

National Treasury

Forensic investigation into the appointment of and payments made to various service providers of the Passenger Rail Agency of South Africa (PRASA)

15 December 2016

CONFIDENTIAL

15 December 2016

National Treasury
Mr Vukani Ndaba
Chief Procurement Officer
Private Bag X115
Pretoria
0001

Dear Mr Ndaba,

Forensic investigation into the appointment of and payments made to Passenger Rail Agency of South Africa service providers

Further to our mandate letter dated 17 February 2016, we are pleased to present you with our final report on the above engagement. This report contains our findings on the contracts entered into between PRASA and 18 identified suppliers (20 contracts as two suppliers entered into two contracts with PRASA each) and we comment on the procurement processes PRASA followed to appoint the identified suppliers. Our report also outlines the requested documentation that we did not obtain and the inferences we made in this respect.

This report has been prepared for your information only and should not be communicated to any external third party without our prior written consent.

Should you require further information or have any queries, please do not hesitate to contact me on 082 417 5889.

Yours faithfully,



Gregory Rammego
Director | Risk Advisory - Africa

Executive summary

1. The Public Protector investigated several procurement transactions at the Passenger Rail Agency of South Africa (PRASA). The Public Protector issued a report titled "*Derailed*" on 24 August 2015, in terms of section 182 (1)(b) of the Constitution of the Republic of South Africa of 1996 and section 8(1) of the Public Protector Act 23 of 1994. The Public Protector took remedial action in pursuit of Section 182 (1) (c) of the Constitution in respect of the investigation. As part of the remedial action, the Public Protector directed the Chief Procurement Officer of National Treasury (NT) to conduct forensic investigations into all PRASA contracts since 2012 with a value above R10 million.
2. NT subsequently mandated Deloitte & Touche (Deloitte) to investigate 20 selected contracts entered into between PRASA and 18 suppliers. Two suppliers entered into two contracts each with PRASA.
3. We requested all relevant documents from PRASA on 24 February 2016 (and several times thereafter) relating to the appointment of the identified service providers. These included advertisements, attendance registers of briefing sessions, all available minutes of different procurement committees, all correspondence between PRASA and prospective bidders, tenders submitted by all bidders in respect of each appointment, contracts with successful bidders etc.
4. We also requested all payment related information from PRASA (and in some instances appointed service providers), such as invoices, proof that PRASA was satisfied with the rendered services, proof of authorisation of payment by delegated officials etc.
5. PRASA did not provide us with the tenders submitted by any of successful service providers, except the tender of Group Five Construction (Pty) Ltd (Group Five) in respect of the contract awarded to Group Five. Therefore, we were not in a position to independently re-evaluate the tenders service providers submitted to PRASA in respect of the identified contracts. We therefore had to base our findings relating to the appointments on the limited documents received, which in most cases only entailed recommendation and adjudication reports.
6. In most instances, PRASA did not provide us with any or sufficient documents to conclude whether or not all services were in fact rendered in terms of the identified contracts. Despite our requests PRASA did not provide us with the detail personal details of individuals in the end user divisions who were responsible for verifying delivery of services to enable the respective finance divisions to effect payments and/or who authorised and effected payments. We discuss this in more detail below.
7. In addition, in none of the tenders investigated, we physically visited sites to verify if services were rendered. This was not part of our mandate. Furthermore, due to the time that has lapsed since the alleged service delivery and the fact that various services were not tangible, this was not possible in respect of several contracts. We relied on documents and interviews conducted in an endeavour to confirm if services were in fact delivered. Our findings should be considered against this backdrop.
8. We summarise our findings relevant to the 20 contracts in the table below:

