28.23 on price than what it currently states in comparison with Oteo’s scoring of 30 points which is the maximum score for price.

Due to the lack of information and explanation on the scores for BBEE and Technical we are unable to comment on the results of this.

The FCIP considered this recommendation at its meeting held on 22 July 2013, and recommended the approval of the award to Oteo, which it submitted to the Board on 31 July 2013.

#### **9.2.3.5 Award**

The Board approved the award to Oteo for R121 117 151.10, including VAT, in a resolution at its meeting held on 31 July 2013, and a notice to proceed was issued to Oteo on 2 September 2013.

#### **9.2.3.6 Contract**

Despite numerous requests, we have not been provided with the complete version of the contract between PRASA and Oteo, only extracts thereof and the variation orders thereto was received.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

Based on a notice of appointment dated 2 September 2013 to the value of R121 111 151.10. This document is however not signed.<sup>50</sup> The details of the contract between Oteo and PRASA are summarised as follows:

<b>Contract between Oteo and PRASA</b>	
<b>Contract Reference (provided by National Treasury)</b>	4600004712
<b>Document reference</b>	HO/INF/(P)/111/10/2011
<b>Brief description</b>	<p>This project entails, broadly the following elements in terms of Electrical works,</p> <ul style="list-style-type: none"> <li>— Perway and Signalling - Preparation of a complete preliminary investigation Report;</li> <li>— Detailing the extent of the stray current problem highlighting the different problem areas;</li> <li>— Recommending specific solution to the problem; and</li> <li>— Providing an indicative cost for each solution.</li> </ul>
<b>Contract amount (including VAT)</b>	R121 117 151.10
<b>Individual that signed on behalf of PRASA</b>	Montana
<b>PRASA signature date</b>	19 March 2014
<b>Individual that signed on behalf of Oteo</b>	Manci
<b>Oteo signature date</b>	15 April 2014
<b>Contract effective date</b>	9 September 2013
<b>Contract end date</b>	9 July 2015
<b>Re-instatement dates</b>	15 March 2016
<b>Contract status at the time of this report</b>	Ongoing

<sup>50</sup> Refer to Exhibit 24 - Oteo notice to proceed, 2 September 2013



#### 9.2.3.7 *Project status and deliverables*

#### 9.2.3.8 *Designs*

Ramolefe indicated to us that prior to the commencement of construction work on site, PRASA Rail (as Prasa Tech had not been established yet) signed off on the designs prepared by Oteo's Sub-contractors, in liaison with the PRASA Rail Perway Specialists, who specialize in the infrastructure of bridges and platforms. Perway is a term used at PRASA Rail referring to such infrastructure. Ramolefe was not able to provide us with the dates as to when the designs were signed off.

#### 9.2.3.9 *Commencement of Construction work*

Despite the notice to proceed dated 2 September 2013 and the contract having been signed on 14 April 2014, based on a consultation with Mhishi, we determined that the construction work for the Stray Current Mitigation Project was only due to commence in September 2015. However, upon entering the site in September 2015, Oteo was informed by Ramolefe on 1 September 2015, that their contract had lapsed as the contract expiry date was 9 July 2015 and it was subsequently suspended.

Ramolefe's explanation for the suspension of the contract was that at the stage when Oteo was meant to commence with the construction in September 2015, he was "*not sure if PRASA had the money...*". However, Ramolefe confirmed that this should have been established at budget stage.

#### 9.2.3.10 *Contract extension of timelines*

The Executive Manager for Strategic Infrastructure, Kobuwe submitted an initial recommendation for extension of time, without cost to the DTPC on 9 June 2015. The submission was escalated to the CTPC on 24 June 2015. At this stage of the extension process, there were still no cost implications and according to Ramolefe, there was no mention of an extended budget. According to Ramolefe, the CTPC was scheduled to deliberate on the extension of time on the following dates:

— 2 July 2015;



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

— 9 July 2015; and

— 17 July 2015.

The CTPC however, did not have any meetings scheduled within this timeframe. Therefore the contract was suspended just after it expired on 9 July 2015. At this stage of the project, a contract extension was no longer feasible and the contract had to be reinstated.

The CTPC submitted a recommendation to the FCIP for re-instatement on 26 November 2015, still without any cost implications. The FCIP approved this recommendation which was approved by Khena, Acting GCEO. Rehman, Senior Manager PRASA Tech SCM, issued a notice of approval to Oteo, entitled "*RE:HO/INF/(P)111/10/2011: Stray Current Mitigation Project: Contract re-instatement*" on 15 March 2016.

Mhishi confirmed that Oteo was notified by PRASA of the re-instatement of the project in March 2016. According to Ramolefe, PRASA made no mention of the re-instatement at an earlier stage in the process and added that "*...sometimes the evaluation period can drag on*". According to Ramolefe, upon re-instatement, PRASA requested from Oteo that the project be accelerated from an initial 14 month contract to a completion within four to five months. This request resulted in Oteo having to reassess their costing estimates, which increased in order to accommodate for the accelerated project. Ramolefe could not provide us with a specific individual that requested this from Oteo, but indicated that this was discussed between the EPMO and Business Readiness divisions of PRASA.

#### 9.2.3.11 Contract extension of costs

On 21 April 2016, Oteo submitted a proposal, inclusive of a variation order for increased cost of R115 240 623.16 (excluding VAT), to PRASA as part of the accelerated programme.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

In a letter dated 22 April 2016 to Oteo, Sebola indicated that Oteo are to “*Start with all necessary preparations in order to implement the accelerated programme as proposed and agreed upon by both parties*”<sup>51</sup>. During our consultation, Ramolefe indicated to us that PRASA should not have sent this letter for approval and instruction to proceed to Oteo as it had not been deliberated upon at any forum and this accelerated program was likely to have an impact on the budget. “*It is not supposed to be like that, but stopping it will be more costly*”.

Based on a letter of request from Rehman to Letsoalo, Acting GCEO at the time, dated 20 July 2016 a second variation order proposal was also submitted by Oteo on 15 June 2016, for a fee increase<sup>52</sup>. A summary of the second variation order and proposal of the fee increase is depicted in the table below:

	Price Including VAT)	Percentage Increase (%)
Original Contract Amount	R 121 117 151.10	-
Acceleration of Programme due to launch of the new PRASA modernized service	R 33 112 886.40	27.3
Drainage and unsuitable soil material variation order	R 52 431 802.17	34
Signaling Rehabilitation	R 12 000 000.00	5.8
Total Contract Value	R 218 661 839.70	180.54%

A CTPC meeting was held on 20 July 2016 to deliberate the above fee increase. The recommendation submission from the CTPC meeting to the FCIP is not signed. It therefore appears that the CPO at the time, Gingcana did not authorise the fee increase variation order. However, the contractors continued with work based on the increased fees. According to Ramolefe a further CTPC meeting has been scheduled to take place on 17 October 2016 to discuss this matter. Ramolefe indicated to us on 11 October 2016, that he is no longer the project manager for Oteo.

<sup>51</sup> Refer to Exhibit 25 - Oteo Notice of approval of programme acceleration, 22 April 2016

<sup>52</sup> Refer to Exhibit 26 - Oteo request from Rehman to Letsoalo, 20 July 2016



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

It is noted that up to 31 December 2014, only R20 546 757.20 has been paid to Oteo. Hence the initial approved contract amount of R121 117 151.10 has not yet been exceeded.

**9.2.3.12 Payments**

***Contract Terms***

As highlighted in sections above the initial Oteo contract amount was R121 117 151.10. Based on the extracts of the contract between PRASA and Oteo, we were unable to ascertain the payment terms as these were not included in the extracts provided.

***Payments Process***

Ramolefe indicated that the payments made in the initial stages of the project which amounted to R20 546 757.20, related to the design phase of the contract. He mentioned that at that stage he was present at the design meetings. He was therefore aware of the progress, and approved the payments based on the designs submitted by Oteo for implementation.

Based on a telephonic consultation with Ramolefe he stated that the payment process for Oteo is dependent on the services being charged. He indicated that now that construction has commenced he visits the site weekly to ascertain the progress and quality of work being performed. When he is satisfied with the progress he authorises the invoices for payment. The invoices are then submitted to Kobuwe for further approval. The Project Coordinator will then load the invoices on SAP which are ultimately processed by Finance for payment.

***Payment analysis***

From the SAP data provided by Phoma for the period 1 April 2012 to 31 December 2015, we identified payments made to Oteo from 10 March 2014 to 31 August 2015, amounting to R20 546 757.20.

Our analysis of the SAP data revealed the following:

- The amount of R20 546 757.20, comprises of 13 invoices;





**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

- Of these invoices 11 were issued within the original contract period of 9 September 2013 to 9 July 2015 which amounted to R19 726 772.92;
- The remaining two invoices were received after the original contract had lapsed, these invoices amounted to R819 984.78.

Based on a review of the supporting documentation to the SAP transactions, no payment certificates relating to the design phase were attached. It is noted that all the invoices had at least four signatures, one of them being Ramolefe's signature. We were unable to determine the names of the other three signatories.

The breakdown of the invoices that were paid outside the original contract period, is as follows:

Invoice No.	Invoice date	Amount
0012/PRASA	31 July 2015	R409 992.39
0013/PRASA	14 August 2015	R409 992.39

The above invoices do not indicate when the work was performed. We were unable to determine whether the work was performed within the contract period.

As indicated earlier in this report Oteo sent an application for extension on 24 June 2015. Kobuwe then forwarded this application in a motivation for extension to Joseph Phungula, chairman of the DTPC. However, this document was not signed as having been approved. At the time of this recommendation submission the contract had lapsed and PRASA submitted a re-instatement recommendation report to Khena the Acting GCEO on 26 November 2015 which was approved on the 20 February 2016. The re instatement indicated that Oteo could proceed with operations on the 15 March 2016.

#### 9.2.4 Conclusion

Although we have been provided with limited information surrounding the confined tenders that took place prior to this open tender, the possibility cannot be excluded that the confined tenders may have impacted on the objectivity and results of the open tender process.



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

Further, the confined tender process could have placed the TTT Consortium at an unfair advantage by having more time to consider their bid price, which may have resulted in Oteo submitting an inaccurate and comparatively lower bid price of R121 117 151.10 resulting in its award. The contract price has since escalated to R218 661 839.70, which is much higher than TTT Consortium's price of R128 247 952.84.

**9.2.4.1 Budget**

Although we have not been provided with evidence of EPMO approval for the budgeted amount of R100 000 000.00, the awarded amount of R121 117 151.10 was in line with Montana's delegated authority. Furthermore, we have not seen the necessary approval for the escalated amount of R218 661 839.80 and yet Sebola provided the go ahead for Oteo to proceed with the accelerated programme on 22 April 2016 which was not within his delegated authority.

**9.2.4.2 Tender process**

The appointment of Oteo to the tender may have not been made in line with the relevant prescripts based on the following reasons:

- There was no closing time stipulated on the tender opening register , hence we are unable to comment whether both bids were received on time;
- We found no declaration of interest being signed by two of the BEC members namely, Khuzwayo and Moagi;
- We were not provided with individual scoring sheets for the BEC members, but only a consolidated scoring sheet. Hence we are unable to comment on the reasonableness of the individual or consolidated scores;
- The BEC recommendation not signed or dated; and
- According to Ramolefe, no meetings were conducted to approve the re-instatement of the Oteo contract after it lapsed but a notice to proceed for an accelerated program was issued by Sebola on 22 April 2016, without any approval of increased costs.



### 9.2.5 Recommendation

We recommend that FCIP consider the second variation order proposal submitted by Oteo on 15 June 2016 in conjunction with the findings of this report, and depending on the outcome, ensure the relevant approvals are made in line with the delegations of authority.

Since we have not seen any declaration of sub-contractors by Oteo to PRASA, we are unable to determine whether such contractors, if any were properly vetted. We recommend that security screening procedures for sub-contractors be included in those completed for contractors as soon as PRASA becomes aware of any sub-contracting arrangements by its contractors.

Consequence management should be considered against the following individuals for not following the prescribed tender process and tender evaluation:

- The BEC members, that are still employed at PRASA for not maintaining adequate records such as:
  - The individual tender scoring sheets and signed recommendation;
  - Signed declaration of interests for Khuzwayo and Moagi; and
- Sebola for issuing a notice to proceed without the re-instatement being approved by the FCIP.

In addition, we recommend that PRASA put in place document management policy and controls to ensure that tender submission and evaluation documents are easily accessible when necessary.

## 9.3 Tshireletso

### 9.3.1 Background to Tshireletso

Tshireletso is a company that specialises in Electrical Engineering. Based on consultation with Kumalo, it is currently in final deregistration.

Tshireletso submitted a bid for tender number HO/INF/215/07/2011, which it won.



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

**9.3.1.1 Directors**

From the statutory searches that we performed on publically available information, we found that Tshireletso, with registration number 2002/007402/07, only had one active director, namely Mankewu at the time of this bid, 31 January 2013.

**9.3.1.2 Media**

Included in the “*Derailed*” article named “*Derailed*” that was compiled by the Office of the Public Protector, reference is made to the Bridge City Project for which, Tshireletso acted as a sub-contractor. The aforesaid article reflects:

*“9. PRASA improperly incurred an upfront payment, to a developer of the City Mall for the construction of an underground train station (Bridge City Project), without going on a bidding process and without proper authorisation during the periods 2008 to 2010”.*

We have not investigated the above matter further. However, we understand from our consultation with Mankwe, that Tshireletso was a sub-contractor for this project.

**9.3.2 Background to the tender number HO/INF/215/07/2011**

On 22 July 2011 at 08h00, PRASA advertised a request for tender number HO/INF/215/07/2011 for “*The appointment of a contractor for the replacement of Foundations, Structures and Small Part Steel Work Phase 3 in the Gauteng North Region*”<sup>53</sup>.

The current end user department for this tender is PRASA Tech. However, the procurement of this contract was completed at PRASA Corp, as PRASA Tech had not been established at the time of the advertisement.

Mankwe, the CTPC Tender Secretariat informed us that subsequent to this tender, on another project of PRASA’s, the Bridge City Project, Tshireletso was appointed as a sub-contractor.

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<sup>53</sup> Refer to Exhibit 27 - Tshireletso Advertisement, 22 July 2011



An email from Vincent Kobuwe, Executive Manager Strategic Infrastructure, dated 25 June 2014 reflects that Tshireletso was previously party to a "Bridge City Project" contract with PRASA, that was cancelled due to non-performance. Based on an internet search, the value of this project was approximately R1.3 billion and was due to commence on 1 February 2014<sup>54</sup>.

Based on a notice to proceed to Tshireletso, dated 13 August 2012, signed by Mashea, on behalf of PRASA, the contact persons at PRASA for the Tshireletso contract are indicated as Malope and Mashea. Malope is no longer employed at PRASA, and upon enquiring about the project with Mashea, he indicated that he had no knowledge about the project and referred us to the Contract Manager, Rethaba. Rethaba also had no knowledge about the project. During the investigation, we later identified that Dlamini who had been employed at PRASA Rail since approximately 2004, transferred to PRASA Tech around December 2013 at which time responsibility for the project was handed to him.

### 9.3.3 Tender process followed

Based on the documentation provided to us, and consultations performed, the tender process which resulted in the awarding of the contract to Tshireletso is summarized in the table below:

<b>Advertisement date</b>	22 July 2011	
<b>Closing date and time</b>	26 August 2011 at 10h00	
<b>Number of bidders at briefing meeting held on 3 August 2011</b>		11
<b>Number of tenders sold/issued</b>		8
<b>Number of bids received at closing</b>		5
<b>Bidders that submitted bids at tender closing</b>		
	Tractionel	
	Racec Rail	
	Resa	

<sup>15</sup> <http://www.engineeringnews.co.za/article/rail-2012-06-21>



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

Lolly's					
Tshireletso Business Engineering					
<b>Eliminated Tenders</b>					
Tractionel		Did not attend the compulsory tender briefing session			
Lolly's		Provided a civil works CIDB grading instead of electrical works. The required grading for electrical works was 6EP.			
Resa		<i>"They have a lower CIDB grading. The requirement was 6EP (Required grading for electrical works)".</i>			
<b>Bidders that complied with pre-qualification criteria</b>					
Tshireletso					
Racec Rail					
<b>Score awarded to shortlisted bidders by BEC</b>					
Bidder Name	Bid amount R Including VAT	Price score (Maximum 20)	B-BBEE score (Maximum 20)	Technical Score (Maximum 60)	Total Score (Maximum 100)
Tshireletso	R47 425 295.61	20	18.5	46.2	89.32
Racec Rail	R61 252 724.78	14	10	34.2	58.92
<b>Bidder selected for award per the BEC recommendation report</b>					
Tshireletso – R47 425 295.61					
<b>Bidder selected for award per the CTPC recommendation report</b>					
Tshireletso – R47 425 295.61					
<b>Notice to proceed</b>					
Tshireletso – R47 425 295.61					
<b>Contractual value</b>					
Tshireletso – R47 425 295.61					