Table 1: Summary of findings

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|--|---|--|---|---|--|
| 1 | Bombardier Africa Alliance Consortium (Bombardier) Contract Value R1 288 771 783.00 | Request for Proposal (RFP) issued and open tender procedure followed. | PRASA electronic system reflects payments totalling R427 414 191.40 | PRASA did not provide supporting documents relating to one payment totalling R43 329 702.28 | <p>1) Appointment process</p> <p>From the available documents and interviews conducted, PRASA followed an open tender process in line with legislation and PRASA’s SCM procedure.</p> <p>2) Payments</p> <p>Where we received supporting documentation, it is evident that those payments were in line with contract. PRASA did not provide supporting documents for one payment totalling R43 329 702.28.</p> <p>3) Services rendered</p> <p>Based on the documents relating to payments, which include payment certificates that PRASA officials and the independent Technical Advisors had to sign as confirmation that service were rendered, it appears that the services were rendered. Mr Johan Edwards</p> | PRASA should provide the outstanding documents relating to the one payment and ensure such documents are kept in line with applicable regulations. |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|--------------------------------------|--|--|--|--|--|
| | | | | | from the Signalling Division and Mr Sorin Baltac, Signalling Engineer confirmed the services were delivered. | |
| 2 | Datacentrix (Pty) Ltd (Datacentrix). | RFP issued and open tender procedure followed. | Prasa provided an electronic download of all payments made to Datacentrix since 2011. It is not clear from the download which of the payments relate to this contract. | No supporting documents received. | <p>1) Appointment process</p> <p>From the available documents and interviews conducted, it appears that PRASA followed an appointment process in line with legislation and PRASA's SCM procedure.</p> <p>Poor needs assessment resulted in an over-payment of approximately R14 000 000.</p> <p>Mr Lucky Montana (Mr Montana), the Group Chief Executive Officer (GCEO) approved the overpayment on condition that responsible officials be disciplined for the irregular expenditure.</p> <p>Mr Chris Mbatha (Mr Mbatha), the Chief Information Officer at PRASA informed us that according to him, the responsible individuals were not</p> | <p>PRASA to provide the outstanding supporting documents relating to payments.</p> <p>PRASA Board should consider taking appropriate action against individuals responsible for causing irregular expenditure.</p> |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|------------------|-----------------------|--|--|--|-----------------|
| | | | | | <p>identified and PRASA did not provide us with information to ascertain who the responsible individuals are.</p> <p>No action was taken against any officials</p> <p>2) Payments</p> <p>We could not verify payments as netither Prasa or Datacentix provided supporting documents. Ms Liz Naidoo, CFO of Datacentix committed to provide the information, but we have not received it to date.</p> <p>3) Services rendered</p> <p>We note that following the contract with Datacentrix PRASA appointed a new Service Provider and most of the old equipment was replaced. It is therefor not possible indendently verify the equipment delivered to PRASA by Datacentix.</p> | |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|---|------------------------|--|--|---|--|
| 3 | Enterprise Technology Solutions (ETS) Contract Value PRASA did not provide a contract. The letter of appointment from NT reflects a value of R15 611 426.00 (including VAT). | Request for Quotation. | PRASA electronic system reflects payments totalling R17 628 371.00 | PRASA provided no supporting documents relating to payments to ETS | <p>1) Appointment process</p> <p>From the available documents and interviews conducted, it appears that PRASA followed an appointment process in line with legislation and PRASA's SCM procedure.</p> <p>Although the value exceeded the threshold for quotations as per PRASA SCM policy, proper approval was obtained to issue a RFQ based on a plausible explanation. It appears that the result of an open tender process would have been the same, because PRASA specifically requested service providers accredited by ORACLE for SAP related software.</p> <p>2) Payments</p> <p>Payments made exceed contract value with R2 016 945.00. This is indicative that the mentioned expenditure may be irregular expenditure.</p> | <p>PRASA's Accounting (the Board) at the time should be held accountable for contravening section 50(1) (a) of the PFMA in that it failed to ensure reasonable protection of procurement and financial records.</p> <p>We recommend that disciplinary action be considered against Mr Mbatha, the Chief Information Officer for contravening section 57 (1) (c) of the PFMA in that he caused irregular expenditure totalling R2 016 945.00 in his area of responsibility (being overpayment of the contract value).</p> <p>PRASA's Accounting Authority should report</p> |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|--|---|--|--|--|---|
| | | | | | <p>3) Services rendered</p> <p>Although Mr Mbatha indicates that services were rendered, PRASA provided no documents indicating that the services were rendered. From the available documents it appears that the services were required, but we received no documentary evidence indicating that the services were in fact rendered.</p> | the irregular expenditure in terms of section 55 (2) (b)(i) of the PFMA |
| 4 | <p>ETS Emergency Training (ETS Training)</p> <p>Contract Value</p> <p>Could not verify independently. According to spreadsheet received from NT, the contract value is R15 155 048.52</p> | PRASA provided no documents relating to the method used to appoint ETS Training | <p>PRASA provided no electronic information relating to payments made.</p> <p>According to the spreadsheet from NT, PRASA paid a total of R15 155 048.52</p> | No documents received. | The fact that we could not find any documents relating to payments to this supplier is indicative that the appointment and payments to this supplier might have been irregular | <p>The Finance division and SCM are the custodians of these documents. Therefore, the Finance division and SCM should be held accountable.</p> <p>PRASA's Accounting (the Board) at the time should be held accountable for contravening section 50(1) (a) of the PFMA in that it failed to ensure reasonable</p> |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|--|---|---|--|---|---|
| | | | | | | protection of procurement and financial records. |
| 5 | Fantique Trade 664 CC (Fantique) Contract Value Could not verify independently. According to spreadsheet received from NT the contract value of contract 4600003172 is R18 696 783.09 and the contract value of contract 4600002943 is R23 502 691.21 | PRASA provided no documents relating to the method used to appoint Fantique in respect of both contracts. | PRASA electronic system reflect payments totalling R29 568 073.12 R15 109 826.25 under contract 4600003172 and R14 459 110.87 under contract 4600002943. | Received supporting documents from PRASA, except for one payment totalling R1 762 243.29 | 1) Appointment process No documents relating to appointment process. The fact that we could not find any documents, is indicative that the appointment might have been irregular. 2) Payments No supporting documents for five payments totalling R1 762 243.29 No invoice for one payment totalling R2 775 230.10 No evidence that PRASA confirmed work in respect of three payments totalling R8 243 086.00 In absence of any documents relating to appointments, we conclude that both appointments may be irregular | The absence of any documents relating to the procurement process is indicative that all expenditure may be irregular and should accordingly be reported (in terms of section 55 (2) (b)(i) of the PFMA). The Accounting Authority at the time should be held accountable in terms of section 83(2), which states every member is individually and severally liable for financial misconducted in that it contravened section 50 (1) (a) of the PFMA in that it failed to ensure |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|--|--|--|--|--|--|
| | | | | | <p>and totality of expenditure by PRASA may also be irregular expenditure.</p> <p>3) Services rendered Based on the documents relating to payments, which include documents that PRASA officials had to sign as confirmation that service rendered it appears that the services may have been rendered rendered (except for three payments totalling R8 243 086.00). We cannot comment on services relating to the five payments where we received no supporting documents totalling R1 762 243.29.</p> | <p>reasonable protection of procurement records.</p> <p>In addition, the SCM division should be held accountable as the custodians of procurement related documents.</p> <p>We further recommend that this matter be reported to the South African Police Service (SAPS) in terms of section 34 of the Prevention and Combatting of Corrupt Activities Act, No 12 of 2004 (PRECCA)</p> |
| 6 | Group Five Contract Value R66 357 660.00 (including VAT) | Request for Proposal (RFP) issued and open tender procedure followed | PRASA electronic system reflects payments totalling R66 357 660.99 | PRASA provided all supporting documents | <p>1) Appointment process From the available documents and interviews conducted, it appears that PRASA followed an appointment process in line with legislation and PRASA's SCM procedure.</p> | No further action required. |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|--|--|--|--|--|--|
| | | | | | <p>2) Payments</p> <p>All payments appear to be in line with contract and the RFP.</p> <p>3) Services rendered</p> <p>Based on the documents relating to payments, which include payment certificates that PRASA officials had to sign as confirmation that services were rendered it appears that the services may have been rendered. PRASA provided photographs of the deliverables</p> | |
| 7 | Internet Solutions (Pty) Ltd (Internet Solutions) Contact Value R24 855 568.98 (including VAT) | RFP issued and open tender procedure followed. | PRASA electronic system reflects payments totalling R23 593 029.76 | No payment documents were received. | <p>1) Appointment process</p> <p>From the available documents and interviews conducted, it appears that PRASA followed an appointment process in line with legislation and PRASA's SCM procedure.</p> <p>2) Payments</p> <p>The absence of any supporting documents relating to payments, is indicative that all</p> | PRASA's Accounting Authority at the time should be held accountable for contravening section 50(1) (a) of the PFMA in that it failed to ensure reasonable protection of procurement and financial records. |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|--|--|--|--|--|---|
| | | | | | <p>expenditure totalling R23 593 029.76 incurred by PRASA may have been irregular expenditure.</p> <p>3) Services rendered Although Mr Chris Mbatha indicates that services were rendered, PRASA provided no documents indicating that services were rendered.</p> | <p>PRASA's Accounting Authority should report the irregular expenditure in terms of section 55 (2) (b)(i) of the PFMA</p> <p>We further recommend that this matter be reported to the South African Police Service (SAPS) in terms of section 34 of the Prevention and Combatting of Corrupt Activities Act, No 12 of 2004 (PRECCA)</p> |
| 8 | <p>Lufthansa Consulting GmbH (Lufthansa)</p> <p>Contract Value R15 million (including VAT)</p> | <p>Confinement process as per paragraph 11.3.7 of PRASA 2009 SCM Policy.</p> | <p>PRASA electronic system reflect payments totalling R15 000 000.</p> | <p>PRASA provided supporting documents relating to all payments.</p> | <p>1) Appointment process Initially PRASA intended to appoint Lufthansa on a confined basis in terms of clause 11.3.7 of its SCM Policy.</p> <p>Due to an apparent non-response from Lufthansa, PRASA Rail embarked on a</p> | <p>The responsible persons (Dr Phungula, the former Chief Procurement Officer and Mr Montana) have resigned.</p> <p>We recommend that this matter be reported to the South African</p> |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|------------------|-----------------------|--|--|---|---|
| | | | | | <p>competitive process of appointing a Service Provider. Before this process could be finalised, Mr Montana approved the appointment of Lufthansa on a confined basis and in doing so disregarded the competitive process that was undertaken.</p> <p>The confinement process in the circumstances were not warranted and not in line with section 217 of the Constitution, the PFMA and PRASA SCM Policy. We conclude that the appointment was irregular.</p> <p>2) Payments</p> <p>Although all payments were in line with contract, all expenditure totalling R15 000 000 should be classified as irregular expenditure as a consequence of the irregular appointment.</p> <p>3) Services rendered</p> | Police Service (SAPS) in terms of section 34 of the Prevention and Combatting of Corrupt Activities Act, No 12 of 2004 (PRECCA) |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|--|--|---|--|---|---|
| | | | | | From our review of documents and interviews conducted, it appears that Lufthansa provided the services as per the contractual agreement. | |
| 9 | Marble Arch Trading CC (Marble Arch) Contract value Only received an unsigned contract for R1 522 573.08. According to the spreadsheet from NT, the contact value is reflected as R37 942 604.91 | Due to limited documents relating to the appointment, it is not clear which methods were used to appoint this service provider | PRASA electronic system reflects payments totalling R58 997 221.93 in respect of Gauteng Northern and Southern regions. | PRASA provided supporting documents relating to payments for services rendered in Gauteng North totalling R4 129 057.31. PRASA provided no supporting documents for payments totalling R54 868 164 | 1) Appointment process Insufficient documents relating to appointment process. The absence of documents, is indicative that all appointments of Marble Arch may have been irregular. PRASA provided two appointment letters to Marble Arch, but the amounts as per the appointment letters differs significantly from the amount of payments to Marble Arch. This justify an inference that PRASA appointed Marble Arch on more than two contracts. 2) Payments PRASA provided 53 invoices from Marble Arch for services in Gauteng Northern Region totalling R4 129 057.31. | All expenditure should be classified as irregular expenditure and reported accordingly (in terms of section 55 (2) (b)(i) of the PFMA) and PRASA's The Accounting Authority at the time should be held accountable in terms of section 83(2) for contravening section 50 (1) and 51 of the PFMA in that it failed to ensure proper protection of procurement and financial records. |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|----|---|---|--|---|--|--|
| | | | | | <p>No supporting documents for payments totalling R54 868 164. All expenditure totalling R58 997 221.93 may have been irregular.</p> <p>3) Services rendered Based on the limited documents relating to payments, which include invoices signed off by unknown PRASA officials, it appears that services totalling R4 129 057.31 in respect of Gauteng Northern region may have been rendered.</p> <p>PRASA provided no evidence that services totalling R54 868 164 were rendered, which is further indicative of irregular expenditure.</p> | We further recommend that this matter be reported to the South African Police Service (SAPS) in terms of section 34 of the Prevention and Combatting of Corrupt Activities Act, No 12 of 2004 (PRECCA) |
| 10 | Mtiya Dynamics (Pty) Ltd (Mtiya) Contact value R14 894 761.20 (including VAT) | RFP issued and open tender procedure followed | PRASA electronic system reflects payments totalling R12 899 888.73 | PRASA provided supporting document for all payments as per PRASA's system | <p>1) Appointment process From the available documents, it appears that PRASA followed an appointment process in line with legislation and PRASA's SCM procedure.</p> <p>2) Payments</p> | No further action required |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|----|--|--|--|---|--|---|
| | | | | | <p>As per our review of supporting document, the payments to Mtiya were in accordance with contract</p> <p>3) Services rendered</p> <p>Based on the documents relating to payments, which include invoices signed off by unknown PRASA officials, it appears that the services may have been rendered</p> | |
| 11 | <p>PMSA (Pty) Ltd (PMSA)</p> <p>Contract value</p> <p>Four contracts with cumulative value of R20 077 200 (including VAT). PRASA extended the initial contract on three occasions. The fourth contract's validity</p> | <p>RFP issued and open tender procedure followed. However, PRASA provided limited documents relating to the procurement process followed</p> | <p>PRASA electronic system reflects payments totalling R16 592 398.80 (as in May 2016)</p> | <p>PRASA did not provide any supporting document relating to payments</p> | <p>1) Appointment process</p> <p>The limited information received by PRASA on the procurement process, is indicative that the process followed to appoint PMSA may been irregular</p> <p>2) Payments</p> <p>The absence of supporting documents relating to payments, is indicative that the expenditure totalling R16 592 398.80 may be irregular</p> | <p>Further extensions of contracts may expose PRASA to risk and would not be in the spirit of the Constitution and PRASA's SCM Policy.</p> <p>The Board of PRASA should take appropriate action to mitigate and to ensure proper controls are put in place to avoid a similar occurrence.</p> |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|------------------|-----------------------------|--|--|---|--|