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

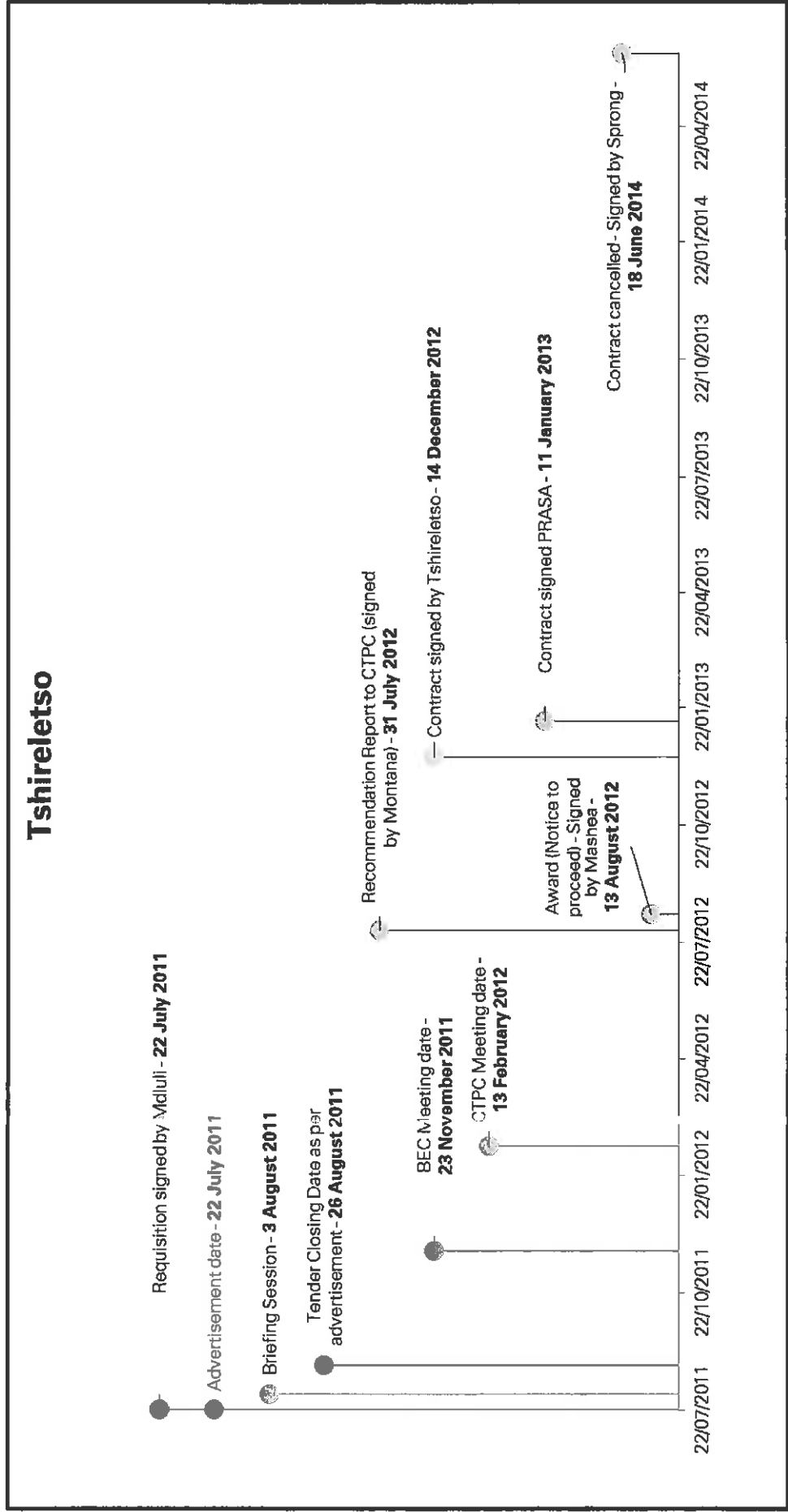
To date of this report, the following documents remain outstanding:

- Budget approval;
- Complete bid submission for Tshireletso;
- Valid Tax clearance certificate and BBBEE certificate effective at the time of the closing date being 26 August 2011;
- Score sheet for Albert Mdluli;
- Notification to BEC members confirming their appointment; and
- Security screening for Tshireletso.



**National Treasury**  
 Forensic investigation into PRASA contracts and payments  
 31 October 2016

A timeline depicting the tender process is reflected below:







### 9.3.3.1 *Budget*

The recommendation report which was signed by Montana on 31 July 2012, indicates an allocated budget of R68 000 000.00 (including R13 600 000.00 contingencies). Despite numerous requests, to date of this report, we have not received any evidence of budget approval for this tender.

It is unclear whether this report (undated) is the BEC or CTPC recommendation. However, based on the flow of documents attached to this report, it appears to be the BEC report which was tabled at the CTPC meeting on 12 February 2012, and submitted by the CTPC to Montana for approval.

### 9.3.3.2 *Bid closing*

Based on the bid register, all five bids were received on 6 September 2011, which is after closing date indicated on the advertisement dated 26 August 2011. We found no evidence of an extension of the closing date in the documentation provided to us<sup>55</sup>. The Chairperson of the CTPC signed the bid register which makes no mention of the late receipts of the bids. This signature is illegible. Based on the minutes of a meeting, 13 February 2012, Zide was the CTPC Chairperson at the meeting, however his signature does not appear to be the same as that listed on the bid register.

### 9.3.3.3 *Tender Evaluation*

The BEC recommendation submission lists the appointment of members of the BEC as follows:

- Khumalo (Manager – Legal);
- Tenza (General Manager – Finance);
- Malope (Senior Engineer – Infra Engineering);
- Nku; (Manager – PRASA Rail); and
- Mdluli (Sourcing Specialist – SCM).

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<sup>55</sup> Refer to Exhibit 28 - Tshireletso Supply Chain Management - Tender Opening Register, 6 September 2011



## **National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

Although all five of the appointed BEC members, signed the attendance register as having attended the meeting, we found no individual scoring sheet for Mdluli. In a general discussion surrounding the tender processes, Khuzwayo, the Project Manager on Superway, indicated that there are some instances where not all of the members appointed, would attend the meeting. They would either apologise and not attend, or attend but just observe the meeting. According to Khuzwayo, if they attended as an observer they did not have to sign the attendance register.

Due to budget constraints, we were unable to determine whether Nku and Malope were SCM members. However, based on the requirement for at least two SCM members to constitute a quorum at the BEC meeting, in the event that Mdluli was the second member and did not perform an evaluation, his attendance may not have rendered the quorum to be invalid.

Three of the appointed BEC members are no longer with PRASA and were therefore unavailable for consultation.

### ***Prequalification***

Despite the closing date of the tender, being 26 August 2011, Tshireletso's tax clearance certificate is dated 26 July 2012 and expired on 26 July 2013. Further its BBBEE certificate has an effective date of 14 March 2012 and expired on 13 March 2013. According to Kumalo, contracts manager for this tender, due to the delay in awarding the tender, Tshireletso re-submitted their tax clearance certificate and BBBEE certificate which were valid for the extended period. We requested the original documents that were effective during the initial tender period. However, to date of this report we have not received such documents.

### ***Scoring***

PRASA evaluates BBBEE based on the following criteria as reflected on the BEC recommendation report signed on 31 July 2012:

- One point indicates "*Poor inadequate response to requirement*";
- Two points indicate that the BBBEE status "*Meets some of the requirements*".



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

- Three points indicate that the BBBEE status *“Meets minimum requirements (Satisfactory)”*;
- Four points indicate that the BBBEE status is *“Good, sound response to the requirements”*; and
- Five points indicate that the BBBEE status is *“Excellent, exceeds the requirements”*<sup>56</sup>.

Our review of the scoring for this tender by the BEC revealed the following:

- Tshireletso had an overall score of 77% for its technical functionality scoring. This score is not in line with the 80% minimum requirements as stated in the 2014 SCM policy. The 2009 policy is silent with regard to the minimum technical scoring;
- We were unable to confirm the correctness of the BBBEE scoring as Khuzwayo was unable to provide an explanation as to how the scores were awarded in relation to the formula indicated on the tender document; and
- Tenza’s score was incorrectly calculated upon consolidation of the BEC members’ scores. Tenza’s consolidated scores are indicated as 72 points for Racec Rail, whereas based on our recalculation, we identified that Racec Rail received an overall score of 28557. We were unable to establish any reason for the miscalculation or error. The impact of this error would have resulted in a larger difference between the winning and losing bidder, ie. Racec Rail’s overall score should have been an average of 25.95, and not 34.2 as indicated, whereas Tshireletso’s overall score on technical evaluation was 46.258.

Based on the technical evaluation, the final recommendation to award the tender to Tshireletso was made and signed off by Mbatha, Group CPO. He recommended that the tender be awarded to Tshireletso at the value of R47 425 295.61(Including VAT).

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<sup>56</sup> Refer to Exhibit 29 - Tshireletso CTPC Minutes of Meeting, 30 March 2012

<sup>57</sup> Refer to Exhibit 30 - Tshireletso Scoring Sheets, 23 November 2013

<sup>58</sup> Refer to Annexure D - Recalculation for scoring for Tshireletso



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

**9.3.3.4 Tender adjudication**

One of the CTPC members, Swanepoel did not sign the declaration of interest for the CTPC meeting held on 13 February 2012, despite the minutes of meeting confirming his attendance. We were unable to establish the reason for this due to the unavailability of the relevant PRASA representatives for the contract, at the time. The other seven CTPC members signed the declarations of interest. This is in line with the minimum requirements of four members having to sign/be present for the CTPC meeting. It is noted that Swanepoel was the CTPC Secretary at the time. We were unable to obtain a contact number for Swanepoel in order to establish the reason for him not signing a declaration of interest.

The recommendation submission by the BEC to the CTPC was discussed at the CTPC meeting on 13 February 2012, and submitted to the GCEO, who signed as approving the award to Tshireletso on 31 July 2012.

**9.3.3.5 Award**

Mashea signed a notice to proceed for Tshireletso, dated 13 August 2012 for an amount of R47 425 295.61. We noted that the contract only indicates an amount of R43 113 905.10<sup>59&60</sup>. Kumalo explained that PRASA often provides for a 5% contingency on their contracts for additional costs that the supplier would potentially require to complete the contract. However, the Contracts Manager would not indicate this amount on the contract as then "...the suppliers would expect the extra money".

**9.3.3.6 Contract**

The details of the contract between PRASA and Tshireletso are summarized as follows:

<b>Contract between Tshireletso and PRASA</b>	
<b>Contract reference</b>	4600004767
<b>(provided by National Treasury)</b>	4600003605
<b>Document reference</b>	HO/INF/(E)215/07/2011

<sup>59</sup> Refer to Exhibit 31 - Tshireletso Contract amounting to R43 113 905.10, 14 August 2012

<sup>60</sup> Refer to Exhibit 32 - Tshireletso notice to proceed amounting to R47 425 295.61, 13 August 2012



**National Treasury**  
 Forensic investigation into PRASA contracts and payments  
 31 October 2016

<b>Brief description</b>	The scope of this contract entails the replacement of foundation structures and small part steel work
<b>Contract amount (including VAT)</b>	R43 113 905.10
<b>Individual that signed on behalf of PRASA</b>	Zide
<b>PRASA signature date</b>	31 January 2013
<b>Individual that signed on behalf of Tshireletso</b>	Mankewu
<b>Tshireletso signature date</b>	14 December 2012
<b>Contract effective date</b>	14 August 2012
<b>Contract termination date</b>	28 August 2013
<b>Extended termination date<sup>61</sup></b>	28 February 2014 (with a possible further extension thereafter)
<b>Contract status at the time of this report</b>	Terminated on 18 June 2014

It is noted that Zide signed the contractual agreement between PRASA and Tshireletso. During our consultation with Zide, we requested the period in which he was acting GCEO. He responded that he was only acting GCEO for five days namely, 21 September 2014 to 26 September 2014. It appears therefore that he did not have the delegation to sign this contract. We have not seen any further approval for example minutes or a resolution authorising Zide to sign this contract. We did not have a follow up consultation with Zide to obtain an explanation for this due to budget constraints on our investigation.

**9.3.3.7 Project status and deliverables**

Although Tshireletso was provided with a notice to proceed dated 13 August 2012, and its contract was effective from 14 August 2012, it is noted that the contract was only signed by Tshireletso on 14 December 2012, and by PRASA on 11 January 2013. Since Dlamini, the current Project Manager, was only appointed around December 2013, we have not been able to determine the date of commencement of work by Tshireletso, but it's first invoice for work done was dated 28 February 2013.

<sup>61</sup> Based on consultation with Dlamini



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

Based on correspondence made available to us following commencement of the project, it appears that after Tshireletso commenced work, it was experiencing some financial difficulty during 2013. PRASA and Tshireletso were served with a court order by IPM, a supplier of Masts for this contract, for unpaid invoices relating to masts that had been supplied by them to Tshireletso. The court order was subsequently withdrawn on 6 December 2013.

Based on the correspondence provided to us, PRASA paid Tshireletso for these masts, which possibly assisted in the withdrawal of the court order. However, we have not been able to identify these payments in the copies of the invoices provided to us, or the dates of settlement thereof. It appears that Tshireletso on the other hand, did not pay their suppliers and the project was therefore delayed with no work having been performed. Tshireletso presented a business rescue plan, dated 6 December 2013 to PRASA whereby Pamodzi would assist Tshireletso to meet their project requirements. According to this plan, Pamodzi made an offer to purchase approximately 75% of the shares in Tshireletso from the main shareholder, Mankewu. This rescue package was however later withdrawn by Pamodzi on 5 March 2014.

At this point, Tshireletso continued with work and the purchasing of equipment for the execution thereof.

#### 9.3.3.8 *Payments*

***Contract Details***

As highlighted in sections above the contract for Tshireletso was for an amount of R43 113 905.10.

Based on the contract's payment terms, the following can be noted:

- On the 15th of each month, an Engineer appointed by Tshireletso must perform a progress measurement or estimate of work done;
- Tshireletso must also submit a detailed list of material brought onto the site for usage.
- The GIBB Consulting Engineer will then check and place a value on the material;



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

- After valuation the GIBB Consulting Engineer will issue a certificate verifying the amount payable to Tshireletso as per the invoice;
- PRASA will pay for 90% of the materials bought. The remaining 10% retention, is due upon *“the due and proper fulfilment of the contract”*.
- We identified that the payments are checked against a payment schedule, however, no reference to a payment schedule is made in the contract nor is it attached to the contract. This payment certificate should be attached to the invoice to authorize payments to be made.

***Payment Process***

According to Dlamini, the current Programme Manager for Tshireletso, the process for payments to Tshireletso varied depending on whether the invoice was for work performed or for materials purchased for usage. He explained the two processes as set below.

***Payments for work done***

Invoices for work performed by the contractor are issued to PRASA according to the payment schedule that was agreed upon by PRASA and Tshireletso however this schedule was not attached to the contract between the two parties. This process proceeds as follows:

- A consultant, in this instance the GIBB Consulting Engineer will verify on behalf of PRASA, the quality of the work done and whether it adheres to the programme of the project and hence the contract. The GIBB Consulting Engineer verifies the quality of the work by way of monthly site visits, and would then issue a payment certificate to PRASA confirming the validity of the work done according to the invoice;
- Dlamini indicated that he requests his regional Project Managers in Kwa-Zulu-Natal, Western Cape and Gauteng, to perform a monthly inspection as well. This is done to ensure that the progress signed off by the GIBB Consulting Engineer and work performed by Tshireletso is in accordance with the actual progress of the work performed;



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

- Monthly progress meetings are held and attended by representatives from Tshireletso, GIBB and PRASA including Dlamini to provide a status update of the project;
- Once all parties are satisfied with the progress, the invoice in addition to the payment certificate will be sent to Dlamini for authorisation. Dlamini indicated that he also performs spot checks of the work performed on site. He would then authorise the invoice and hand over the documentation to his Executive Manager for approval; and
- Invoices for work done in some cases will include ad hoc materials purchased, that are not significant in value.

***Payment for Materials***

The payment process differs when the invoice only relates to materials purchased by the contractor for a substantial amount that might impact on their cash flow. Dlamini stated that the GIBB Consulting Engineer would inspect the material and sign the payment certificate, approving the quality thereof. According to a different agreement with Tshireletso however, PRASA requires that the supplier of the materials cedes possession of the materials to Tshireletso, and in turn Tshireletso would be required to cede the said materials to PRASA. According to Dlamini this precautionary step has been introduced to counter past experiences where the suppliers would seize materials from PRASA due to non-payment from the contractor, as was the case for the masts purchased from Industrial Poles and Masts (Pty) Limited. We have not been provided with a copy of this cession agreement.

***Payment Analysis***

From the SAP data provided by Phoma for the period 1 April 2012 to 31 December 2015 we identified invoices which were paid to Tshireletso from 28 February 2013 to 19 November 2013, amounting to R6 979 089.52.

Our analysis of the SAP data revealed the following:

- The amount of R 6 979 089.52, comprises of 11 invoices;
- Of these invoices nine were issued within the contract validity period of 14 August 2012 to 28 August 2013 which amounted to R4 716 631.78;





**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

- The remaining two invoices were received after the original contract had lapsed on 28 August 2013, these invoices totaled an amount of R2 262 457.74; and
- Dlamini indicated that the project was extended by six months from 18 August 2013 to 28 February 2014. However, despite numerous requests we were not provided with any supporting documentation as to the approval date of the contract extension.
- It appears that the contract was extended to cater for the masts purchased from IPM, the dispute of which was settled in December 2013. However, we have not been provided with a copy of this extension.

The breakdown of the invoices that were paid outside the original contract period, is as follows

Invoice No.	Invoice Date	Amount
PF0014	19 September 2013	R1 815 544.45
PF0015	25 October 2013	R446 913.29
<b>Total</b>		<b>R2 262 457.74</b>

Invoice number PF0015 is the last recorded invoice on the SAP system. According to Dlamini the contract was terminated on 18 June 2014 due to non-performance.

#### 9.3.4 Conclusion

We understand that prior to the advertisement for this tender in July 2011, Tshireletso acted as a sub-contractor for the Bridge City Project. The value of this project was approximately R1.3 billion. Based on the Derailed report, unauthorized payment were made by PRASA in respect of this project between 2008 and 2010. We have not investigated Tshireletso's involvement in the Bridge City project, However, based on correspondence, it is clear that in June 2014, PRASA was aware of Tshireletso's involvement in the Bridge City Project which was cancelled due to non-performance.

Although Tshireletso was provided with a notice to proceed dated 13 August 2012, and its contract was effective from August 2012, it is noted that the contract was only signed by Tshireletso on 14 December 2012, and by PRASA on 11 January 2013.



## **National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

Since Dlamini, the current Project Manager, was only appointed around December 2013, we have not been able to determine the date of commencement of work by Tshireletso, but its first invoice for work done was dated 28 February 2013. It is evident from correspondence provided to us, that shortly thereafter, sometime during 2013, Tshireletso started experiencing financial difficulty, which caused a delay in the execution of its services to PRASA.

Based on consultations, Tshireletso's contract appears to have been extended twice, after which it was terminated on 18 June 2014, due to non-performance.

We are unable to conclude whether PRASA could have foreseen these financial difficulties. Although the CTPC recommendation report makes reference to security screening having been performed, which identified no risks, we found no evidence of a due diligence or security screening having been performed and therefore cannot comment on the process that was followed in this regard.

### **9.3.4.1 Budget**

Although we have not been provided with evidence of budget approval for this tender, the recommendation report from Mbatha, the Group CPO at the time, to Montana, indicated that there was an approved budget of R68 000 000.00 (which included an amount of R13 600 000.00 for consultants, VAT and contingencies).

### **9.3.4.2 Tender process**

It appears that the appointment of Tshireletso was not in line with the relevant prescripts based on the following reasons:

- The bid closing date was stated as 26 August 2011, our document review however revealed that all five bids were submitted on the 6th of September 2011. We found no evidence of an extension for the closing date;
- Tshireletso submitted BBBEE and tax clearance certificates that had effective dates of 14 March 2012 and 26 July 2012 respectively. These documents are dated after the original bid closing date of 26 August 2011.

It is possible that Tshireletso submitted the 2012 documents as a result of either an extension of the closing date or delay in the award, which was only made August 2012. However, despite numerous attempts we were not provided with any evidence of such extension, or a BBBEE and tax clearance that was valid at the time of the initial closing date of 26 August 2011;



- Mdluli was appointed to the BEC. However, we found no individual scoring sheet for Mdluli. Based on the requirement for at least two SCM members to constitute a quorum at the BEC meeting, in the event that Mdluli was the second member and did not perform an evaluation, his attendance may not have rendered the quorum to be invalid;
- The score by Tenza for Racec Rail was incorrectly calculated on the consolidated scoring sheet as 25.95, whereas based on our recalculation it should have been 34.2. This would have narrowed the margin between Tshireletso's overall score of 46.2 and Racec Rail of 34.2;
- We were unable to confirm the correctness of the BBBEE scoring as Khuzwayo was unable to provide an explanation as to how the scores were awarded in relation to the formula indicated on the tender document;
- Swanepoel, a member of the CTPC, did not sign a declaration of interest for the CTPC meeting held 13 February 2012, despite the minutes indicating that he attended the meeting; and
- The contractual agreement between PRASA and Tshireletso was signed by Zide on 13 January 2013. However, Zide's acting period as GCEO was only for a period of five days from 21 September 2014 to 26 September 2014 and we found no delegation for him to sign the contract on behalf of the GCEO.

### 9.3.5 Recommendation

The controls surrounding procedures and conduct of the BEC should be reviewed to ensure that all members appointed to the BEC and CTPC be present at the relevant evaluations, adjudication meetings, and their attendance noted as well as the capacity in which they attend. Apologies should also be recorded in writing for non-attendance.

In addition we recommend that consequence management should be considered against the following individuals for not following the prescribed open tender and evaluation processes:

- The (unidentified) Chairperson of the CTPC for accepting bid submissions post the bid closing date;



## **National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

- Swanepoel, as he did not sign the declaration of interest for the CTPC meeting; and
- Zide for signing above his delegation of authority in respect of the Tshireletso contract.

We further recommend that PRASA review their security screening requirements and procedures and ensure that financial due diligence checks are adequately performed when committing to long term business arrangements to ensure that counterparties in the contract are able to fulfil their duties as per the contract.

In addition, we recommend that PRASA put in place document management policy and controls to ensure that tender submission and evaluation documents are easily accessible when necessary.

## **9.4 Superway**

### **9.4.1 Background to Superway**

Based on its website, Superway was established in 1988 targeting the road, civil and building construction industries, and has become a leader in the construction and maintenance industries through its commitment, dedication, innovation, quality and excellence<sup>62</sup>.

Superway submitted a bid in response to tender number HO/INF/305/03/2011 for which it was ultimately awarded Work Package 3.

#### **9.4.1.1 Directors**

From the statutory searches that we performed on publically available information, we found that Superway, with registration number 1995/013212/07, had the following active directors as at the closing date of the tender being, 11 April 2011:

- Richard Sean Bengston;
- Nomusa Doreen Monica Gumbi; and
- Francois Pienaar.

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<sup>62</sup> <http://www.superway.co.za/>



#### 9.4.1.2 *Media*

Our searches conducted within the online records of The Southern African Legal Information Institute revealed that a hearing was held in the High Court of South Africa, North Gauteng division on 31 March 2016. During this hearing, the applicant, National Roads Agency, and respondent, Superway, had a dispute regarding costs. This application was refused. Due to the timing of this hearing on 31 March 2016, it could have been foreseen by PRASA or have an impact on the tender which was awarded in 2012.

#### 9.4.2 **Background to the tender number HO/INF/305/03/2011**

The Greenview Capacity Enhancement Project involves five different Work Packages/appointments. The Work Packages were all advertised on one invitation to tender. However, the evaluation of these tenders was performed in separate BEC meetings. The five packages are explained as follows:

- **Work Package 1** Track doubling, rail infrastructure and station-structure work for stations at Mamelodi Gardens and Greenview.

The tender was allocated to KNS as the main contractor at a value of R158 297 938.17. A note on the recommendation report signed on, 17 April 2012 states that *“KNS has contractually defaulted and their contract has been terminated by PRASA in January 2012”*;

- **Work Package 2** Mamelodi Gardens station remodeling (Station top structure). Construction to commence after completion of sub-structure by main contractor in Work Package 1.

Package 2 was awarded to Bila in October 2011;

- **Work Package 3** New Greenview station (Station top structure). Construction to commence after completion of sub-structure by main contractor in Work Package 1

The tender was allocated to Rainbow/Anquet JV in October 2011. A note on the recommendation report signed on, 17 April 2012 states that *“Rainbow has been liquidated before occupying the site – contract cancelled by PRASA in December 2011”*;



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

- **Work Package 4** New Pienaarspoort station, including sub and top construction, but excluding tract work.

The recommendation report states that designs were being finalized and that the project would have been tendered in March 2012; and

- **Work Package 5** Elimination of level crossing at Pienaarspoort (road bridge) and required track work

Work Package 5 were to be tendered during a latter part of the project with an estimated value of R63 million. This tender relates to a new station top structure at Greenview, Pretoria, known as *“The Greenview Capacity Enhancement Project”*.

Based on our consultations and documents received, a team of professionals, SSI were appointed for *“R23m plus adjustable percentage fees on final cost of project”* to assist PRASA in managing the tender process as well as the project once the tender had been awarded.

We understand however, from Khuzwayo, Project Manager for Superway, that there was a misunderstanding and SSI only performed the initial evaluation of the tender. As indicated below, the results of SSI’s evaluation was disregarded and the PRASA Tech BEC performed its own evaluation.

Based on our consultations with Khuzwayo, PRASA made use of SSI to provide an objective opinion on the evaluation of the tender and perform the work of the BEC as a third party. Despite numerous requests, we have not been provided with the terms of reference for SSI.

Khuzwayo stated that SSI would be paid 8% of the winning bidder’s total value. Based on the contract amount of R89 393 077.98 it appears that SSI would have been paid R7 151 446.24. Despite numerous requests however, we have not been provided with any confirmation of an amount paid by PRASA to SSI in respect of this tender. He added that the terms of reference do not reflect that SSI had the responsibility to also conduct the activities of the BEC.

However, we noted that Andre Fryer from SSI signed the notes to the tender briefing session held on 24 March 2011 and the minutes of the clarification meeting held on 14 September 2011. SSI also performed and signed a separate evaluation. Based on email correspondence, we identified that subsequently, they were informed by Gow that this was not within their scope and that they were to withdraw their recommendation submission.



The email from Gow to Andre Fryer, dated 12 July 2011 reads: *"You are hereby requested to formally withdraw the Preliminary Adjudication Report done by SSI. The tender evaluation will be done by a PRASA appointed Tender Evaluation Committee. As the consultant appointed on the project your role in terms of assisting the PRASA Evaluation Committee during the evaluation process will be clearly spelled out and communicated to you in due course"*.

In his response to the above email/instruction, on 20 July 2016 Fryer wrote: *"The document submitted to Sidney was a concept document that could be used by the Tender Committee to evaluate the tenders and appoint contractors. I was waiting for the appointment of the committee to give criteria and to evaluate the tenders but had to proceed with a concept to meet the validity date of 11 August 2011.*

*I Outlined the following: I was waiting for your committee to agree on the criteria and scores. Could you please evaluate the criteria in order that we can table it for the committee. The committee should also evaluate the scores allocated.*

*The document is only a concept and can be used or ignored by the procurement office".<sup>63</sup>*

The current end user department for this tender is PRASA Tech and the procurement of this contract was completed at PRASA Corp.

According to the notice to proceed issued to Superway dated, 30 July 2012, Khuzwayo is listed as the Project Manager on this project. According to Maphosa, she is the current Project Manager.

#### **9.4.3 Tender process followed**

Based on the documentation provided to us, and consultations performed, the tender process which resulted in the awarding of the contract to Superway is summarized in the table below:

<b>Advertisement Date</b>	4 May 2010
<b>Closing date and time</b>	11 April 2011 (no time indicated)
<b>Number of bidders at briefing meeting dated 24 March 2011</b>	Not Provided*

<sup>63</sup> Refer to Exhibit 33 - Superway Email to SSI to withdraw their BEC report, 20 July 2011



**National Treasury**  
Forensic investigation into PRASA contracts and payments  
31 October 2016

<b>Date of clarification meeting</b>	14 September 2011
<b>Number of bids sold/issued</b>	Not Provided*
<b>Number of bids received at closing date</b>	10
<b>Bidders that submitted bids at tender closing</b>	
Esorfranki	
Ruwakon	
Bila	
Siya Zama	
Robenco	
SKT	
KNS/Mpendolu JV	
Superway	
Yikusasa	
Rainbow/Anquet JV	
<b>Eliminated Tenders</b>	
Esorfranki	<i>"Disqualified because JV-CIDB does not match requirement of 5GB (Construction grading), According to information supplied with tender as 1GBPE (construction grading)"</i>
Yikusasa	<i>"The CIDB certificate and grading expired on 8 July 2009. "Web-base info not available". Yikusasa was disqualified based on the expired CIDB grading not being valid".</i>
<b>Bidders that complied with pre-qualification criteria</b>	
Ruwacon	
Bila	
Siya Zama	
Robenco	
SKT	





**National Treasury**  
Forensic investigation into PRASA contracts and payments  
31 October 2016

KNS/Mpendolu JV											
Superway											
Rainbow/Anquet JV											
<b>Scores awarded to shortlisted bidders by PRASA and SSI BEC</b>											
Rank		Bidder Name	Bid amount	Price score (Maximum 30)		B-BBEE score (Maximum 20)		Technical Score (Maximum 50)		Total Score (Maximum 100)	
PRASA	SSI			PRAS A	SSI	PRAS A	SSI	PRAS A	SSI	PRAS A	SSI
-	5	Esorfranki	-	-	24.08	-	14.82	-	36.50	-	75.40
-	3	Yikusasa	-	-	27.71	-	17.41	-	45.9	-	91.02
1	9	Bila	R60 446 220.79	30.00	30.00	17.50	16.30	36.11	19.20	83.61	65.50
2	1	Rainbow	R54 898 400.00	29.03	24.71	12.60	17.41	36.86	45.90	78.49	88.02
3	6	Superway	R56 627 439.62	24.27	22.98	15.50	16.30	28.03	35.00	67.80	74.28
4	4	Siya Zama	R63 340 000.00	25.30	23.97	13.20	14.82	26.89	38.00	65.39	76.79
5	10	SKT	R55 473 096.68	28.71	26.16	11.50	0.00	23.43	9.70	63.64	35.86
6	8	Ruwacon	R53 178 570.84	26.95	26.00	11.60	14.82	24.66	27.20	63.21	68.02
7	7	Robenco	R61 506 667.43	28.05	26.88	9.40	14.82	24.69	32.50	62.14	74.20
8	2	KNS	R58 589 781.45	29.03	28.29	11.60	14.82	19.77	44.10	60.40	87.21
<b>Bidder selected for award per the BEC recommendation report</b>											
Rainbow/Anquet JV - R60 446 220.79											
<b>Bidder selected for award per the CTPC recommendation report dated 09 September 2011</b>											
Rainbow/Anquet JV - R60 446 220.79											
On 30 September 2011, Rainbow/Anquet JV communicated to Gow that it had voluntarily been placed under business rescue.											
PRASA communicated that they could not cancel the contractual proceedings because Gow had not formally communicated it to them and at that stage it was merely rumors.											
<b>Bidder selected for award per the CTPC recommendation report dated 13 March 2012</b>											



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

Superway – R63 340 000.00 (refer below regarding the appointment of Superway)
<b>Notice to proceed</b>
Superway —R63 340 000.00, including VAT (relating to the original bid price) —R14 000 000.00, including VAT (relating to additional scope from Package 1 of this tender that could not be completed by KNS as discussed below)
<b>Contractual value</b>
Superway- R89 393 077.98, including VAT (including additional scope and funding based on Package 1 and 3)**

\*Despite numerous requests, copies of the briefing register and register of bids sold were not provided to us.

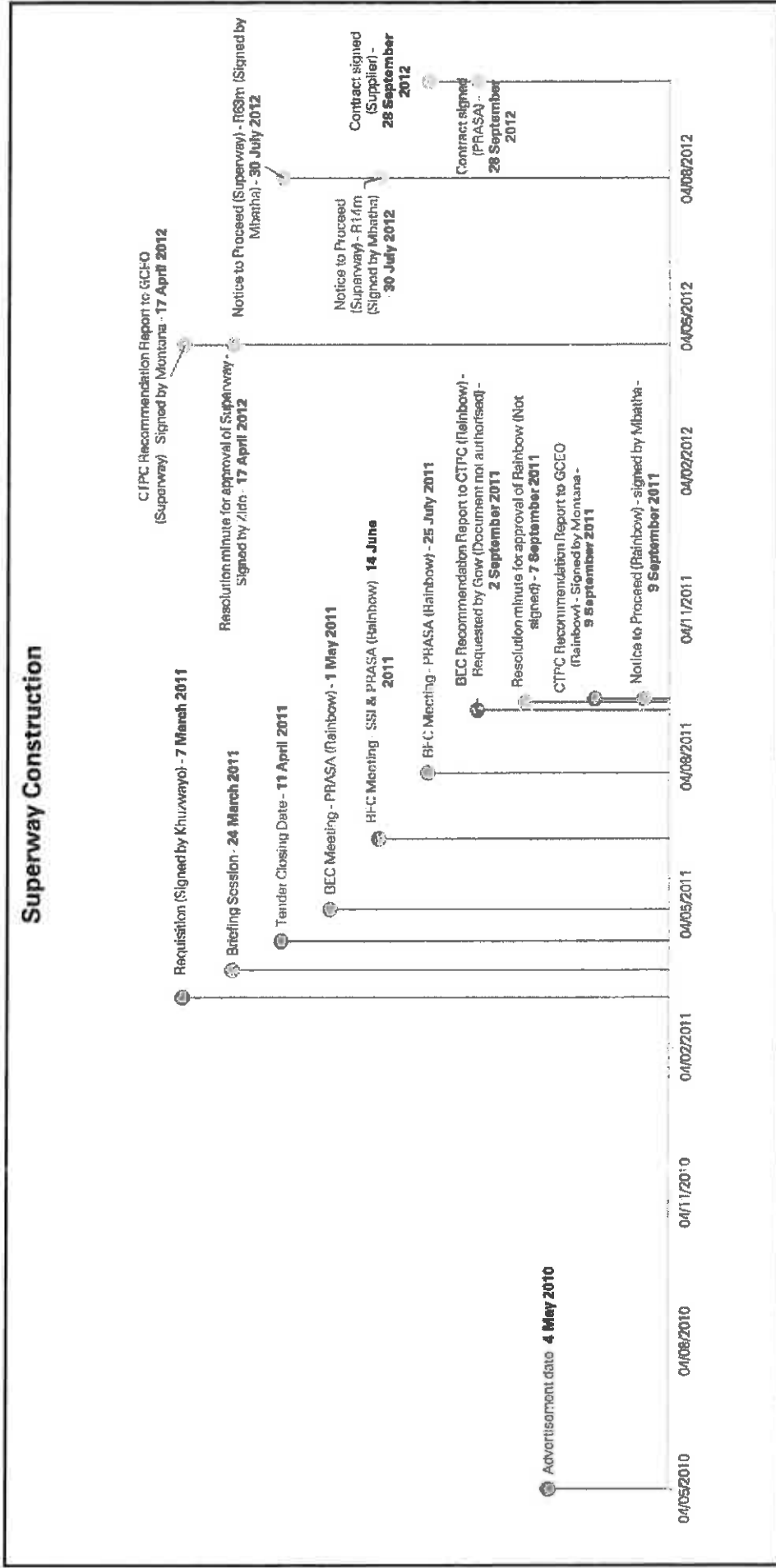
\*\* It is noted that the contractual value does not equate to the sum of the two notices to proceed

The following documents remain outstanding:

- Advertisement;
- Budget approval;
- Attendance registers for:
  - Briefing session;
  - Tender collection;
  - CTPC Meeting;
- Register of briefing session;
- Signed declaration of interest and confidentiality agreements for all attending BEC and CTPC members; and
- Security screening of Superway and/or Rainbow/Anquet JV.



The tender process is depicted in the timeline reflected below:





**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

**9.4.3.1 Budget**

Despite numerous requests, we have not been provided with any evidence of budget approval for this tender. A recommendation report from the Group CPO to the GCEO, entitled "*Motivation for Contract value increases*" which was signed by Montana on 19 November 2014, indicates an allocated budget of R100 000 000.00 (2013/2014) and R105 000 000.00 (2014/2015). However, despite numerous requests, to date of this report, we have not received any evidence of budget approval for this tender.

**9.4.3.2 Tender evaluation**

***Prequalification***

According to Khuzwayo PRASA does not do compliance checks in terms of documents to be submitted as part of the tender submission when evaluating the tender. However, we noted from the BEC recommendation report, that Esorfranki and Yikusasa were disqualified. We have not been provided with the basis for this disqualification.