| | | date was 15 October 2016 | | | <p>3) Services rendered</p> <p>In the absence of any supporting documents relating to payments, we can not comment on whether PMSA rendered services to PRASA.</p> | <p>PRASA's Accounting Authority at the time should be held accountable for contravening section 50(1) (a) of the PFMA in that it failed to ensure reasonable protection of procurement and financial records. The Accounting Authority should report the irregular expenditure in terms of section 55 (2) (b)(i) of the PFMA</p> <p>We further recommend that this matter be reported to the South African Police Service (SAPS) in terms of section 34 of the Prevention and Combatting of Corrupt Activities Act, No 12 of 2004 (PRECCA)</p> |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|----|---|--|---|---|--|----------------------------|
| 12 | PricewaterhouseCoopers (PWC) Contract value R12 864 284 (including VAT) | Confinement as per paragraph 12.3.8 of PRASA 2014 SCM Policy | PRASA electronic system reflects payments totalling R12 715 694.80 | PRASA provided supporting documents for all payments as per PRASA's system | <p>1) Appointment process The confinement process (nominated appointment) in circumstances is justifiable.</p> <p>2) Payments All payments made were in line with the contract.</p> <p>3) Services rendered Based on the documents relating to payments signed off by Mr Mlungisi Tenza, former PRASA Head of Asset Management and PWC's deliverable, it appears services were rendered</p> | No further action required |
| 13 | Sizwe Africa IT Group (Sizwe) Contract Value R20 115 048.52 | RFP issued and open tender procedure followed. | PRASA provided us with a spreadsheet indicating payments totalling R48 716 585.73. We ascertained that the information PRASA provided relates to payments in respect of | PRASA did not provide any supporting documents relating to payments. Sizwe provided supporting documents relevant to the contract totalling R16 052 056.07. The contract is still in place | <p>1) Appointment process From the available documents, it appears that PRASA followed an appointment process in line with legislation and PRASA's SCM procedure.</p> <p>2) Payments</p> | No further action required |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|----|---|--|--|---|--|--|
| | | | the contract under review and other contracts which are not part of our mandate. | | <p>Payments made to Sizwe in terms of the contract under review are in line with the contract.</p> <p>3) Services rendered</p> <p>Based on the documents relating to payments, it appears services were rendered.</p> | |
| 14 | Sobela Engineering (Pty) Ltd (changed name to Railway Cellular (Pty) Ltd on 31 October 2014 (Rail Cell) Contract Value R11 700 000 (including VAT) | Unsolicited bid as per paragraph 12.3.5 of PRASA 2014 Policy | PRASA electronic system reflects payments totalling R11 699 573.33 | No supporting documents provided relating to payments | <p>1) Appointment process</p> <p>Unsolicited bid used to appointment service provider. The process not warranted in the circumstances</p> <p>We conclude that appointment was irregular.</p> <p>2) Payments</p> <p>We conclude all expenditure incurred was irregular expenditure totalling R11 699 573.33</p> | <p>Dr Phungula and Mr Montana were ultimately responsible for Rail Cell's appointment and both these individuals resigned.</p> <p>PRASA's Accounting Authority at the time should be held accountable for contravening section 50(1) (a) of the PFMA</p> |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|------------------|-----------------------|--|--|---|--|
| | | | | | <p>3) Services rendered</p> <p>PRASA provided no evidence that services were rendered.</p> | <p>in that it failed to ensure reasonable protection of financial records.</p> <p>The Accounting Authority, should ensure that proper controls have been put in place to avoid a similar occurrence.</p> <p>PRASA’s Accounting Authority should report the irregular expenditure in terms of section 55 (2) (b)(i) of the PFMA</p> <p>We further recommend that this matter be reported to the South African Police Service (SAPS) in terms of section 34 of the Prevention and Combatting of Corrupt Activities Act, No 12 of 2004 (PRECCA)</p> |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|----|--|---|--|---|---|--|
| 15 | Softfinity Consulting (Pty) Ltd (Softfinity) Contract value R35 039 040.00 (including VAT) | RFP issued and open tender procedure followed | PRASA electronic system reflects payments totalling R18 670 734.18 | PRASA provided supporting documents for the total of R18 670 734.18 (including VAT) | <p>1) Appointment process From the available documents, it appears that PRASA followed an appointment process in line with legislation and PRASA’s SCM procedure.</p> <p>2) Payments Payments in line with contract. Supporting documents for payments did not indicate concerns/irregularities.</p> <p>3) Services rendered Based on the documents relating to payments, such as approved time sheets and an interview with Mr Imraan Khan, General Manager: Enterprise Architecture it appears services were rendered.</p> | PRASA should expedite an application for condonation relating to the finding of an irregularity in the appointment process by the Auditor General of South Africa. |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|----|--|---|--|--|---|---|
| 16 | Take Note 368 CC (Take Note) Contract Value Initial contract for R18 000 000.00 (including VAT). Addendum to initial contract for R4 104 000.00 (including VAT) Total value of R22 104 000.00 (including VAT) | Confinement (nominated process) as per paragraph 12.2.8 of the 2014 SCM Policy. | PRASA electronic system reflects payments totalling R20 400 000.00 | Yes, invoices received from Take Note. Total of invoices is R21 300 000 (including VAT). No supporting documents received from PRASA. | 1) Appointment process In circumstances the confinement process justifiable an in line with PRASA SCM Policy. 2) Payments Payments in line with contract. Supporting documents for payments did not indicate concerns/irregularities. 3) Services rendered Based on the documents relating to payments and documents received from Take Note, it appears that services were rendered. | Should PRASA endeavour to continue with similar security services in future, PRASA should follow an open tender process No further action required |
| 17 | Thales Mziya Consortium (Thales) Contract value R 1 864 771 512.08 (including VAT) | Request for Proposal (RFP) issued and open tender procedure followed | PRASA electronic system reflects payments totalling R379 508 301.25 | PRASA provided supporting documents for the total of R379 508 301.25 (including VAT) | 1) Appointment process From the available documents, it appears that PRASA followed an appointment process in line with legislation and PRASA's SCM procedure. 2) Payments Payments in line with contract. Supporting documents for | No further action required |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|----|---|------------------------|--|---|--|--|
| | | | | | <p>payments did not indicate concerns/irregularities.</p> <p>3) Services rendered</p> <p>Based on the documents relating to payments and an interview with Mr Sorin Baltac (Mr Baltac), Signalling Engineer at PRASA, it appears that services were rendered</p> | |
| 18 | <p>Worldwatch Trading 169 (Worldwatch)</p> <p>Contract Value</p> <p>PRASA did not provide any contract(s) with this service provider.</p> <p>According to the information from NT the contract with number 4600005825 was for R12 125 670.68</p> | No documents received. | PRASA electronic system reflects payments totalling R6 785 030.34 | PRASA did not provide any supporting documents relating to payments to this service provider. The absence of any documents relating to payments is indicative that the expenditure may have been irregular. | <p>1)Appointment process</p> <p>No documents relating to appointment process. The absence of any documents relating to the initial appointment and extensions of contract is questionable. This is indicative that the appointment and extension of contracts may have been irregular</p> <p>2)Payments</p> <p>The absence of any documents relating to payments, is indicative that all payments to this service provider may be irregular. The irregular</p> | <p>Mr Montana approved all extensions of security contract and Mr Montana resigned.</p> <p>NT should consider verifying payments to this entity through forensic analysis of PRASA's payment data. If payment is confirmed to have been made, then it would be irregular and/or fraudulent, because there is no evidence to support otherwise.</p> |