We reviewed the prequalification criteria that SSI used to examine the documents submitted by the three highest ranking, short listed suppliers. The results of our assessment of the pre-qualifying criteria differs to that of SSI, as outlined in Annexure E<sup>64</sup>.

For example, neither Rainbow nor Superway submitted CIDB grading certificates, and should therefore have been disqualified in addition to Esorfranki and Yikusasa, neither of which were noted by SSI.

Cognisance is taken of the fact that Anquet, the other party to the Rainbow joint venture, submitted a CIDB grading certificate. However, according to Khuzwayo, both parties to a joint venture should submit all compliance documents in order to comply with the pre-qualification.

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<sup>64</sup> Refer to Annexure E - Comparison of pre-qualifying criteria to that of SSI



**National Treasury**  
Forensic investigation into PRASA contracts and payments  
31 October 2016

### **Scoring**

#### **SSI Evaluation – 14 June 2011**

Based on the SSI evaluation report signed on, 14 June 2011, they recommended that KNS be awarded Work Package 4 of this tender based on their financial offer being the second lowest after Rainbow. The recommendation is also based on the fact that KNS had already been awarded Work Package 1 and commenced with construction of the station sub-structure. Therefore, the integration would have resulted in the project being finalised four months earlier.

Despite numerous requests, we did not receive the signed confidentiality agreement and declaration of interest for the BEC meeting, dated 9 September 2011 whereby Rainbow/Anquet JV was the recommended bidder. Therefore we could not establish whether there were any conflicts.

The recommendation report dated, 2 September 2011 indicate the following BEC members that attended the BEC meeting:

- Dinthe (Programme Manager – Facilities);
- Khuzwayo (Project Manager – SCM);
- Sonny (Procurement Manager – SCM);
- Maletswa (Corporate Security Manager – Security);
- Rabekane (Operations Manager – Gauteng South);
- Nkgabutle (Operations Manager – Gauteng North); and
- Maloyi (Head: Station and Facilities Development – SAD).

We performed an analysis of the score sheets, completed by both PRASA and SSI and noted that the PRASA BEC's scoring sheets were incomplete, and further that its prices differed significantly from SSI<sup>65</sup>. Khuzwayo was unable to provide reasons for this. He was also unable to explain to us the manner in which the BBBEE scores are allocated. Further, the BBBEE scoring was not consistent with that of SSI. For example, PRASA allocated different BBBEE scores to bidders with the same BBBEE level ie. Ruwacou, Siya Zama, Robenco and KNS all have a Level 4 BBBEE rating, yet the PRASA BEC awarded different scores to each of these bidders.

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<sup>65</sup> Refer to Exhibit 34 - Superway Incomplete scoring sheets, August 2011



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

**PRASA BEC Evaluation, 2 September 2011**

The PRASA BEC disregarded SSI's findings and on 2 September 2011 recommended to the CTPC, that the Rainbow/Anquet JV, being its second highest ranking bidder, be appointed for work Package 1. The recommendation report suggested that PRASA make this award subject to negotiated prices with the JV. The recommendation is also motivated by Rainbow/Anquet JV's black equity shareholding that increased from 30% to 35% and that it had an active involvement in local businesses.

Although Bila was PRASA's highest ranking bidder, with an original bid of R60 446 220.79, this bid was not recommended as according to the recommendation report from the Group CPO to the GCEO, dated 9 September 2011, which stated that *"they are a small company and, their price seems to be unrealistically low, and they have been awarded the Mamelodi project, plus proposed extension of scope."* Instead, Bila was awarded Package 2. *"To mitigate risk of failure to deliver on both projects, Bila Civils Contractor, due to its size and capacity, is recommended for appointment on the Mamelodi Station construction project with less complex issues to deal with"*<sup>66</sup>.

Superway had an overall score of 56% for its technical functionality scoring. This score is not in line with the 80% minimum requirements as stated in the 2014 SCM policy. The 2009 policy is silent with regard to the minimum score for technical functionality.

**9.4.3.3 Tender adjudication**

Despite numerous requests, we were not provided with signed declaration of interest and confidentiality agreements from PRASA for this bid evaluation at the CTPC level.

**CTPC recommendation, 8 September 2011**

In a CTPC recommendation report dated 8 September 2011, it is recommended to the GCEO that the Rainbow/Anquet JV be awarded work Package 3 for R60 446 220.79. Montana approved this recommendation on 9 September 2011.

Around the same time the KNS/Anquet JV had defaulted on its contract for work Package 1. Khuzwayo informed us that SSI set up a JBCC (Joint Building Contracts Committee) contract for the agreement between Rainbow/Anquet JV initially. However, this contract was not drawn up as the JV went into voluntary business rescue and was subsequently liquidated.

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<sup>66</sup> Refer to Exhibit 35 - Superway Recommendation report to GCEO, 9 September 2011



As a result of the Rainbow/Anquet JV being liquidated and KNS defaulting on its contract, the tender was not evaluated a second time. Instead, there was a CTPC meeting on 16 March 2012 and a recommendation submission by the CTPC on 17 April 2012 to the GCEO to award the remaining work from Package 1 as well as work Package 3 to Superway.

***CTPC recommendation, 16 April 2012***

Superway was PRASA's third highest ranking bidder for work Package 3. According to Khuzwayo, during the tender process, but prior to the award, Superway was approached for an extension of the timeframe of its bid, as well as to increase the scope of work to include work Package 1, which had already been awarded to KNS. Package 1 was at 80% completion at the time of KNS defaulting, with approximately R40m of work left to complete. Therefore, apart from the request to Superway to increase its scope to include Work Package 1, PRASA entered into negotiations to provide for the fees for the additional work. According to a recommendation report from Mbatha, the Group CPO at the time, to the GCEO, which was signed by Mbatha on 16 April 2012, the proposed total contract amount was for R63 340 000.00 for the original offer, and an additional R10 000 000.00 (including VAT) for the increased scope.

**9.4.3.4 Award**

Montana approved the CTPC recommendation on 17 April 2012, and two notices to proceed were issued to Superway on 30 July 2012 to the value of R63 340 000.00 and R14 000 000.00 for work packages 3 and 1, respectively. The contact person at PRASA is indicated as Khuzwayo and the notices to proceed were signed by Mbatha. We did not obtain an explanation as to why the notice to proceed for work package 1 was for R14 000 000.00 as opposed to R10 000 000.00 which was reflected on the approved CTPC recommendation.

**9.4.3.5 Contract**

We found no evidence of security screening having been performed on Superway, prior to PRASA entering into the contract.



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

The contract between Superway and PRASA for work Package 3 and the remainder of work Package 1 was signed on 28 September 2012<sup>67</sup>. It is noted that Zide signed the contractual agreement between PRASA and Superway. During our consultation with Zide, we requested the period in which he was acting GCEO. He responded that he was only acting GCEO for five days namely, 21 September 2014 to 26 September 2014. It appears therefore that he did not have the delegation to sign this contract. We have not seen any further approval for example minutes or a resolution authorising Zide to sign this contract. We did not have a follow up consultation with Zide to obtain an explanation for this due to budget constraints on our investigation.

The contractual information is captured below:

<b>Contract between Superway and PRASA</b>	
<b>Contract Reference</b> (Provided by National Treasury)	4600004777
<b>Document reference</b>	HO/INF(P)305/02/2011
<b>Brief description</b>	Construction of the Greenview Station building above platform level including external works and other additional work
<b>Contract amount (including VAT)</b>	R89 393 077.98
<b>Extended contract amount (including VAT) approved by Khena on 7 April 2016</b>	R102 338 331.15
<b>Individual that signed on behalf of PRASA</b>	Zide
<b>PRASA signature date</b>	28 September 2012
<b>Individual that signed on behalf of Superway</b>	Christiaan Kriel
<b>Superway signature date</b>	28 September 2012
<b>Contract effective date</b>	12 August 2012
<b>Contract end date</b>	12 September 2013
<b>Contract re-instatement date</b>	7 April 2016 (six months)
<b>Contract status at the time of this report</b>	Complete, with the exception of a snag list.

<sup>67</sup> Refer to Exhibit 36 - Superway contract, 28 September 2012





#### 9.4.3.6 *Project status and deliverables*

Based on our discussions with Kumalo, contracts manager for Superway, and Khuzwayo, we understand that the project is now complete. They indicated however that: *"Upon completion of the project, Superway still had a snag list of incomplete items that would not be cost effective to complete"*. We understand from Kumalo that there was a court order issued to Superway to complete the snag list. However, in the interest of completing the snag list in the interim, PRASA has subsequently embarked on an open tender for other potential bidders to complete the snag list instead.

Based on our discussions with Maphosa, the current project manager for Superway however, it appears that the project is still ongoing and on 26 November 2015, Rehman issued a request for the contract to be reinstated and for an increase in the contract value of R4 142 298.15 (excluding VAT). The reason provided by Rehman for this reinstatement is that *"...the Station is already 95% complete and it will make business sense to continue with the same contractor up until all the works are completed and the station becomes operational."*

*The reason for the contract value increase is because of unforeseen delays and unbudgeted expenses that surfaced after the contract was signed in September 2012."*

Khena approved this request on 7 April 2016.

Rehman's request for re-instatement also indicated that there was a *"Previously approved Addendum for Additional Work"* for R7 213 186.59 (excluding VAT). The total extended contract amount therefore amounts to R102 338 330.60 (including VAT). We have not been provided with a copy of this addendum, and have not investigated this further.

#### 9.4.3.7 *Payments*

##### ***Contract Details***

As highlighted in the sections above the original Superway contract amount was R89 393 077.98 including VAT which was increased by Khena on 7 April 2016 to R102 338 331.15, including VAT. Based on the extracts of the contract between PRASA and Superway, we were unable to ascertain the payment terms as these were not included in the extracts provided.



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

***Payment Process***

During our consultation with Maphosa, the current Project Manager for Superway she indicated that she had only joined the project during March 2015. Prior to her appointment there were three other managers, namely: Luyanda Gantsho, General Manager, Ernest Gow who resigned during January 2015 and Sonwabile Nkandlo who was suspended during March 2015. She indicated that the handover process was limited and she has very limited knowledge of activities that took place prior to her appointment.

Maphosa indicated that a process of verification is followed before Superway's invoices are paid. Maphosa indicated that after work is performed, Superway internally evaluates the quality of the work performed. This evaluation is done by the Superway's Quantity Surveyor. A signature by the Quantity Surveyor on the invoice indicates satisfaction of work performed. This is then handed to an independent Principle Agent, appointed by PRASA, who obtains verification of the quality of work performed from their in-house Quantity Surveyor, who issues a payment certificate thereafter.

Maphosa reviews the invoices received and checks these against the programme schedule and that they have been appropriately approved. Maphosa performs regular site visits to check that the activities performed are in line with the programme schedule. Once satisfied she authorises the invoice for payment.

The invoices are then reviewed by Maphosa's immediate supervisor Keraang, and later by Kobuwe, Executive Manager: Strategic Infrastructure. Once approved by Kobuwe the invoices are then loaded by Moosa onto SAP and forwarded to Finance for payment.

***Payment Analysis***

From of the SAP data provided by Phoma for the period 1 April 2012 to 31 December 2015, we identified 28 invoices paid to Superway during the period 28 February 2013 to 30 April 2016 amounting to R100 413 391.11, of which R97 219 289.25 was paid within our review period and R3 194 101.86 was during 2016.

Our analysis of the SAP data revealed the following:

- Seven of the invoices were issued within the original contract period being 12 August 2012 to 12 September 2013 which amounted to R13 119 187.47.



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

- The remaining 21 invoices were received after the original contract had lapsed on 12 September 2013, these invoices totalled to R87 294 203.64. It cannot be determined whether the invoices were for work done during the contract period, please note that this amount includes five payments amounting to a total of R8 192 873.20 that were paid via the sundry suspense account. Two of these payments amounting to a total of R2 221 295.84 have not been reversed.
- It is noted that payments prior to the approval of the increased amount on 7 April 2016, amount to R100 413 391.11 (including VAT) which is more than the initial contract amount of R89 393 077.98 (including VAT). We further noted that the initial contract amount had already been exceeded on SAP by 27 February 2015, i.e. prior to Maphosa's appointment as Project Manager, as total payments to this date amount to R89 845 642.69. She was therefore unable to provide an explanation as to who approved the excessive payments.

Upon analysing the supporting documentation to the invoices, we identified that five of the 27 payments, were made without the presence of a payment certificate. We were unable to verify the reason for this due to the fact that there was no knowledge transfer to Maphosa regarding events prior to her appointment.

One of the checks performed on the SAP data was to verify that all payments that were made through the Sundry suspense accounts were later reversed. We identified that of the two invoices dated 19 November 2014, on SAP were processed through Suspense account but were not reversed. These two invoices did not follow the normal SAP approval process but were authorised by Saki Zamxaka the CEO of PRASA Tech via a memorandum requested by Kobuwe. These two invoices amounted to R473 896.58 and R1 747 399.26 (total R2 221 295.84). It was highlighted in a consultation with Manyosa that invoices are paid from the Sundry (suspense account) when the payment needs to be processed in a speedily manner. It should also be noted that a court order was issued by Superway for the said amounts to be paid. The court ordered payment of the amounts after "*perusal of the summons and other documents filed and as the DEFENDANT in in default*". According to an email communication from Kobuwe to Saki Zamxaka "*Processing on the invoice on SAP via PRs system is not possible at this stage. The Contract was finalised at Corporate and the project was never migrated to company 7000*". The payment was made via the sundry suspense account, on the basis of this approval from Zamxaka.



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

#### 9.4.4 Conclusion

The tender process followed which resulted in the appointment of Superway is questionable for a number of reasons, the dominant being that Rainbow, one of the parties to the Rainbow/Anquet JV who was originally awarded the contract, and Superway, did not submit the required CIDB grading certificates, and hence should have been disqualified together with Esorfranki and Yikusasa who were disqualified for this reason.

In addition it is unclear what role SSI played in this process, but it is evident that their scores differed vastly from those of the BEC. Assuming SSI's scores are to be disregarded, we have found insufficient justification as to why Bila, the PRASA BEC's highest ranking bidder, was not awarded this tender.

##### 9.4.4.1 Budget

Although we have not been provided with evidence of budget approval for this tender, the recommendation report from the Group CPO to the GCEO, entitled "*Motivation for Contract value increases*" which was signed by Montana on 19 November 2014, indicates an allocated budget of R100 000 000.00 (2013/2014) and R105 000 000.00 (2014/2015).

##### 9.4.4.2 Tender process

In addition to the above, it appears that the appointment of Superway was not in line with the relevant prescripts based on the following reasons:

- Although we have not seen SSI's mandate it is possible that SSI's evaluation could have influenced the final bid evaluation, and SSI's independence in this regard is questionable due to the fact that according to Khuzwayo, SSI would be paid 8% of the tender value awarded;
- The prequalification checks were not performed adequately, in that Rainbow and Superway did not submit CIDB grading certificates and should have been disqualified;
- We were not provided with confidentiality agreements and declarations of interest for the BEC or CTPC level;



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

- The PRASA BEC scoring sheets were incomplete;
- The PRASA BEC recommendation report was not signed by Mbatha; and
- The contractual agreement between PRASA and Superway was signed by Zide on 13 January 2013. However, Zide's acting period as GCEO was only for a period of five days from 21 September 2014 to 26 September 2014 and we found no delegation for him to sign the contract on behalf of the GCEO.

**9.4.4.3 Payments**

Based on the documentation and information we are unable to determine whether the payments in excess of the contract amount were appropriately approved. Further, we identified five invoices from Superway that were paid, without having the necessary payment certificates attached.

**9.4.5 Recommendations**

We recommend that consequence management be considered against the following individuals for not following the open tender process and tender evaluation:

- The BEC for not performing adequate pre-qualification checks on the documents submitted for the tender and for the incomplete scoring sheets;
- The BEC and the CTPC for inadequate document management in respect of the confidentiality agreements and declarations of interests;
- Mbatha for not signing the BEC recommendation report; and
- Zide for signing above his delegation of authority in respect of this contract.

It is further recommended that the controls surrounding payments beyond authorized contract values be reviewed to include a systematic audit trail of approvals and the reasons provided. All stipulated controls surrounding the documentation supporting payments, such as signed payment certificates, must also be adhered to.

In addition, we recommend that PRASA put in place document management policy and controls to ensure that tender submission and evaluation documents are easily accessible when necessary.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

## 9.5 LDM – R95 million (Western Cape Re-Signaling Project)

### 9.5.1 Background to LDM and TLF

We were provided with two contracts to review involving PRASA and LDM, for:

- R95m (contract awarded to TLF for this tender); and
- R19m, discussed in Section 9.6 of this report.

LDM was established in Durban in 1984, and has since established itself as a “*Built Environment consultancy*” firm that is represented nationally and internationally in association with various industry partners<sup>68</sup>.

Transurb is a Belgian limited liability company, offering tailor-made solutions in railway and urban transport, with representation in South Africa.

Based on its internet website, Focus is a professional construction project management and quantity surveying company with operations in South Africa, and selected locations outside South Africa into the rest of Africa and the Middle East<sup>69</sup>.

Based on the CTPC Recommendation to the GCEO, dated 31 July 2012, LDM, Transurb and Focus formed TLF with 33.3% shareholding each and submitted a tender for tender number HO/INF(S)244/01/2012, which it won.

#### 9.5.1.1 Directors

From the statutory searches that we performed on publically available information, we found that LDM, with registration number 2003/000818/07, had the following active directors of the company as of 31 January 2013:

- Jugdeesh Ranjit Keval Daya;
- Tenjiwe Hoyana;
- Mark Hulley;
- Deenadayalan Ruthensamy Letchmiah;

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<sup>68</sup> <http://ldm.co.za>

<sup>69</sup> <http://focuspm.co.za/>



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

- Somasundram Munian;
- Robert Ayanda Ntlauzana;
- Devandran Shane Reddy; and
- Ashley Stephen Ruiters.

We further found the directors for Focus, with registration number 2001/018134/07, had the following active directors of the company as of May 2012:

- Russell Ashton Chappe De Leonval;
- Clinton Craig Crowie;
- Rowan Mark Crowie;
- Aadil Essop;
- Kevin Ross McGill;
- Siyabonga Mbanjwa;
- Fred Hanson Pietersen;
- Alwin John Rottcher; and
- Bafikile Bonke Simelane

Transurb SA, with registration number 0413.393.907 had the following directors:

- Pearl Couvreur;
- Brieuc Pierre Viviane de Meeus D'Argenteuil;
- Georges Jacques Dupont;
- Richard Marcel Gayetot;
- Peter van Gaelen;
- Frank Windmolders; and
- Andy Willaert.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

**9.5.2 Background to the tender number HO/INF(S)244/01/2012 – R95 million (Western Cape Re-Signaling Project)**

The subject of this tender is *“Technical Supervision Assistance for the Western Cape Re-Signaling Project”*<sup>70</sup>.

The procurement of this contract was completed at PRASA Corp which is also the current end user department for this tender

According to a notice to proceed issued to TLF on 16 August 2012, Khuzwayo is listed as the Project Manager. However, Khuzwayo indicated to us that he is not the Project Manager for this project, and that Nkosi is the current Project Manager. We have since ascertained that Edwards is the current Project Manager.

**9.5.3 Tender process followed**

Based on the documentation provided to us, and consultations performed, the tender process which resulted in the awarding of the contract to TLF is summarized in the table below:

<b>Advertisement date</b>	09 February 2012
<b>Closing date and time</b>	22 March 2012
<b>Number of bidders at briefing meeting dated 21 February 2012</b>	Not Provided
<b>Number of tenders sold/issued</b>	Not Provided
<b>Number of tenders received at closing</b>	3
<b>Bidders that submitted tenders at tender closing</b>	
Gibb	
Mott Mac Donald	
TLF	
<b>Bidders that complied with pre-qualification criteria</b>	
Gibb	
Mott Mac Donald	

<sup>70</sup> Refer to Exhibit 37 - LDM R95 Million Advertisement, 9 February 2012





**National Treasury**  
 Forensic investigation into PRASA contracts and payments  
 31 October 2016

TLF					
<b>Scores awarded to shortlisted bidders by the BEC</b>					
Bidder Name	Bid amount R (Including VAT)	Price score (Maximum 32)	B-BBEE score (Maximum 20)	Technical Score (Maximum 48)	Total Score (Maximum 100)
TLF	R95 735 212.64	26.5	20	36.4	82.9
Gibb	R81 915 491.51	32	16.7	21.7	70.4
Mott Mac Donald	R89 397 546.00	20	6.5	30.4	56.9
<b>Eliminated Tenders</b>					
None					
<b>Bidder selected for award per the BEC recommendation report</b>					
TLF - R95 735 212.64					
<b>Bidder selected for award per the CTPC recommendation report dated 31 July 2012</b>					
TLF - R95 735 212.64					
<b>Notice to proceed dated 16 August 2012</b>					
TLF - R95 735 212.64					
<b>Contractual value (Contract dated – 16 August 2012)</b>					
TLF - R95 735 212.64					

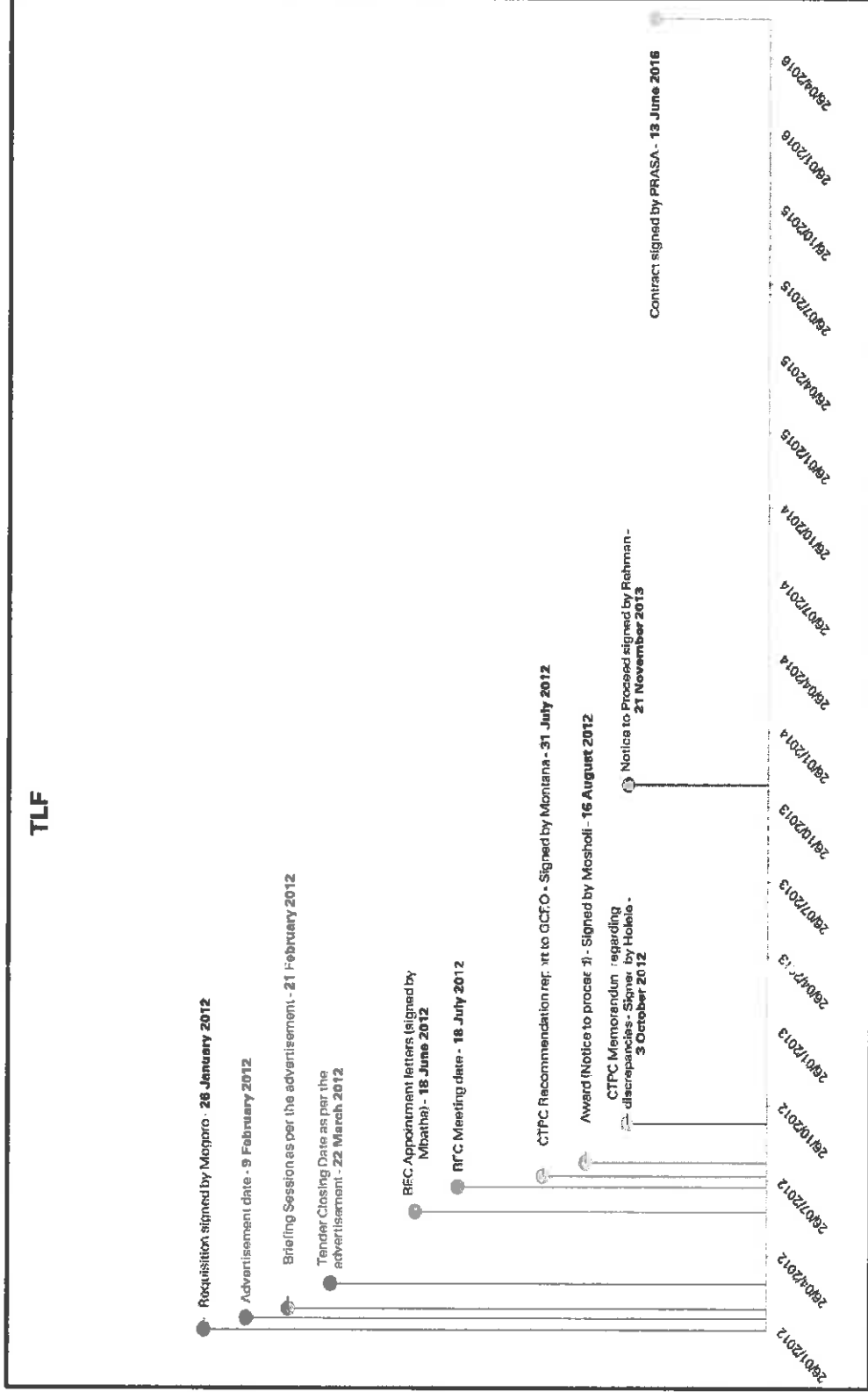
The following documents remain outstanding:

- Signed requisition;
- Budget approval;
- Minutes and register of briefing session;
- All competitive bids received and the register thereof (including TLF);
- Letters of appointment of the BEC members;
- BEC recommendation submission to the CTPC;
- Security screening for the winning tenderer; and
- Signed confidentiality agreements and declaration of interest for BEC and CTPC.



**National Treasury**  
Forensic investigation into PRASA contracts and payments  
31 October 2016

The tender process is depicted in the timeline reflected below:





#### 9.5.3.1 *Budget*

Despite numerous requests, we have not been provided with any evidence of budget approval for this tender.

#### 9.5.3.2 *Bid closing*

Based on the register of bids received, all three bidders submitted their bids on the closing date. Although the closing date, 10 May 2012 is reflected on the tender opening register for bids received, there is no time reflected on the register to indicate the time that the bids were submitted<sup>71</sup>.

The compulsory list of compliance documents required to be submitted by the bidders, was received from PRASA, but we cannot conclude as to whether PRASA performed compliance review of the documents as well as the manner in which they did so, based on this as we have not been provided with the bid submission of TLF.

#### 9.5.3.3 *Tender evaluation*

Based on the BEC scoring sheets provided to us, the BEC comprised of:

- Mohube (Risk, PRASA Corp);
- Tenza (Finance, PRASA Corp);
- Mogoro (SCM, PRASA Corp);
- Sonny (SCM, PRASA Tech); and
- Baloyi (Chairperson, SAD Infra, PRASA Corp).

Magoro is no longer employed at PRASA, and despite attempts, we were unable to secure a consultation with Mohube, Tenza, Sonny or Baloyi.

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<sup>71</sup> Refer to Exhibit 38 - LDM R95 Million Supply Chain Management - Tender Opening Register, 10 May 2012



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

**Scoring**

Despite numerous requests, to date of this report, the signed declaration of independence and confidentiality agreement completed by all BEC members were outstanding. Therefore we were unable to establish whether the BEC members were compliant in this regard.

The letters of appointment for the members to the BEC are also outstanding. Therefore we were unable to determine the committee members and whether all appointed members attended the meetings.

We performed an analysis on the BEC scoring sheets provided to us, but were unable to determine how the scores were allocated, in particular the BBBEE scores, and the evaluation of compliance of documents submitted as part of the tender submission.

For example, the allocated BBBEE scoring for TLF is 20 points, which is the maximum allocation for BBBEE points<sup>72</sup>. However, according to a recommendation report to the GCEO, entitled "*Technical and Supervision Assistance for the Western Cape Re-Signalling Projects HO/INF (s) 244/01/2012*" which was signed by Montana on 31 July 2012, one of the consortium members namely, Transurb did not provide a BBBEE certificate because they are a foreign company<sup>73</sup>.

We are unable to comment on the possible impact of this on the overall scores as we have not been provided with the bid documents for the bidders. Despite numerous requests, to date of this report, we have also not been provided with a copy of the BEC submission to the CTPC.

TLF had an overall score of 75.63% for its technical functionality scoring. This score is not in line with the 80% minimum requirements as stated in the 2014 SCM policy. The 2009 policy is silent with regard to the minimum technical functionality scoring. However, in the CTPC recommendation to the GCEO relating to TLF, signed on 31 July 2012, it is stated that the minimum criteria for technical functionality should be 70%.

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<sup>72</sup> Refer to Exhibit 39 - LDM R95million Scoring sheets, July 2012

<sup>73</sup> Refer to Exhibit 40 - LDM R95 Million Recommendation Report, 31 July 2012



#### 9.5.3.4 *Tender adjudication*

Included in the outstanding documents are the signed confidentiality agreement documents, declarations of independence and attendance register for the CTPC. Therefore we are unable to determine whether the CTPC were compliant in this regard. We were also unable to determine, based on the lack of attendance register, which members attended the adjudication of this tender.

In a CTPC recommendation report dated 31 July 2012, the CTPC recommended that TLF be awarded the tender for R93 015 330.07. However, the TLF bid price was R95 315 330.07 ie. R2 300 000.00 more than the recommended and awarded amount<sup>74</sup>.

#### 9.5.3.5 *Award*

Montana signed the CTPC recommendation report on 31 July 2012. In the comments section of this report, Montana indicated that the approval was subject to TLF confirming to PRASA its BBEE partners. We have not been provided with any evidence of such confirmation by TLF to PRASA.

PRASA was unable to provide us with the recommendation submission to the CTPC.

#### 9.5.3.6 *Contract details*

The contract was signed approximately four years after the tender was awarded on 16 August 2012. Khuzwayo indicated that the delay in signing the contract was due to the error by the CTPC, indicating that the tender value was R93 015 330.07.

On 18 May 2016, Khuzwayo drafted a recommendation to the CTPC for rectification of the amount awarded as per bid proposal. This submission was approved by Khena, acting GCEO at the time, on 13 June 2016. It remains unclear why this process was delayed by approximately four years and Khuzwayo had no further comment in this regard.

The delay in signing the contract had little effect on the project as Munian of LDM stated that the notice to proceed which was dated 16 August 2012 and TLF's letter of acceptance dated 16 August 2012 between the two parties involved.

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<sup>74</sup> Refer to Exhibit 41 - TLF contract, 13 June 2016



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

Based on the notice to proceed that was issued to TLF on 16 August 2012 to the value of R95 315 330.07. The contact person at PRASA is indicated as Khuzwayo. This document is signed by Mosholi.

The details of the contract between TLF and PRASA are summarised as follows:

<b>Contract between TLF and PRASA</b>	
<b>Contract Reference (Provided by National Treasury)</b>	4600004802
<b>Document reference</b>	HO/INFRA(S)244/01/2012
<b>Brief description</b>	Technical Assistance and Supervision in the Western Cape Re-signaling Project
<b>Contract amount (including VAT)</b>	R95 315 330.07
<b>Individual that signed on behalf of PRASA</b>	Illegible <sup>75</sup>
<b>PRASA signature date</b>	13 June 2016
<b>Individual that signed on behalf of TLF</b>	Illegible
<b>TLF signature date</b>	No date indicated
<b>Contract effective date</b>	16 August 2012
<b>Contract end date</b>	15 August 2018
<b>Contract status at the time of this report</b>	Ongoing

<sup>75</sup> Refer to Exhibit 41 - TLF contract, 13 June 2016



#### **9.5.3.7 Project status and deliverables**

Based on our consultation with Munian from TLF, representing LDM, PRASA has not processed any payments to TLF in 2016. He stated that the project is still ongoing, but that TLF is funding the project due to lack of funds from PRASA. Refer to section 9.5.3.8 below for further information in this regard.

#### **9.5.3.8 Payments**

##### ***Contract Terms***

As highlighted in sections above the TLF contract amount was R95 315 330.07. The contract payment terms indicate the following:

- Payments are to be effected 60 days after receipt of the invoice;
- Payments shall be made in accordance to the "Payment Schedule", attached as Annexure B to the contract. This schedule reflects monthly amounts, being an estimate of what is to be paid to TLF in respect of services provided; and
- If necessary, the contract payment schedule may be adjusted by mutual agreement between the parties involved.

##### ***Payment Process***

During a consultation with Edwards the current manager for the TLF R 95 million contract at PRASA, he confirmed that the invoices and payments follow a payment milestone schedule. This schedule according to Edwards reflects amounts that are to be paid every month. He indicated that he receives monthly reports from TLF, highlighting the progress made on the project onsite. He also attends monthly meetings which are usually held during the last week of the month. He stated that during the beginning of the week he consults with representatives of TLF and towards the latter part of the week he holds a technical meeting as well as a project meeting.

Once the invoices have been received and the aforementioned meetings have been held, if Edwards is satisfied with the progress, he approves the invoices for payment which are then loaded onto SAP by the Project Coordinator.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

Edwards indicated that subsequent to an internal Audit finding, all invoices go through an internal audit process whereby the internal audit personnel check the invoice against the contract and payment schedule. He added that this internal audit process was introduced when it was identified during an audit that an amount invoiced and loaded on SAP for payment, was lower than what the contract had stipulated as the monthly payment. Once internal audit are satisfied that the amounts invoiced are in accordance with the contract, the invoices are released for payment in accordance with the delegated levels of authority. Edwards is authorised to release payments up to R500 000.00. Once payments are released, the project coordinator creates a GRV on SAP and Finance processes the payment.

***Payment Analysis***

From the SAP data provided by Phoma for the period 1 April 2012 to 31 December 2015, we identified payments for nine invoices to LDM in respect of the TLF contract, during the period 8 August 2013 to 28 March 2014, amounting to R24 690 268.27

Our analysis of the SAP data revealed that all these invoices were issued within the contract validity period dated 16 August 2012 to 15 August 2018.

During our consultation with Edwards he indicated that since the last invoice paid by PRASA for the TLF contract on 28 March 2014 for R2 563 848.13, 14 additional invoices have been received amounting to R22 391 624.95, dated between 30 June 2015 to 31 July 2016, which have not yet been paid. These invoices are dated from 30 June 2015 to 31 July 2016. He indicated that the reason for the non-payment was based on a further audit finding which stated that the contract was not signed at the time that the invoices were issued. As indicated above the contract was only signed on 13 June 2016. These invoices have since been loaded onto SAP and have been released but at the date of our consultation being 30 August 2016 the invoices were pending the approval of the CFO before payment can be processed.





#### **9.5.4 Conclusion**

The award of this tender to TLF was made by Montana, subject to TLF confirming its BBBEE partners to PRASA. We found no evidence of such confirmation, and it appears that the maximum BBBEE score of 20 points which was awarded by the BEC to TLF was incorrect, as Transurb, the foreign member to the consortium did not have a BBBEE certificate. In the absence of the bid documents, we are unable to verify the scores awarded to the other bidders in this regard, or determine the impact of this anomaly on the overall scores.

In addition, due to the paucity of documentation provided to us, we were unable to conclude if the appointment of TLF to the tender was made in line with the relevant prescripts based on the following reasons:

- We were not provided with TLF's original bid submission, therefore we couldn't determine if they complied with the bid submission requirements;
- The declarations of interest and confidentiality documents for the BEC and the CTPC were also not provided to us;
- The letters of appointment to the BEC are outstanding; and
- We were not provided with the BEC submission to the CTPC.

#### **9.5.5 Recommendation**

We recommend that finalization of the matters relating to the payment of the 14 unpaid invoices dated 30 June 2015 to 31 Jul 2016, be sought from the relevant delegated authority.

In addition, we recommend that PRASA put in place document management policy and controls to ensure that tender submission and evaluation documents are easily accessible when necessary.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

## 9.6 LDM – R19 million (Phillipi Station Development)

### 9.6.1 Background to the LDM R19 million contract

Please refer to section 9.5.1 for background to LDM.

### 9.6.2 Background to the tender number HO/PT/INFR(CM)031/11/2013

This contract relates to an UG of the Phillipi Station for which LDM was appointed as a Project Implementation Agent to supervise and monitor the design aspects thereof.

A tender process was not followed for the appointment of LDM in this instance, as according to Gantsho, the contract was an extension of an existing contract with LDM, and hence should have followed a confined tender process as described in section 7.2.1.4.3 of this report. In terms of the confined tender process this should be motivated for approval by the GCEO.

Gantsho explained that the initial tender process for construction of the Phillipi Station was followed in 2007 as part of preparations for the FIFA World Cup in 2010.