| # | Service Provider | Method of appointment | PRASA electronic information received and cumulative total of payments | Supporting documents relating to payments received | Findings | Recommendations |
|---|------------------|-----------------------|--|--|---|--|
| | | | | | <p>expenditure based on payments as per PRASA's system amounts to R6 785 030.34. In our view, Mr Matakata as the Chief Security Officer is responsible to ensure that all matters related to security are dealt with in accordance with prescribed processes. We are of the view that Mr Matakata may have contravened section 57(1)(c) of the PFMA in that he failed to take effective steps to prevent irregular expenditure in his area of responsibility.</p> <p>3) Services rendered PRASA provided no evidence that services were rendered.</p> | <p>The Board of PRASA, as the Accounting Authority, should ensure that proper controls have been put in place to avoid a similar occurrence. The irregular expenditure should be reported as such in terms of section 55(2)(b)(i) of the PFMA</p> <p>PRASA in collaboration with NT to consider disciplinary action against Mr Matakata in that he contravened section 57(1)(c) of the PFMA.</p> <p>We recommend that the matter be reported to the SAPS in terms of section 34 of PRECCA.</p> |

9. It is a concern that PRASA appointed several service providers via deviations from the prescribed process (confinement / unsolicited bids). It is disconcerting that we encountered difficulties to obtain proper documents dealing with the reason(s) for the deviations from normal prescribed procedure. The method of procuring services through deviations should be discouraged, as it creates an environment susceptible to abuse. We agree with the concern expressed by the Public Protector in this respect.
10. Such practices undermine fair competition, and result in a negative impact on quality and cost effective pricing.
11. The Board is PRASA's accounting authority and sections 50 and 51 of the PFMA apply. We take cognisance of the concerns raised by the Public Protector relating to the frequent deviations from an open procurement process and agree with the Public Protector that there was an abuse of the procurement process which is supposed to be fair, equitable, transparent, competitive and cost effective as enshrined in the Constitution, the PFMA and PRASA's SCM policy of 2009 and 2014 respectively. PRASA's Board is overall accountable for the proper operation and administration of the organisation.
12. Numerous appointments happened via deviations. Mr Montana and Dr Phungula (the former Chief Procurement Officer) appear to have been involved in all such appointments we investigated.
13. Mr Montana and Dr Phungula was senior employees of PRASA. As senior employees in management, both Dr Phungula and Mr Montana was in a relationship of trust vis-a-vis PRASA, and it was accordingly expected of them to act in the best interests of PRASA. This entails that they should display honesty and diligence in the exercise of their duties and responsibilities. In our view, both Mr Montana and Dr Phungula actions (specifically to appoint Lufthansa) constituted a breach of their duty to act diligently and in the best interests of PRASA. In our view, both Mr Montana and Dr Phungula acted negligently.
14. In terms of section 34 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 (PRECCA) any person who holds a position of authority and who knows or ought reasonably to have known or suspected that another has committed an offence of corruption, or fraud or theft involving R100 000.00 or more, is obliged to report such knowledge or suspicion or cause it to be reported to the South African Police Services (SAPS).
15. It is noteworthy that in terms of section 34 of PRECCA, there is a reporting duty in circumstances where a person 'ought to have known or suspected' that an offence has been or might have been committed. The frequency of appointments via deviations and the absence of documents relating to appointments of and payments to service providers is questionable. In our view, the only reasonable inference that can be made in the circumstances is that the documents are not at PRASA's disposal and/or that PRASA is not willing to provide these documents. The fact that the appointments covered in this report occurred under the auspices of Mr Montana as GCEO and Dr Phungula as CPO is alarming – considering the frequency thereof.
16. Although we found no direct evidence to indicate that Mr Montana, Dr Phungula or any other individual unduly benefitted from these transactions, the frequency of these appointments via deviations and the lack of documents can not be ignored. Given their respective positions and considering what a reasonable person in their respective positions ought to have known, we are

of the view that a reasonable suspicion exists that unknown PRASA officials might have committed fraud or corruption. In lieu of this aspect, we are of the view that PRASA (in collaboration with NT) should report these matters to the SAPS in terms of section 34 of PRECCA.

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Role Players

| Name | Designation | Reference in report |
|--------------------------|--|----------------------------|
| Mr Sorin Baltac | PRASA: Signalling Engineer | Mr Baltac |
| Mr Sandile Bhengu | PRASA CRES: SCM official at PRASA CRES in Pretoria | Mr Bhengu |
| Mr Maishe Bopape | Senior Manager: SCM PRASA Rail | Mr Bopape |
| Mr Hishaam Emeran | General Manager: Strategic Network Planning | Mr Emeran |
| Mr Mbulelo Gingcana | PRASA Chief Procurement Officer | Mr Gingcana |
| Mr Jeremy Gobetz | Director: Werksmans Attorneys | Mr Gobetz |
| Mr Edward Gwala | Finance Manager: PRASA CRES | Mr Gwala |
| Mr Claude Jarrard | Former Director of PWC | Mr Jarrard |
| Mr Sydney Khuzwayo | Senior Manager Assurance and Projects | Mr Khuzwayo |
| Mr Imraan Khan | General Manager: Enterprise Architecture | Mr Khan |
| Mr Vincent Kobue | Corporate Tender and Procurement Committee Member | Mr Kobue |
| Mr Med Kwesiga | Senior Manager: PRASA CRES Strategic Portfolio Programmes Management | Mr Kwesiga |
| Ms Mercia Leburu-Tsawane | SCM: Sourcing Manager at PRASA Corporate | Ms Leburu-Tsawane |
| Ms Mamela Luthuli | Chief Executive Officer of Take Note | Ms Luthuli |
| Mr M Matakata | PRASA : Chief Security Officer | Mr Matakata |
| Dr Thami Mazwai | Executive Chairperson of Mtiya Dynamics (Pty) Ltd | Dr Mazwai |
| Mr Chris Mbatha | Former Acting Chief Procurement Officer | Mr Mbatha |
| Mr Albert Mdluli | SCM Manager: PRASA CRES | Mr Mdluli |
| Ms Bonolo Moloto | SCM Manager: National Treasury | Ms Moloto |
| Ms Constance Monkwe | Corporate Tender and Procurement Committee Secretary | Ms Monkwe |
| Mr Tshepo Lucky Montana | Former Group Chief Executive Officer | Mr Montana |

| Name | Designation | Reference in report |
|-----------------------|---|----------------------------|
| Ms Matshidiso Mosholi | SCM Manger: PRASA Corporate | Ms Mosholi |
| Mr Neels Nel | Director at PWC | Mr Nel |
| Mr Vukani Ndaba | Chief Director: SCM National Treasury | Mr Ndaba |
| Mr Siyabonga Ncube | SCM Manager: PRASA Metrorail | Mr Ncube |
| Mr Samuel Olifant | Finance administrator: PRASA Metrorail | Mr Olifant |
| Ms Doritha October | Debtors Clerk at Sizwe | Ms October |
| Ms Yvonne Page | Corporate Tender and Procurement Committee Member | Ms Page |
| Dr Josephat Phungula | Former Chief Procurement Officer | Dr Phungula |
| Mr Teddy Phoma | SCM Manager: PRASA Corporate | Mr Phoma |
| Ms Maggi Ramabi | SCM Administration Officer: PRASA Corporate | Ms Ramabi |
| Mr Mlungisi Tenza | Former PRASA Head of Asset Management Division | Mr Tenza |
| Mr Dries van der Walt | Executive Manager Strategy and Benchmarking) | Mr Van Der Walt |

Abbreviations

| Detail | Abbreviation |
|---|--|
| Auditor General of South Africa | AGSA |
| Board Based Black Economic Empowerment | BBBEE |
| Bombardier Africa Alliance Consortium | Bombardier |
| Curriculum Vitae | CV |
| Corporate Tender and Procurement Committee | CTPC |
| Datacentrix (Pty) Ltd | Datacentrix |
| EPMO | Enterprise Programme Management Office |
| Enterprise Technology Solutions | ETS |
| Fantique Trade 664 CC | Fantique |
| Group Five Construction (Pty) Ltd | Group Five |
| Internet Solutions (Pty) Ltd. | Internet Solutions |
| Lufthansa Consulting GmbH | Lufthansa |
| Marble Arch Trading CC | Marble Arch |
| Mtiya Dynamics (Pty) Ltd | Mtiya |
| The Prevention and Combating of Corrupt Activities Act, No 12 of 2004 | PRECCA |
| PricewaterhouseCoopers Inc. | PWC |
| PMSA (Pty) Ltd. | PMSA |
| PRASA CRESA | PRASA Corporate Real Estate Solutions |
| PRASA | Passenger Rail Agency of South Africa |
| PSIRA | Private Security Industry Regulatory Authority |
| Public Finance Management Act, No 1 of 1999 | PFMA |
| Request for Proposals | RFP |
| Request for Quotations | RFQ |
| Siemens Ltd | Siemens |

| Detail | Abbreviation |
|--|---------------------|
| Sizwe Africa IT Group | Sizwe |
| Sobela Engineering (Pty) Ltd | Sobela |
| Softfinity Consulting (Pty) Ltd | Softfinity |
| Supply Chain Management | SCM |
| Thales South Africa System (Thales Mziya Consortium) | Thales |
| Take Note Trading 368 CC | Take Note |
| Terms of Reference | ToR |
| Transnet Freight Rail | RFR |
| Werksmans Attorneys | Werksmans |
| Worldwatch Trading 169 | Worldwatch |

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| Annexure | Reference |
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1. Introduction and background

- 1.1 During the latter half of 2015, the Public Protector investigated several procurement transactions at the Passenger Rail Agency of South Africa (PRASA). The Public Protector issued a report titled "*Derailed*" on 24 August 2015, in terms of section 182 (1)(b) of the Constitution of the Republic of South Africa and section 8(1) of the Public Protector Act 23 of 1994.
- 1.2 The Public Protector *inter alia* observed, from the transactions investigated, a culture of systematic failure by PRASA officials to comply with the PRASA Supply Chain Management Policy (SCMP), particularly involving a failure to plan for bulk procurement, test the market appropriately for competitive pricing and to manage the contracts that may exist within PRASA.
- 1.3 The transactions investigated by the Public Protector (and related findings) revealed a systemic failure to comply with the SCM policy, particularly the failure to plan for bulk procurement, test the market appropriately for competitive pricing and to manage contracts, which failure appears to have cost PRASA millions in avoidable expenditure and preventable disruption of services.
- 1.4 Furthermore, the Public Protector felt that if the pattern is not identified and halted it has the potential to derail the effective and efficient procurement of goods and services to support PRASA's operations and consequently service delivery. Poor financial management also has implications for the national revenue as it may mean frequent yet preventable rescue funding.
- 1.5 The Public Protector took remedial action in pursuit of Section 182 (1) (c) of the Constitution in respect of the investigation. As part of the remedial action, the Public Protector directed that the Chief Procurement Officer of National Treasury are to conduct forensic investigations into all PRASA contracts since 2012 with a value above R10 million.
- 1.6 National Treasury identified the contract/s between several entities and PRASA that fall within the ambit of the remedial action contemplated by the Public Protector.
- 1.7 National Treasury appointed several forensic service providers, of which Deloitte & Touche (Deloitte) is one, to assist in the investigations and allocated 20 of the identified transactions to Deloitte. We summarise the details of the entities and the PRASA contract numbers in the table below:

Table 1: PRASA supplier details

| Entity | PRASA contract number |
|-----------------------------------|------------------------------|
| Bombardier Africa Alliance | 4600005644 |
| Datacentrix (Pty) Ltd. | 4600005480 |
| Enterprise Technology Solutions | 4600004913 |
| ETS Emergency Training | 4600005065 |
| Fantique Trade 664 CC | 4600003172 |
| Fantique Trade 664 CC | 4600002943 |
| Group Five Construction (Pty) Ltd | 460000617 |
| Internet Solutions (Pty) Ltd. | 4600004760 |
| Lufthansa Consulting GmbH | 4600005265 |
| Marble Arch Trading CC | 460000450 |
| Mtiya Dynamics (Pty) Ltd | 4600005314 |
| PMSA (Pty) Ltd. | 4600004512 |
| PricewaterhouseCoopers Inc. | 4600005816 |
| Sizwe Africa IT Group | 4600005187 |
| Sobela Engineering (Pty) Ltd | 4600005826 |
| Softfinity Consulting (Pty) Ltd | 4600005493 |
| Softfinity Consulting (Pty) Ltd | 4600004500 |
| Take Note Trading 368 CC | 4600004566 |
| Thales South Africa System | 4600006085 |
| Worldwatch Trading 169 | 4600005825 |

2. The investigation

Scope of the investigation

2.1 In terms of our Service Level Agreement with National Treasury dated 10 February 2016, the scope of the investigation is as follows:

Preliminary phase

- Obtain and verify the contracts entered into between PRASA and the mentioned service providers
- Investigate the procurement processes, which were followed in the appointment of the suppliers.
- Determine whether the appointments of identified service providers were made in line with relevant prescripts and were approved by relevant authorities
- Establish any deviations from prescribed procedure and if deviations were in line with relevant prescripts
- Obtain documents relating to payments made to the suppliers and determine whether payments correspond to the respective bid price and/or contractual agreements
- Identify all persons or entities (if any) that unduly benefited as a result of irregular conduct
- Make recommendations on the remedial actions, which should be taken in instances of maladministration and/or where improper conduct has been established.

More detailed investigations/reviews

2.2 During this phase of the reviews, we endeavoured to:

- Obtain copies of all procurement policies, procedures and other directives relevant to SCM for the period under investigation
- Obtain all outstanding documentation not provided in the preliminary phase, including but not limited to:
 - The Tender specification documents
 - Advertisement
 - Receipt of tenders
 - All tenders submitted and received
 - Tender evaluation report
 - Tender adjudication report
 - Tender award documentation
 - Minutes of meetings of the above tender processes
 - Service Level Agreements
 - A list of payments, payment certificates and all supporting documentation relating to the payments as deemed necessary.