In a memorandum from Luyanda Gantsho to Sonny, dated 18 April 2013, with subject heading *"Phillipi Station Upgrade Appointment Extension for Professional Team"*, Gantsho recommended that *"the current Professional team appointment be extended to include construction and monitoring"*<sup>76</sup>. LDM is not mentioned as the professional team in this memorandum. However, Gantsho informed us that the professional team referred to was indeed LDM. He added that there was a risk in delay in the construction if the appointment was not made before construction was due to begin.

We were further informed by Keraang, Project Manager for this contract, that construction had already started before the extended contract was signed or the notice to proceed which was issued to LDM on 21 November 2013. He further indicated to us that the DTPC had already approved a recommendation for approval by the GCEO. However, we have not been provided with such a document.

In Gantsho's memorandum for LDM's extension he indicated that:

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<sup>76</sup> Refer to Exhibit 42 - LDM R19 Million Contracts Memorandum, 18 April 2013



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

*“There is a risk of delay if the appointment is not made before construction begins. If the appointment was not extended, PRASA would have had to advertise or nominate, from the list to save time, a professional team.*

*There may have still been a delay as the other team would have needed time to review designs and all related documents with an inherent risk of price changes (up or down).*

*The existing team may have included things they omitted in the design with the intention to increase cost and their fees”.*

It appears therefore, that the approval of the extension was made on this basis.

This memorandum was submitted by Gantsho and was subsequently approved by Zamxaka, the Divisional CEO for PRASA Tech, in line with his delegated authority, although his approval is not dated. Zamxaka also included a handwritten note on the memorandum which reflects *“What is the estimated cost? All proposals must have estimated costs”*. Godfrey Sonny also approved the extension on 22 April 2013, with a note which reads *“Based on points being addressed”*. We found no further evidence of the costs for this extension being approved, or a response to the conditions raised by Zamxaka or Sonny. We also found no approval by the GCEO, as required in terms of the deviation from the normal procurement process.

#### **9.6.2.1 Award**

Based on our consultations, contractors may proceed with operations onsite once a notice to proceed has been issued by PRASA. According to Manyosa, a signed notice to proceed is considered binding, and is often relied upon to ensure that delivery by the contractor is not hindered by the delays experienced in the signing of the contracts. LDM's notice to proceed was signed by Rehman on 21 November 2013 and indicates an amount of R1 146 004.99.

#### **9.6.3 Contract details**

Based on a notice to proceed that was issued to LDM on 21 November 2013 to the value of R19 146 004.99, the notice to proceed is signed by Rehman and the contact person at PRASA is listed as Gantsho. Through consultations, we identified that Keraang is the current Project Manager for this contract.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

The contractual information is captured below:

<b>Contract between LDM and PRASA</b>	
<b>Contract Reference (Provided by National Treasury)</b>	4600005982
<b>Document reference</b>	HO/PT/INFR(CM)031/11/2013
<b>Brief description</b>	Project implementation agent for the supervision and monitoring of the Phillippi Station redevelopment
<b>Contract amount (including VAT)</b>	R19 146 004.99
<b>Individual that signed on behalf of PRASA</b>	DCEO, PRASA Tech
<b>PRASA signature date</b>	No date
<b>Individual that signed on behalf of LDM</b>	"S. Munin"
<b>LDM signature date</b>	17 December 2013
<b>Contract effective date</b>	28 November 2013
<b>Contract end date</b>	28 August 2015
<b>Re-instatement date</b>	Approval date – 28 January 2016 <sup>77</sup>
<b>Contract status at the time of this report</b>	Ongoing

**9.6.3.1 Payments**

**Contract Details**

As highlighted in sections above the LDM 19 million contract amount was R19 146 004.99. The contract's payment terms indicated the following:

- Payments are to be effected 60 days after receipt of invoice;

<sup>77</sup> Refer to Exhibit 43 - LDM R19 Million Contract Re-instatement, 28 January 2016



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

- Payments shall be made in accordance with the “Payment Schedule” which was attached as Annexure B to the contract. This schedule reflects monthly amounts which were an estimate of what is to be paid to LDM in respect of services provided; and
- The notice to proceed reflects that operations were expected to commence on 21 November 2013.

Included in the contract between PRASA and LDM, the parties initially agreed on a payment schedule which reflected the estimated amounts to be paid to LDM on a monthly basis, with the cumulative amounts ultimately amounting to the contract value.

***Payment Process***

During our consultation with Keraang, he indicated that he became the Project Manager of the R19 million LDM contract after succeeding three managers before him, namely:

- Richard Baloyi, who has left the employment of PRASA;
- Luyanda Gantsho who has since been promoted to General Manager: Infrastructure;
- Knowledge Ramolefe the PRASA Project Manager for Oteo. In his previous role as project manager for LDM; and
- Keraang oversees the role that LDM performs as Project Managers of the project.

According to Keraang, LDM confirms the work by Boshard Construction (Pty) Limited for this project. The role of LDM is to evaluate the work done by Boshard Construction (Pty) Limited, which has been appointed as the contractor for the Phillippi Station redevelopment. This evaluation is done without the involvement of any PRASA representative. Once LDM is satisfied with the work performed and the quality thereof by Boshard Construction (Pty) they sign the invoice from Boshard Construction (Pty) Limited as approval and confirmation of work performed.

Once the invoice is received from LDM for their project management services, Keraang compares the amount reflected on the invoice against the payment schedule. The payment schedule is included as an annexure to the signed contract between LDM and PRASA. If the amounts are line with the schedule he signs as approval thereof.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

**Payment Analysis**

From the SAP data provided by Phoma for the LDM R19 million contract we identified nine invoices were received by PRASA amounting to R17 486 890.59. The contract therefore has remaining funds of R1 659 114.40 available for this project.

The analysis of the SAP data also highlighted that four of the invoices amounting to R8 570 705.06 were issued before the start date of the contract being 28 November 2013, as follows:

Invoiced No.	Invoice Date	Amount
IN001624	9 July 2013	R2 877 189.00
IN001708	29 August 2013	R411 551.40
IN001763	1 October 2013	R1 388 590.10
IN001826	26 November 2013	R3 893 374.56
<b>Total</b>		<b>R8 570 705.06</b>

Although the payments for the above invoices were processed after the notice to proceed was issued, LDM invoiced PRASA six months before the effective date of the contract. At the time of the first invoice dated on 9 July 2013, LDM had no written authority to perform any activities. Keraang stated that to the best of his knowledge these invoices, were for preliminary design work which needed to be performed before Boshard Construction (Pty) Limited could be appointed. He was unable to provide us with any further explanation in this regard as these invoices were processed before his time. The invoice description which reads "*Phillipi Station redevelopment: UG to the existing station precinct - principal implementing agent services fee Professional fees for services rendered in respect of above project*" for all four invoices, does not give an indication of the specifics of the work performed.



### ***Payments after the period***

Boshard Construction (Pty) Limited, ceased operations on 25 June 2015 for this project. We noted that one of the LDM invoices dated 8 July 2015 (i.e. more than a month after the contract period had lapsed on the 27 May 2015) amounting to R980 400.00 was paid on 31 March 2016. Keraang indicated that since this invoice was for services rendered outside the contract period, approval for a further extension of the contract was required before the invoice could be paid. However, the payment was only made on 31 March 2016, this was after the reinstatement of LDM's contract was approved on 28 January 2016. The reinstatement has been attached as an exhibit in the earlier parts of the report.

A further invoice was issued by LDM for the remaining balance of the contract amounting to R1 659 114.40. Keraang indicated that he "*refused*" to pay this invoice as there were no services rendered which warranted the payment. He added that he did not approve the invoice for payment because he usually keeps reserve funds for the funding of closure reports and other miscellaneous expenses that may arise in such instances.

## **9.6.4 Conclusion**

Similar to the contract awarded to TLF for which LDM is affiliated, as discussed in section 9.5 above, the approval of this contract to LDM was also given subject to certain conditions. In this instance Zamxaka and Sonny approved the extension of an existing contract, apparently awarded to LDM previously, depending on the estimated costs. We found no evidence of this condition being met. We also found no approval by the GCEO, as required in terms of the deviation from the normal procurement process.

### **9.6.4.1 Payments**

Although approval for the extension of the contract was provided on 22 April 2013, subject to the condition stated above, ie: with no amount stipulated, and a notice to proceed was issued on 21 November 2013, the contract was only signed on 17 December 2013. It is clear that LDM commenced work prior to the notice to proceed and contract, as they submitted invoice dated from 9 July 2013 to 26 November 2013 for work performed, ie: without any written authority to perform any activities. This placed PRASA at the potential risk of incurring costs without any contractual terms or conditions governing these costs.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

**9.6.5 Recommendation**

We recommend that PRASA implement strict controls to ensure that it does not permit contractors to commence work in the absence of a written contract. Further, document management policy and controls should be enhanced to ensure that the documentation surrounding extensions and the rationales behind such extensions, are easily accessible.

In addition, we recommend that PRASA put in place document management policy and controls to ensure that tender submission and evaluation documents are easily accessible when necessary.

**9.7 Fastmove**

**9.7.1 Background to Fastmove**

Based on its website, Fastmove Electrical is a black owned entity which performs infrastructure projects including electrical and mechanical. It was established in 1996 to service the public sector, government departments and Parastatals.

**9.7.1.1 Directors**

From the statutory searches that we performed on publically available information, we found that Fastmove, with registration number 1996/047665/23, had only one active director as at the closing date of the tender, 30 November 2012, namely Ofsael Vusumuzi Mazibuko.

**9.7.1.2 Media**

Our searches conducted within the online records of The Southern African Legal Information Institute, revealed the following litigation records, involving Fastmove:

— Case number 22611/2014 Fastmove vs Iyona Traders.

This Case was heard on 17 May 2016, no further detail was identified.





— Free state Steam and Electrical CC v Minister of Public Works and Others (7810/2008) [2008] ZAGPHC 256 (18 August 2008)<sup>78</sup>.

Fastmove was the fourth respondent in this matter; which relates to a tender process that Fastmove participated in and won. Based on the article, Fastmove should have been disqualified from the tender process due to previous non-performance. The following extract bears reference:

*“That the tender could not reasonably have been awarded to the fourth respondent [Fastmove] by reason of the fact that its performance in respect of an identical contract which was in the process of execution was to the knowledge of the second respondent so poor and inadequate that such performance should reasonably have disqualified the fourth respondent. The fourth respondent scored full marks in respect of performance”.*

*This application is not opposed by the fourth respondent, the successful party when the tender was awarded by the Adjudication Committee. It is also clear that no minutes were kept when the Bid Adjudication Committee deliberated and decided to grant the tender to the fourth respondent.*

*The applicant argues that Mr J de Wit, who was the chairperson of the Evaluation Committee who drafted the report which resulted in the contract being awarded to fourth respondent, was biased. He was the author of the recommendation to the Adjudication Committee on which the decision was made. The argument is that, although Mr de Wit knew of the quality problems of previous work done by the fourth respondent, he nevertheless scored 5 out of 5 for the fourth respondent in regards to quality. It is further noted that Mr de Witt does not file an affidavit”.*

Despite numerous requests to date of this report, we have not been provided with any evidence of security clearance performed by PRASA in respect of this tender. Hence we are unable to determine whether security clearance was performed and/or whether this matter was identified during such clearance.

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<sup>78</sup> Refer to Exhibit 44 - Fastmove Free State Steam & Electrical CC v Minister of Public Works and Others, 18 August 2008



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

**9.7.2 Background to the tender number HO/INF/(E)/107/09/2011**

On 24 October 2011, PRASA embarked on an open tender process for *“The replacement of 3KV DC High Speed Circuit breakers with new technology circuit breakers”*<sup>79</sup>. Fastmove submitted a bid for this tender which it won.

According to a notice to proceed, issued to Fastmove on 29 April 2013, Richard Malope was the Senior Electrical Engineer, Infrastructure<sup>80</sup>. According to a letter of intent issued to Fastmove on 25 March 2013, Mashea was the Contracts Manager for this project. Mpiisi informed us that he succeeded Malope as Project Manager after Malope’s departure from PRASA during February 2015.

The current end user department for this tender is PRASA Tech. However, the bid evaluation for this contract was completed at PRASA Corp, and the tender adjudication was completed at PRASA Rail, as PRASA Tech had not yet been established at that stage.

**9.7.3 Tender process followed**

Based on the documentation provided to us, and consultations performed, the tender process which resulted in the awarding of the contract to Fastmove is summarized in the table below:

<b>Advertisement date</b>	21 and 23 October 2011 <sup>81</sup>	
<b>Closing date and time</b>	30 November 2011	
<b>Number of bidders at briefing meeting dated 03 November 2011</b>		16
<b>Number of tenders sold/issued</b>		11
<b>Number of bids received at closing date, 30 November 2011</b>		7
<b>Bidders that submitted tenders at tender closing</b>		
Siemens		
Fastmove		
Active		

<sup>79</sup> Refer to Exhibit 45 - Fastmove Tender Notice and Invitation to Tender, not dated

<sup>80</sup> Refer to Exhibit 46 - Fastmove notice to proceed, 29 April 2013

<sup>81</sup> Refer to Exhibit 47 - Fastmove Page from Adjudication report, 29 June 2012



**National Treasury**  
Forensic investigation into PRASA contracts and payments  
31 October 2016

CONCO					
Tractionel					
Ampcor					
Microelettrica/Mahleketho JV					
<b>Eliminated Tenders following the evaluation performed by the PRASA Corp BEC</b>					
CONCO	<i>"CONCO did not comply with the requirements of Part C4 (scope of works) of the tender document. The tenderer has not made provision for certain items listed in the scope of works".</i>				
Microelettrica/Mehleketo JV	<i>"The Joint Venture did not comply with the requirements of clause 3(2) of the Tender Data which states that the lead partner must have a contractor grading designation class of 8EP or higher for construction work. The JV also did not comply with clause 3(3) where the combined contractor grading designation calculated in accordance with the CIDB regulations is equal to or higher than a contractor grading designation determined in accordance with the sum tendered for an 8EP class of construction work."</i>				
Active Power Projects (Pty) Limited	<i>"The BOQ was incomplete and the unpriced element would have substantially altered their tender offer".</i>				
<b>Shortlisted bidders</b>					
Siemens					
Fastmove Electrical					
Tractionel					
Ampcor					
<b>Final scores awarded to shortlisted bidders by the PRASA Rail BEC</b>					
Bidder Name	Bid amount R (Including VAT)	Price score (Maximum 30)	B-BBEE score (Maximum 20)	Technical Score (Maximum 50)	Total Score (Maximum 100)
Siemens	R81 915 491.51	28.4	9.5	39.4	77.2
Ampcor	R106 278 076.00	30.0	10.5	36.8	76.3
Fastmove	R89 397 546.00	25.5	19.0	22.4	66.8
Tractionel	R95 735 212.64	23.0	9.1	31.7	62.8
<b>Bidder selected for award per the initial PRASA Corp BEC recommendation report</b>					
Ampcor - R77 637 574.73					



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

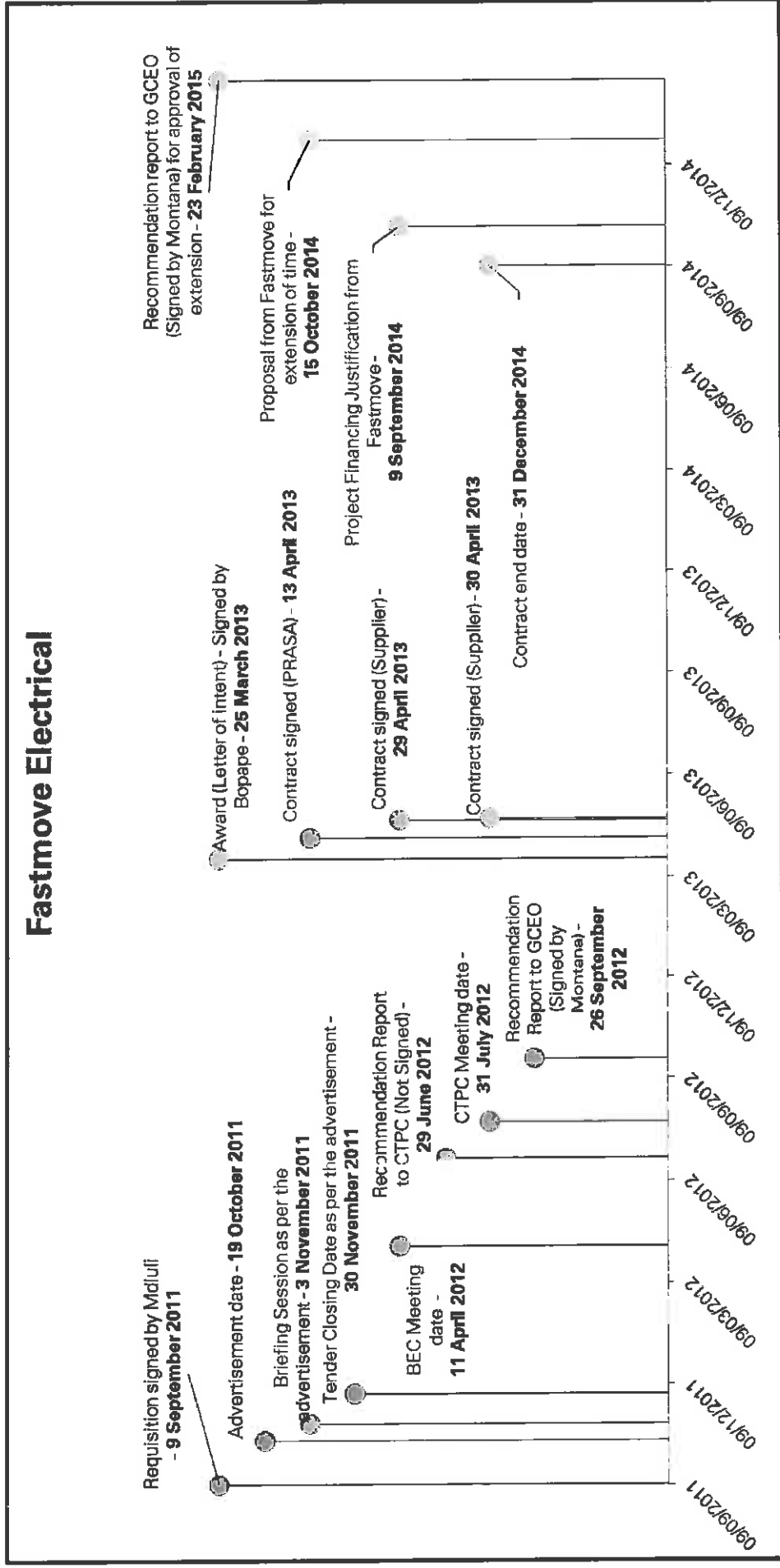
<b>Bidder selected for award per the initial PRASA Rail BEC recommendation report</b>
Siemens - R81 915 491.51
<b>Bidder selected for award per the CTPC recommendation report</b>
Fastmove - R89 397 546.00
<b>Letter of Intent</b>
Fastmove - R89 397 546.00
<b>Contractual value</b>
Fastmove - R89 397 546.00

To date of this report, the following documents are outstanding:

- Minutes/notes of tender clarification meeting;
- Letters of appointment for BEC members;
- Declaration of interest and confidentiality agreement for P. Van Den Berg ;
- Individual scoring sheets for each BEC member; and
- Security screening for Fastmove.



The tender process is depicted in the below timeline:





### 9.7.3.1 *Budget*

We were not provided with any evidence of budget approval for this tender. Despite numerous requests and consultations we were unable to identify who replaced Malope as Project Manager for this project when he left PRASA. We were therefore unable to obtain any further background to the budget and specifications for this tender other than that provided in the tender documentation. We later identified from Kumalo, towards the reporting phase of this investigation, that Mpsi was appointed as Project Manager during February 2015, and is currently still the Project Manager. However, we did not consult with Mpsi on this issue due to budget constraints.

### 9.7.3.2 *Bid closing*

Based on the register of bids received, all three bidders submitted their bids on the closing date. Although the closing date, 31 January 2012, is reflected on the tender opening register for bids received, there is no time reflected on the register to indicate the time that the bids were submitted<sup>82</sup>

### 9.7.3.3 *Tender evaluation*

During the time of the tender, the PPPFA had not yet been in place and there was not a clear threshold for the technical scoring. Despite this, the scores should still have been divided into the following categories

- Technical evaluation;
- Price; and
- B-BBEE.

#### ***Scoring***

Fastmove had an overall score of 45% for its technical functionality scoring, which is not in line with the 80% minimum requirements as stated in the 2014 SCM policy. There was no clear threshold stipulated in the tender document, or the 2009 SCM policy.

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<sup>82</sup> Refer to Exhibit 48 - Fastmove Supply Chain Management - Tender Opening Register, 31 January 2012



**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

We were not provided with individual scoring sheets for each of the BEC members, for each of the components. Instead we were provided with one consolidated scoring sheet<sup>83</sup>. Hence we are unable to comment on the consistency or reasonableness of each of the BEC member's scores.

***Tender evaluation meeting dated 11 April 2012***

Subsequent to the tender evaluation meeting held on 11 April 2012, the BEC submitted a recommendation to the CTPC for the award of the tender to Ampcor. Following this process, the procurement of the contract was transferred from PRASA Corp to PRASA Rail to continue with the adjudication process.

Following the initial evaluation process by the PRASA Corp BEC, the tender validity period expired on 28 September 2012, and PRASA Rail sent a letter to all seven qualifying bidders on 11 October 2012 requesting that the tender validity be extended to 15 November 2012. The extension was accepted by six of the seven qualifying bidders and the prices tendered remained the same, except for Ampcor, which increased its price by 12% ie. From the initial tendered amount of R77 637 574.73 (including VAT and 5% contingency) to R90 835 962.43.

PRASA Rail requested a second tender validity extension from the four shortlisted bidders as well as the three disqualified bidders on 29 January 2013 until 28 March 2013, during which period the adjudication of the tender was to take place. Ampcor increased its prices a second time, this time by 42% ie. From R90 835 962.43 to R106 278 076.00, whereas prices for the other bidders remained the same.

Subsequent to the two escalations of Ampcor's prices, the PRASA Rail BEC revisited the scoring sheets for the technical, price and BBBEE status of the four shortlisted bidders. The BEC concluded that Siemens was the highest bidder based on their price and overall score. Siemens was therefore recommended to the CTPC as the preferred bidder in the recommendation report. The report was signed as by Bopape as the recommender on 14 February 2013 and approved by Montana on 23 March 2013.

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<sup>83</sup> Refer to Exhibit 49 - Fastmove Final Evaluation for Tender, 11 October 2012



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

**9.7.3.4 Tender adjudication**

At a CTPC meeting dated 31 July 2012, the CTPC initially recommended Ampcor for the award of this tender at a cost of R77 637 574.73. The submission report pertaining to this recommendation report from the CPO to the GCEO, was approved by Montana on 26 September 2012, subject to confirmation of a security check being performed on Ampcor.

Thereafter on 13 February 2013, Bopape sent a memorandum to Montana recommending that the decision to appoint Ampcor be rescinded and that Siemens be appointed at a cost of R81 915 491.51. Montana did not approve Siemens as the winning bidder as at that point, Siemens had too many projects with PRASA. A comment is reflected on the memorandum made by Montana, that *"PRASA should not be putting all its eggs in one basket"*<sup>84</sup>.

Although Ampcor was the second highest bidder, according to Rehman and Kumalo, due to Ampcor's escalated prices, Fastmove, the third highest bidder was ultimately recommended by the CTPC for the award. However, we have not been provided with any further information or documentation to this effect.

**9.7.3.5 Award**

We have not been provided with any evidence of approval by the GCEO for the award to Fastmove.

**9.7.3.6 Contract**

A Letter of Intent was issued to Fastmove on 25 March 2013 for the value of R89 397 546.00 (Excluding VAT)<sup>85</sup>. Mashea is listed as the contract manager.

A notice to proceed was issued on 29 April 2013 but the contract value was indicated as R95 560 192.80 (Including VAT) in this case. The contact person is indicated as Malope, Senior Electrical Engineer, Infrastructure, and the document is signed by Sonny, Senior Manager, SCM. Malope was replaced by Mpisi after he left PRASA. We have not been able to identify the reason for the discrepancy between the amounts indicated on the letter of intent and the notice to proceed, as Malope is no longer employed at PRASA, and despite numerous attempts we were unable to secure a consultation with Sonny.

<sup>84</sup> Refer to Exhibit 50 - Fastmove CTPC Recommendation Report - Recommending Siemens, 13 February 2013

<sup>85</sup> Refer to Exhibit 51 - Fastmove Letter of Intent, 25 March 2013





**National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

The contract between Fastmove and PRASA was signed by Zide on behalf of PRASA. However, it does not indicate the date on which both the parties signed. During our consultation with Zide, we requested the period in which he was acting GCEO. He responded that he was only acting GCEO for five days namely, 21 September 2014 to 26 September 2014. It appears therefore that he did not have the delegation to sign this contract. We have not seen any further approval for example minutes or a resolution authorising Zide to sign this contract. We did not have a follow up consultation with Zide to obtain an explanation for this due to budget constraints on our investigation.

The contractual information is captured below:

<b>Contract between Fastmove and PRASA</b>	
<b>Contract Reference (Provided by National Treasury)</b>	4600004802
<b>Document reference</b>	HO/INF/(E)/107/09/2011
<b>Brief description</b>	Replacement of 3KV DC High Speed circuit breakers in the following Metrorail Regions: <ul style="list-style-type: none"> <li>— Kwa-Zulu Natal</li> <li>— Western Cape</li> <li>— Wits East</li> <li>— Wits West</li> </ul>
<b>Contract amount (including VAT)</b>	R95 560 192.80
<b>Individual that signed on behalf of PRASA</b>	Zide
<b>PRASA signature date</b>	No date reflected
<b>Individual that signed on behalf of Fastmove</b>	Mazibuko
<b>Fastmove signature date</b>	No date reflected
<b>Contract effective date</b>	16 August 2012
<b>Contract end date</b>	31 December 2014
<b>Extension dates</b>	23 February 2015
<b>Contract status at the time of this report</b>	Ongoing



#### **9.7.3.7 Project status and deliverables**

During our consultation with Sibanda, the Fastmove representative for this project, he indicated that due to the nature and scope of the project, it is still underway, despite the project end date being indicated on the contract as 31 December 2014. According to the commencement date of the contract, 30 April 2013, the contract period is 20 months. The delay in concluding the project was due to the fact that Fastmove has to order the high speed circuit breakers from a Swiss entity which has resulted in a significant time delay in the delivery of circuit breakers to PRASA.

Fastmove submitted a request for project financing on 9 September 2014 and a request for extension of time on 15 October 2014 which was approved by Montana on 23 February 2015. Fastmove then submitted further extension requests on 7 September 2015 and 15 October 2015. Neither of these requests have been approved by PRASA. We have not received a recommendation report or any other confirmation that a deliberation discussion took place in order to discuss these extensions.

#### **9.7.3.8 Payments**

##### **Contract Terms**

As highlighted above the Fastmove contract amount was R95 560 192.80. The contract's payment terms indicated the following:

- On the 15th of each month the Engineer (appointed by the consultant) will make a progress measurement or estimate of work done;
- Fastmove will submit a detailed list of material brought onto the site for usage, and the Engineer will check and place a value on the material;
- After valuation of the goods and work performed the Engineer will issue a certificate authorising payment to be made;
- Progress payments are made, which excludes a 10% retention, which is paid after the circuit breakers have been installed;
- The payment certificate should be attached to authorise payments made.



**National Treasury**  
Forensic investigation into PRASA contracts and payments  
31 October 2016

### ***Payment Process***

During our consultation with Mpsi, he indicated that in total there are three Project Managers at PRASA for the Fastmove contract, each covering a different region as follows:

- Mpsi, covering Kwa-Zulu Natal;
- Philip Mahlasi, Western Cape; and
- Mohera Tlaki, Gauteng.

All three Project Managers joined PRASA in 2014. However Mpsi took over as Fastmove's Project Manager during February 2015.

Mpsi approves the invoices for all the regions, he stated that when approving payments, he receives an array of documents one of which is a delivery note from Fastmove for the circuit breakers. Mpsi then attends a testing and functionality session (which takes place every time new circuit breakers are received) at Semi-Conductors, a company situated in Midrand, whereby the circuit breakers are tested. A register is kept of individuals who attend these testing sessions. According to Mpsi these sessions were previously attended by an external consultant appointed by PRASA, but due to budget constraints their services were terminated.

Once he is satisfied with the quality and functionality of circuit breakers, Mpsi checks the invoice against the Bill of Quantities included in Fastmove's bid documents. Mpsi mentioned that upon appointment, the prices stated on the Bill of Quantities were fixed. However, Fastmove recently submitted an application to review the prices due to the deterioration of the South African Rand. We understand that this is still being considered by PRASA and all payments under our review were in accordance with the fixed price list.

PRASA pays Fastmove 90% of the invoiced amount upon delivery of the goods and the balance after installation. The approved invoice together with the supporting documentation, is submitted to the Chief Engineer, Dlamini, for authorisation. Thereafter the amounts are loaded on SAP by Shale, the Project Coordinator, and the payment is processed.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

***Payment Analysis***

From the SAP data provided by Phoma for the period 1 April 2012 to 31 December 2015, we identified 12 invoices paid to Fastmove from 22 July 2013 to 22 April 2016, amounting to R22 608 837.96.

Our analysis of the SAP data revealed the following:

- Eight of the invoices amounting to R14 746 712.82 were issued within the original contract period, being 30 April 2013 to 31 December 2014. However when Fastmove was awarded the contract the initial local supplier of circuit breakers to Fastmove, ABB, informed Fastmove that they were no longer the local agent of the international supplier circuit breakers, namely Secheron. This meant that Fastmove had to source the high speed circuit breakers directly from Secheron in Switzerland. This caused a delay in the delivery of circuit breakers, and thus the contract dates extended from 1 May 2013 to 18 February 2015.
- Based on a letter dated 24 February 2015 provided by Mpisi, the contract dates were further extended from 18 February 2015 to 18 November 2015. The remaining four invoices amounting to R7 862 125.14 were received after the original contract had lapsed but within the extended contract period of 18 February 2015 to 18 November 2015.
- An amount of R752 444.57 was paid on 22 April 2016 which is outside our mandate period. The exclusion of such amount would thus make the total batch payment amount to R21 856 393.39 for our period of review. Mpisi explained that the amount of R752 444.57 was not initially paid out due to the AG having reservations about this amount hence there was a delay in payment.

***Payments without certificates***

Upon analysing the supporting documentation to the invoices we noted the following: As indicated above, according to the contract, a payment certificate should be signed and attached to the invoice before a payment can be processed. Only five of the 12 invoices had a signed payment certificate attached as support for the invoice. The other seven invoices that were issued without the presence of a payment certificate or signature, are as follows:



**National Treasury**  
Forensic investigation into PRASA contracts and payments  
31 October 2016

Issue detected	Invoice date	Amount
Certificates not attached	18 June 2014	R1 512 517.80
	21 July 2014	R1 512 517.80
Certificate not signed	10 December 2013	R2 940 085.08
	30 September 2014	R2 449 301.97
	26 August 2015	R3 052 877.36
	23 September 2015	R1 998 743.65
	10 November 2015	R752 444.57

Mpisi highlighted that since he joined the project he has been signing the necessary certificates, but could not comment on the process followed by his predecessors. He further indicated that sometimes the invoice is signed instead of the payment certificate. It is noted that the above seven invoices were signed however we were unable to determine the name of the signatories on these invoices.

This payment occurred on 22 April 2016. Mpisi's record of payments indicate that they paid a total of R19 872 691.01 (VAT inclusive) and the SAP data states that a total of R22 608 837.96 was paid (R21 856 393.39 paid within mandate period and R752 444.57 was paid in 2016). He attributed the difference to retention payments which may have been recognised on SAP but not yet paid.

The data also indicated that there was a period (30 September 2014 to 26 August 2015) where no invoices were issued. Mpisi stated that this was a period when either no work was performed as the request for extension was in the process of approval.

It can be noted that only R22 608 837.96 was paid on a contract that amounts to R95 560 192.80, this can be attributed to operations on site being ceased as the contract had lapsed, and there were delays in approving the reinstatement submission for Fastmove.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

#### 9.7.4 Conclusion

Based on our media searches we identified two matters of concern involving Fastmove, the first being a dispute indicating that Fastmove should have been disqualified from a tender process in 2008, due to previous non-performance and the second being a litigation matter in 2014 which was only heard in 2016. Although it is unlikely that PRASA could have foreseen the issues relating to the second matter, we found no evidence of a due diligence or security screening having been performed on Fastmove following its award of this tender.

In addition, the appointment of Fastmove may have not been made in line with the relevant prescripts based on the following reasons:

##### 9.7.4.1 Budget

We have not been provided with evidence of budget approval for this tender.

##### 9.7.4.2 Tender process

- We were not provided with individual scoring sheets for the BEC members, but only a consolidated scoring sheet. Hence we are unable to comment on the reasonableness of the individual or consolidated scores;
- The tender document had no clear threshold for technical scoring, leaving the scoring to various interpretations;
- Following Ampcor's escalated prices, the reason quoted by Montana for not appointing Siemens, namely that "*PRASA should not be putting all its eggs in one basket*" appears to be insufficiently justified; and
- The contractual agreement between PRASA and Tshireletso was signed by Zide on 13 January 2013. However, Zide's acting period as GCEO was only for a period of five days from 21 September 2014 to 26 September 2014 and we found no delegation for him to sign the contract on behalf of the GCEO.
- The contractual agreement between PRASA and Fastmove was signed by Zide. Although the date of the signatures are not reflected, Zide's acting period as GCEO was only for a period of five days from 21 September 2014 to 26 September 2014 and the contract was effective from 16 August 2012. We found no delegation for him to sign the contract on behalf of the GCEO.



#### 9.7.4.3 *Payments*

We identified seven invoices from Fastmove that were paid, without having the necessary payment certificates attached.

#### 9.7.5 **Recommendations**

We recommend that PRASA review the tender bid submission and evaluation process to ensure that adequate controls are in place and that procedures are implemented that allow the effective operation of the controls. Security screening and or due diligence procedures should be performed on at least the short listed bidders, prior to the various committees recommending the awards.

Consequence management should also be initiated against the following for disregarding the open tender and evaluation process

- The members of the BEC that are still employed at PRASA for not completing individual scoring sheets, and/or the BEC secretariat for not maintaining adequate records in this regard;
- Zide as he signed above his delegation of authority in respect of this contract; and

It is further recommended that the controls surrounding the documentation supporting payments, such as signed payment certificates, must also be adhered to.

In addition, we recommend that PRASA put in place document management policy and controls to ensure that tender submission and evaluation documents are easily accessible when necessary.

### 9.8 **DCD**

#### 9.8.1 **Background to DCD**

Based on its internet website, DCD designs, develops and manufactures on-tread composite railway brake blocks for trains, to customer specifications, and also has the capability of diversifying into the manufacture brake disk pads. DCD operates in South Africa and exports to sub-Saharan and North Africa, Australia, Europe, the USA and Canada. It manufactures for passenger, freight, locomotive and mining railways and is a recognised supplier to licensed OEM's<sup>86</sup>.

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<sup>86</sup> <http://www.dcd.co.za/rail/DCDMetpro.aspx>



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

**9.8.1.1 Directors**

From the statutory searches that we performed on publically available information, we found that DCD, with registration number 2006/037611/07, had the following active directors as the closing date of this tender being, 30 November 2012:

- Dion Hendrik Booysens;
- Anisha Gordhan;
- Christopher Nkuna;
- Vincent Langlois;
- Gerrit Pretorius;
- Daniel Petrus Richards;
- Gary Michael Colegate; and
- Robert George King.

**9.8.2 Background to the tender number TRE11-KLP-09T-0167**

On 14 June 2011, Transnet issued an advertisement which indicates that it was a closed tender to three suppliers on the Transnet preferred supplier database, in respect of the supply and delivery of composite brake blocks on an ad hoc basis for a period of two years. These three suppliers are:

- FIP;
- Global Engineering; and
- DCD.