- Obtain all correspondence relevant to issues identified including electronic communication and other records if applicable
- Conduct interviews with all relevant officials, consulting engineers, contractors and other third parties, and obtain affidavits were required and necessary
- Review of all tender documents and payment documents in order to identify any irregularities
- Determine the existence of any variation orders (if applicable) and whether this was done in terms of the relevant policies and procedures
- Perform background checks on individuals and companies in order to identify the role players and potential conflict of interests if applicable
- Conduct a detailed analysis of all payments made to the bidders and identify any irregularities.

Our Methodology

Interviews conducted

2.3 During the course of our investigation, we either interviewed individuals in person, confirmed information telephonically or via e-mail correspondence. We also considered and reviewed documentation relating to contracts identified. We summarise the most important aspects of the interviews below. It should be noted that we do not discuss all interviews conducted in the table below (only the pertinent interviews):

Table 2: Interviews conducted

| Name | Position | Purpose of Interview |
|---|--|--|
| Mr Teddy Phoma (Mr Phoma) | Procurement Officer at PRASA | To establish the applicable procurement procedures and policies at PRASA and to assist us with collation of documents. |
| Mr Dries van der Walt (Mr Van Der Walt) | Executive Manager Strategy and Benchmarking) | To gain an understanding of the circumstances relating to the appointment of Lufthansa. |
| Mr Sorin Baltac (Mr Baltac) | PRASA Signalling Engineering | To gain an understanding of the process followed by the BEC in the appointment of Thales and Bombardier Alliance. |
| Mr Hishaam Emeran (Mr Emeran) | General Manager: Strategic Network Planning | To gain an understanding of the process followed by the BEC in the appointment of Thales and Bombardier Alliance. |
| Mr Isaac Kgagane (Mr Kgagane) | SCM Official | To obtain documents relating to Thales and to identify role players in the appointment of the supplier. |
| Mr Edward Gwala (Mr Gwala) | Finance Manager at PRASA CRES | To ascertain payment procedures and obtain payments documents in respect of Group Five and Marble Arch. |

| Name | Position | Purpose of Interview |
|------------------------------------|--|---|
| Mr Mbulelo Gingcana (Mr Gingcana) | PRASA Chief Procurement Officer | To provide feedback on preliminary findings and discuss the manner in which PRASA will assist to collate information and facilitate meetings with PRASA officials. |
| Mr Sandile Bhengu (Mr Bhengu) | SCM Official: PRASA CRES in Pretoria | To obtain an understanding of the services rendered by Marble Arch to PRASA and to obtain documents relating to payments by PRASA to Marble Arch. |
| Mr Med Kwesiga (Mr Kwesiga) | Senior Manager PRASA CRES Strategic Portfolio Programmes Management | To obtain an understanding of the evaluation report and process relating to the evaluation of tenders for a Train Mess in Cape Town (Group Five) |
| Ms Mamela Luthuli (Ms Luthuli) | CEO of Take Note Technologies | To gain an understanding of circumstances that culminated in Take Note's appointment and to obtain documents relevant to the work done by Take Note. |
| Mr Siyabonga Ncube (Mr Ncube) | SCM Manager: PRASA Metrorail | To ascertain the whereabouts of documents relating to Softfinity Consulting CC and to obtain information relating to payments made by PRASA to Softfinity. |
| Mr Chris Mbatha (Mr Mbatha) | Former CPO of PRASA and current Chief Information Officer (CIO) of PRASA | To gain an understanding of his involvement in the appointment of various suppliers when he served as PRASA's CPO. In addition to gain an understanding of the SCM policy of 2009 and shortcomings in the policy. We also endeavoured to obtain information on Bombardier, Thales, Take Note and PWC. |
| Mr Albert Mdluli (Mr Mdluli) | SCM Manager: PRASA CRES | To obtain information relating to Group Five and Marble Arch. |
| Ms Matshidiso Mosholi (Ms Mosholi) | SCM Manager PRASA Corporate | To establish which divisions of PRASA are responsible for various contracts and to obtain an understanding of processes followed by PRASA to appoint some of the identified suppliers. |
| Mr Mlungisi Tenza'(Mr Tenza) | Former PRASA Head of Asset Management Division | To establish if PWC did compile an asset register for PRASA and to obtain the deliverable submitted by PWC to PRASA |

| Name | Position | Purpose of Interview |
|-----------------------------|--|---|
| Ms Maggy Ramabi (Ms Ramabi) | SCM Contract Administration Officer at PRASA | To establish the process relating to payments to suppliers and to assist to collate additional documents from PRASA relevant to our mandate |

2.4 We endeavoured to arrange interviews with various PRASA officials, which we identified as individuals who may assist with the investigation. To date of this report, these PRASA officials have not confirmed meetings with us. We understand from Mr Phoma that these individuals did not respond to requests to meet with us. Our endeavours to arrange meetings with these individuals were also fruitless. These individuals include, Mr M Matakata (Mr Matakata), Group Security Officer, Mr Kabelo Mantsane (Mr Mantsane), the former Group Security Officer. We also did not interview former PRASA employees who played a role in the appointment of various suppliers. These individuals include:

- Mr Tshepo Lucky Montana (Mr Montana) – former Group Chief Executive Officer (GCEO)
- Dr Josephat Phungula (Dr Phungula) – former Chief Procurement Officer (CPO).

2.5 We refer to this is the more detailed discussion of the suppliers below, but only if these aspects have an impact on the investigation conducted thus far. We obtained the contact details of Dr Phungula from Mr Gingcana the Chief Procurement Officer. We endeavoured to contact Dr Phungula twice, but he indicated to us that he was busy and would call us back. Dr Phungula did not do so and hence we did not have the opportunity to interview Dr Phungula to provide us with his version of events.

2.6 We did not have any contact details for Mr Montana and did not interview Mr Montana. Therefore, it should be noted that Mr Montana was not provided with the opportunity to provide his version of events.

2.7 It should further be noted that various PRASA officials who were seemingly involved in the appointment of service providers, resigned from PRASA and we therefore did not approach the individuals who resigned from PRASA. In our view, these interviews would not have a bearing on the outcome of our findings as discussed in the detailed section below. These include:

- Mr Moisha Bopape (Mr Bopape), SCM Manager at PRASA CRES
- Mr Mantsane

Documents reviewed

2.8 Initially we addressed a letter to PRASA on 24 February 2016 (**Appendix 1**). In this letter, we detailed all the documents we required for purposes of our investigation. We received the first documents from PRASA on 19 April 2016. The documents we initially received were very limited. We do not know the reason(s) for the delay by PRASA to provide us with the documents.