It is noted that a fourth supplier, Federal Mogul Friction Products, a Division of Federal Mogul SA (Pty) Limited, may have submitted a bid based on documentation provided to us by Gabryk.





The current end user department for this tender is PRASA Rail. The procurement of the contract between DCD and PRASA was performed by PRASA Rail in conjunction with Transnet in terms of clause 16A6.6 of the *“Treasury Regulations for departments, trading entities, constitutional institutions and public entities”*, Issued in terms of the PFMA<sup>87</sup>.

Clause 16A6.6 states that: *“The accounting officer or accounting authority may, on behalf the department, constitutional institution or public entity, participate in any contract arranged by means of a competitive bidding process by any other organ of state, subject to the written approval of such organ of state and the relevant contractors.”*

According to Maddocks, the BEC member for the evaluation of this project at PRASA, there were two PRASA BEC members, who participated at the Transnet BEC namely himself and Gabryk. Subsequent to its own evaluation, PRASA produced the recommendation report to the CTPC, based on the outcome of the joint evaluation. Maddocks also provided us with a copy of an e-mail from Transnet, inviting PRASA to provide its requirement should it wish to be included in the tender<sup>88</sup>. He indicated that both him and Gabryk were recorded in their minutes and in all subsequent correspondence, which should suffice as their approval and invitation to participate in terms of Clause 16A6.6 of the PFMA. We found no specific written approval for PRASA to participate in this process.

### 9.8.3 Tender process followed

Based on the documentation provided to us, and consultations performed, the tender process which resulted in the awarding of the contract to DCD is summarized in the table below:

<b>Advertisement date</b>	13 June 2011
<b>Number of bidders at briefing meeting</b>	Not provided
<b>Number of bids sold/issued by Transnet</b>	Not provided
<b>Number of bids received at closing dates: 28 June 2011 (Original)</b>	Not provided

<sup>87</sup> Refer to Exhibit 52 - DCD Clause 16A6.6 of the Treasury Regulations for departments, trading entities, constitutional institutions and public entities, March 2005

<sup>88</sup> Refer to Exhibit 53 – Email from Maddocks, 29 August 2016



**National Treasury**  
 Forensic investigation into PRASA contracts and payments  
 31 October 2016

12 July 2011 (Amendment 1)		
22 July 2011 (Amendment 2)		
<b>Bidders that submitted tenders at tender closing</b>		
FIP		
Global Engineering		
DCD		
<b>Bidders that complied with pre-qualification criteria</b>		
FIP	R6 657 498.00 (including VAT)	
Global Engineering	R5 549 380.00 (including VAT)	
DCD	R30 166 544.00(including VAT)	
<b>Eliminated Tenders</b>		
None		
<b>Bidder(s) selected for award per the PRASA BEC recommendation report</b>		
FIP		
Global Engineering		
DCD		
<b>Bidder(s) selected for award per the PRASA recommendation report to the CTPC</b>		
FIP		
Global Engineering		
DCD		

To date of this report, the following documents are outstanding:

- Budget approval (Purchase requisition);
- Minutes and register of briefing session;
- Declarations of interest and confidentiality document signed by committee members (PRASA BEC);



**National Treasury**

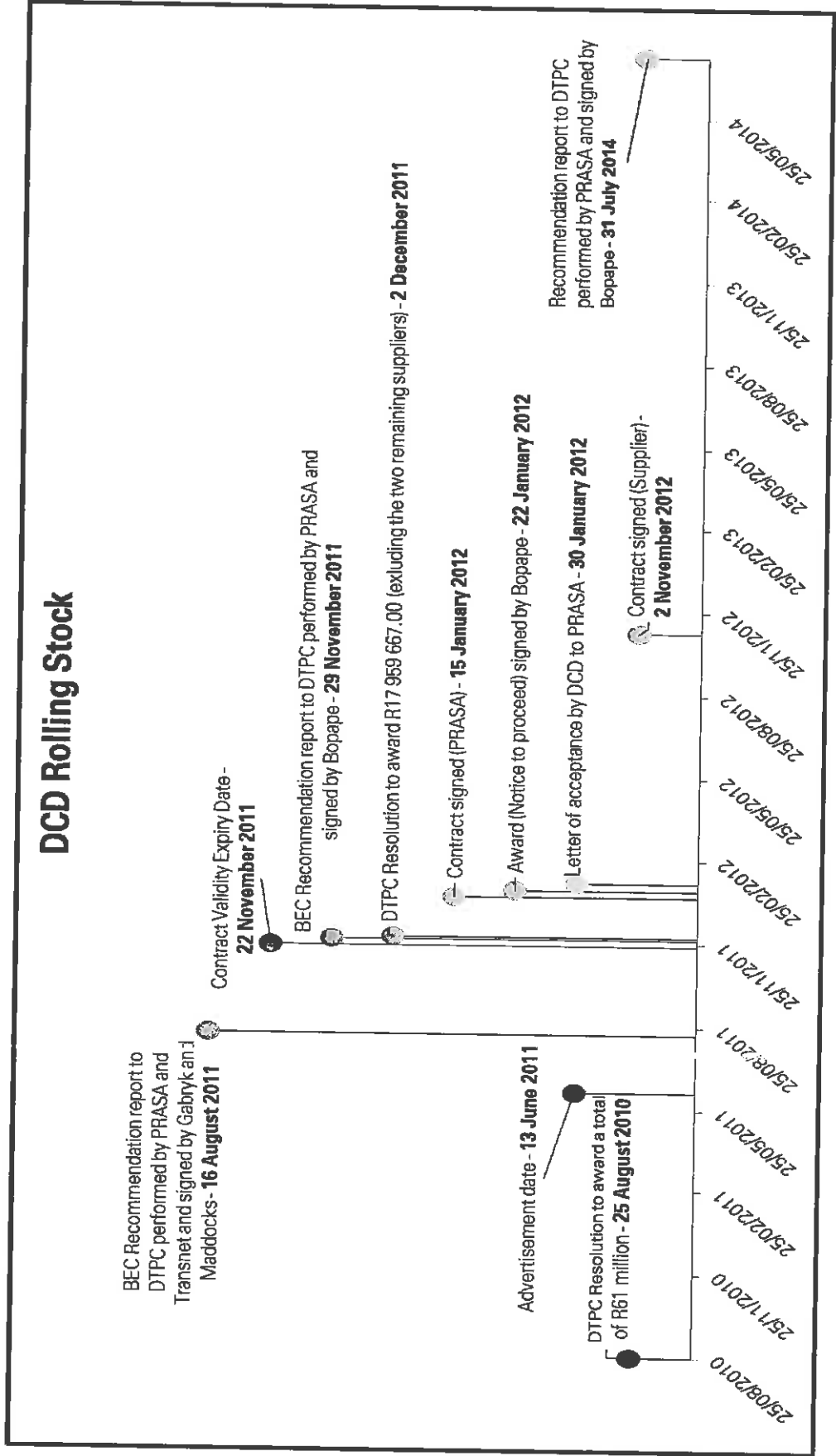
Forensic investigation into PRASA contracts and payments

31 October 2016

- Security clearance documents for DCD;
- DCD's bid submission; and
- Transnet tender documents. According to Maddocks, in terms of clause 16A6.6 of the *"Treasury regulations for departments, trading entities, constitutional institutions and public entities"*, PRASA were entitled to appoint DCD and indicated that it was not necessary to provide us with the Transnet tender documentation.



A timeline depicting the tender process is reflected below:





#### **9.8.3.1 *Advertisement and Briefing session***

According to Maddocks and Gabryk, a briefing session was held by Transnet. However, we were not provided with the minutes to the briefing session. It is therefore, unclear whether a briefing session was scheduled and whether or not it was compulsory. Furthermore, it is unclear which and if all of the preferred bidders attended the briefing session.

#### **9.8.3.2 *Budget***

The BEC recommendation to the DTPC refers to an approved budget of R54,2m for this contractor. Based on our consultation with Maddocks, PRASA Rail submitted a requirement of R54m to the Finance department, which allocated the amount among the budget for the various regions for approval. No specific approval for R54m was provided for this tender.

#### **9.8.3.3 *Tender evaluation***

##### ***Prequalification***

None of the bidders were disqualified, based on the prequalification criteria. Since we were not provided with copies of any of the bid documents we were unable to confirm compliance by all three bidders with the pre-qualification criteria.

All three of the above listed suppliers were evaluated by members of the BEC.

The PRASA BEC report was signed by Bopape on 29 November 2011, on behalf of the PRASA BEC, in recommending all three of the suppliers for different aspects of the tender, for approval

##### ***Scoring***

#### **9.8.3.4 *Tender adjudication***

The DTPC resolution minute dated, 2 December 2011 states that the DTPC recommends the award to FIP, Global Railway and DCD. The award was subject to GCEO approval. However, we have not been provided with the approval by the GCEO.



### 9.8.3.5 Award

Following the evaluation process, DCD, FIP and Global Engineering were ultimately awarded the tender for R30 166 544.00 as follows:

- DCD: R17 959 667.00;
- FIP: R6 657 498.00; and
- Global: R5 549 380.00.

### 9.8.3.6 Contract details

Based on a notice to proceed that was issued to DCD, by PRASA on 22 January 2012 to the value of R17 595 667.00, the contact persons at PRASA are indicated as Gabryk and Mashea. The document is signed by Bopape.

The contractual information is captured below:

<b>Contract between DCD and PRASA</b>	
<b>Contract Reference (Provided by National Treasury)</b>	460000661
<b>Document reference</b>	TRE11-KLP-09T-0167
<b>Brief description</b>	Supply of Composition Brake Blocks to PRASA Rail (Both Metrorail and Shosholosa Meyl)
<b>Contract amount (including VAT)</b>	R 17 595 667.00
<b>Individual that signed on behalf of PRASA</b>	Only signature reflected
<b>PRASA signature date</b>	15 January 2012
<b>Individual that signed on behalf of DCD</b>	Only signature reflected
<b>DCD signature date</b>	2 November 2012
<b>Contract effective date</b>	1 August 2012
<b>Contract end date</b>	31 July 2014
<b>Extension dates</b>	Extension of contract period and value as per the DTPC recommendation report – 31 July 2014
<b>Contract status at the time of this report</b>	Terminated



#### **9.8.3.7 Project status and deliverables**

In a recommendation report dated 13 July 2014, Bopape and Mofi recommended the extension of the contract validity period and value for DCD to the DTPC. The reason for this recommendation was that, although the contracts had expired and a tender process had commenced, a conclusion for the award could not be made as DCD did not comply with the compulsory local content threshold required by the DTI. Transnet submitted an application to the DTI for exemption in this instance, and in the interim in order to cater for the continuous supply of brake blocks, DCD's contract was extended from 1 August 2014 to 31 December 2014 with additional cost amounting to R22 521 422.00 (Including VAT).

Maddocks and Gabryk informed us of a second extension, but neither party could confirm the date/period to which it was extended. However, both parties confirmed that the project is still ongoing. We have not investigated these extensions as they were not part of our initial scope.

#### **9.8.3.8 Payments**

##### ***Contract Details***

As highlighted in the above sections of this report the DCD contract amount is R17 595 667.00. The contract's payment terms indicated the following:

- Payment of invoices to the contractor will be effected within 30 days from the date of the receipt of a correct and original invoice. The invoices are to quote the contract being Contract Number HO/PR/217/11/2011 and the clients VAT no, and
- All original invoices are to be forwarded to the client representative who is to acknowledge delivery for payment processing.

##### ***Payment Process***

Based on a consultation with Van Eden, the current project administrator for DCD, she explained that she became the project administrator for this project during 2014. She took over after the Project Manager had left and attempts to find an alternative Project Manager had failed.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

Van Eden assisted in managing the contract, until the contract lapsed on 31 July 2014. She indicated that the contract with DCD is for the supply of brake blocks and she together with Maddocks and Gabryk handle all the negotiations with regards to the contract prices as well as the allocation of funds to the various regions. She stated that they are merely administrators of the contract. All operational aspects are performed by the Project Managers in each region, for example placing the orders for the brake blocks, checking the quality, loading invoices on SAP and releasing invoices payments.

***Payment Analysis***

We requested the SAP data relating to PRASA's transactions with DCD early during the investigation but only received these during the report writing phase. The data provided to us was in an excel spreadsheet in a different format to the SAP data provided to us by PRASA Tech for all the other contracts subject to our review. We were not provided with the physical supporting documentation which support the transactions on SAP.

Based on an overview of the SAP data provided by Van Eden for the period 1 April 2012 to 31 December 2015, we identified 90 purchase orders processed during the period 5 March 2012 to 28 October 2014. The data however, only reflects the purchase orders created it cannot be determined if these were paid. These 90 transactions amount to R25 130 378.00.

Based on these purchase orders, there is a potential overspending of R7 534 711.00 against the contract amount of R17 595 667.00. Van Eden indicated to us that the budget was exceeded before she joined as administrator of the contract.

**9.8.4 Conclusion**

Based on Maddock's version, the participation by PRASA Rail in the tender process performed by Transnet appears to have been in line with clause 16A6.6 of the PFMA. However, we found no specific written approval for PRASA to participate in this process. Further, since PRASA Rail performed its own evaluation and recommendations of the bids, due to the limited documentation provided to us, we are unable to confirm whether, the PRASA Rail BEC performed an adequate assessment of the bids received. Of particular concern is the six month extension of DCD's contract from 1 August 2014 to 31 December 2014, which although was also subject to a tender process by Transnet, did not meet the DTI threshold, but was extended by PRASA Rail as an interim solution.





## **National Treasury**

Forensic investigation into PRASA contracts and payments

31 October 2016

In addition, there is a potential overspending of R7 534 711.00 against the contract amount of R17 595 667.00.

### **9.8.5 Recommendation**

We recommend that PRASA obtain a legal opinion on the interpretation of clause 16A6.6 of the PFMA, to ensure that adequate controls are in place and that procedures are implemented when participating in the procurement of a contractor performed by another organ of state.

It is further recommended that the controls surrounding payments beyond authorized contract values be reviewed to include a systematic audit trail of approvals and the reasons provided.

In addition, we recommend that PRASA put in place document management policy and controls to ensure that tender submission and evaluation documents are easily accessible when necessary.

## **9.9 Summary of issues identified from our investigation:**

The findings above, when compared against the minimum criteria as set out the 2009 and 2014 SCM Policies can be summaries as follows:

### **9.9.1 Both 2009 and 2014 SCM Policies**

#### **9.9.1.1 Document retention**

Based on the 2009 and 2014 SCM Policy, the End-user at PRASA is required to “*keep record in order to support any direction or instruction given to the SCM.*” Based on the paucity of documentation relating to each of the tender processes, we were unable to conclude on a number of issues pertaining to whether the tenders were performed in line with the relevant prescripts. This finding was raised by the AG, in relation to the historical GO contracts, but it is clear that the issue extends to tender processes followed in general at PRASA.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

**9.9.1.2 Budget approval**

Based on the 2009 and 2014 SCM Policy, PRASA is required to *“Accurately obtain proper budget approval where applicable, as well as to maintaining proper documentation to support the direction given to SCM”*. Despite numerous requests however, we were not provided with approved requisition forms for any of the tender processes subject to our review.

**9.9.1.3 Security Screening/Due diligence procedures**

The completion of background check is required to ensure that suppliers are compliant with relevant legislation. Since we were not provided with evidence of any security screening having been performed, we cannot comment on the compliance of this requirement.

**9.9.1.4 The evaluation criteria and the weighting thereof**

Scores are awarded by BEC members during an evaluation of technical functionality, price and BBBEE. The weighting of each of the aforesaid scoring categories is decided by the BEC. This however, does not correspond with PPPFA specifications.

The evaluation criteria and the weighting thereof was clearly set out in the recommendation submissions for each of the seven tenders under review. However, despite numerous requests from Project Managers on the different tenders, we were unable to obtain clarity on the consistency of the weightings, particularly pertaining to the BBBEE scoring. It appears that there is no set criteria that the weighting of the BBBEE scoring is weighted against.

**9.10 2014 SCM Policy only**

**9.10.1.1 Bid specification committee**

According to Phoma, a bid specification was only appointed from October 2015.



**9.10.1.2** *Indicate that minimum qualifying score for functionality*

According to the 2014 SCM Policy, the minimum requirement for a functionality score is 80%. While the tenders subject to this review were prior to 2014, the minimum required score for functionality was not always stipulated.

**9.10.1.3** *Include the spread sheet that will be used for evaluation without the weighting thereof*

We have received consolidated evaluation spreadsheets for all five of the tenders that followed an open tender process. However, we did not receive individual score sheets for the tenders awarded to Oteo and Fastmove.

## **9.11 Recommendations**

In addition to the recommendations above for each of the tenders investigated, we recommend that consideration be given for PRASA to perform further investigation into the following which we were unable to conclude within the time and budget constraints of this investigation:

### **9.11.1 General**

The outstanding documentation listed for each of the tenders should be made available and reviewed. Furthermore we recommend that:

- Procedures be implemented as a matter of urgency in order to address document management, and to ensure a proper audit trail of tender submission and evaluation documents that are easily accessible when necessary;
- Pre-qualification checks must be mandatory and the results documented;
- Clarity and consistency of the evaluation criteria and the weighting thereof and scoring mechanisms should be clearly articulated and documented;
- Security screening/due diligence procedures be performed on all recommended bidders prior to awards being made. Such procedures should also be performed for sub-contractors as PRASA becomes aware of any sub-contracting arrangements by its contractors.



**National Treasury**

Forensic investigation into PRASA contracts and payments  
31 October 2016

**9.11.2 Tshireletso**

- Determine whether Nku and Malope were SCM members, in order to confirm whether there was a quorum on the BEC; and
- Confirm whether Zide had delegation to sign the contract.

**9.11.3 Superway**

- Confirm whether Zide had delegation to sign the contract.

**9.11.4 Fastmove**

- Determine the approved budget from Mpisi; and
- Confirm whether Zide had delegation to sign the contract.

**KPMG Services (Pty) Limited**

**Nosisa Fubu**

***Director***