- 2.9 We received various documents relating to the appointment of and payments made to the identified suppliers. It should, however, be noted that the documents received thus far in respect of most of the identified suppliers are incomplete and not comprehensive.
- 2.10 We were in constant communication with PRASA to obtain outstanding documents. Due to the volume of the documents received and the documents outstanding, we do not list these documents for purposes of this report. However, we do discuss outstanding documents in our findings in respect of specific suppliers below.
- 2.11 We submitted a preliminary report to NT on 27 June 2016. On 4 July 2016, we met with Mr Gingcana and with Mr Phoma. Mr Phoma a SCM manager at PRASA Corporate. During this meeting, we reiterated which documents are outstanding and provided a detailed list of outstanding documents on 05 July 2016 (**Appendix 2**). We agreed with PRASA that the cut-off date for requesting documents from PRASA was 18 July 2016. PRASA did not provide the bulk of the information that we requested. The findings in this report should be considered against this backdrop. We discuss the aspect of documents not received in our detailed discussion of each identified supplier below.

Limitations

Our work did not constitute an audit

- 2.12 The scope of our work was limited by your instructions and the information made available to us.
- 2.13 Our work has been based on interviews conducted with management and staff of PRASA as well as the perusal and analysis of documentation and other records made available to us. Unless otherwise indicated, such information was not independently verified or audited.
- 2.14 The work performed as per our brief did not constitute a statutory audit and we do not express an audit opinion in accordance with International Standards of Auditing.

Corroboration of information

- 2.15 In the circumstances where we could not obtain relevant documents or find relevant corroboration for evidence, you should not rely on our work and our report as being comprehensive as we may not have become aware of all facts or information that may be relevant. Any assumptions made during our investigation have been set out under the appropriate points of this document and are designed to be prudent and objective.

We do not express a legal opinion

- 2.16 Although the work performed incorporates our understanding of the law as it stands, we do not express a legal opinion on the issue, but merely state the facts as they have come to our attention. Our discussion of the relevant laws is intended solely to serve as a backdrop for the discussion and application of the relevant facts of the matter. It should be noted that where we do comment on matters of law any interpretation should be referred to your legal advisors.

2.17 We do not comment on the innocence or guilt of any person, but merely report on the facts at our disposal. It is the prerogative of a properly constituted tribunal to pronounce upon the guilt or innocence of an individual.

This document should not be distributed to any other party

2.18 This report is solely for the purpose set out above and for your information. The report should not be used for any other purpose nor distributed to other external third parties without our prior written consent. We do not accept any responsibility to third parties for breaches of this obligation or for any opinion expressed or information included in this document.

We only received documents from three PRASA suppliers and met with one PRASA supplier

2.19 On 04 July 2016, we met with Mr Phoma and Mr Gingcana to discuss our progress to date. During this meeting, we agreed that we would compile letters to request information directly from suppliers. However, we agreed with PRASA that these letters would be sent to the respective suppliers via PRASA. We compiled the relevant letters and provided it to PRASA via email to forward to the suppliers. We compiled letters in respect of the following suppliers:

- PricewaterhouseCoopers (PWC)
- Take Note Technologies CC (Take Note)
- Sizwe IT Group (Pty) Ltd (Sizwe)
- Mtiya Dynamics (Pty) Ltd
- Internet Solutions
- PMSA
- Enterprise Technology Solutions
- Datacentrix (Pty) Ltd (Datacentrix).

2.20 To date of this report, only Sizwe, Take Note and PWC responded to these requests and we only received documents from three mentioned suppliers. (Sizwe, Take Note and PWC) We only met with Take Note and Sizwe.

We did not to date obtain all relevant documents from PRASA

2.21 We relied on PRASA to provide us with documents relevant to *inter alia* the procurement and payment of suppliers. To date of this report, various documents are still outstanding. We endeavoured to obtain all available documents from PRASA. The process of collating documents by PRASA has been delayed. From our interviews and the delays experienced, it appears PRASA does not have documents readily available.

2.22 Where applicable, we refer to this aspect in the text of the report itself. In some instances, the documents received by the SCM division of PRASA (Messrs Phoma and Gingcana) are very limited. Our findings in this report should be considered against this backdrop. Should additional documents become available that may affect our findings, we reserve the right to amend our findings.

- 2.23 It should also be noted that PRASA did not provide us with any documents in respect of certain service providers. We deal with this aspect in the more detailed discussion of the respective service providers below.
- 2.24 During our meeting with Messrs Phoma Gingcana on 04 July 2016, the discussion *inter alia* focussed on documents that were outstanding at that stage and how PRASA could assist to facilitate interviews with PRASA officials. During this meeting, it was also agreed that we would approach suppliers directly with PRASA's assistance.
- 2.25 PRASA did not provide us with any tenders submitted by prospective bidders in respect of all 20 contracts. Therefore, we did not re-evaluate any of the tenders independently. We based our findings in respect of the appointment of the identified services providers based on the documents we received from PRASA.

We did not interview Dr Phungula or Mr Montana

- 2.26 As indicated, we did not interview Dr Phungula or Mr Montana. These individuals are no longer in PRASA's employ. We thus emphasise that we did not have the benefit of hearing their respective versions of events and could thus not test the veracity or not thereof against the available facts and our conclusions. Our report should be considered against this backdrop.

We did not obtain any PRASA board minutes or interviewed board members

- 2.27 We did not interview any PRASA Board members that served as Board members from 2012 to 2015. We did request Mr Phoma in writing and verbally to facilitate meetings with the Chairperson or other board members. We did not receive any feedback from Mr Phoma in this respect.

3. Relevant legislation, policies and procedures

3.1 Below we refer to the relevant legislative and administrative principles, which govern the daily activities of the PRASA employees with respect to the relevant procurement procedures and other aspects pertinent to this investigation.

The Constitution of the Republic of South Africa

3.2 The Constitution of the Republic of South, Act 108 of 1996 is the supreme law of the Republic of South Africa.

3.3 Section 195 of the Constitution *inter alia* provides a requirement that Public administration must be governed by democratic values and principles enshrined in the Constitution, including:

- A high standard of professional ethics must be promoted and maintained
- Efficient and economic use of resources.

3.4 Section 217(1) the Constitution provides the basis for procurement and determines that:

"When an organ of state in the national, provincial or local sphere of government or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable transparent, competitive and cost effective."

The Public Finance Management Act, No 1 of 1999

3.5 PRASA is a state owned enterprise with an estimated total net value of assets over R19 billion as at 2010/2011. PRASA is an organ of state listed as a National Government Business Enterprise in terms of Schedule 3B of the Public Finance Management Act 1 of 1999 (PFMA). PRASA has four subsidiaries, namely:

- Metrorail, operating commuter rail services in urban areas
- Shosholoza Meyl operating regional and intercity rail services
- Autopax, operating regional and intercity coach services
- Intersite, managing the corporate property portfolio.

3.6 PRASA is controlled by PRASA's Board of Control (the Board), Chaired by a Non-Executive Chairman. In terms of section 49(2) (b) of the PFMA, the Board is its Accounting Authority. The Group Chief Executive Officer (GCEO) has delegated authority in terms of PRASA's *"Powers and Authority of the Board and Delegation of Authority."*

3.7 Chapter 6 (sections 46 to 57) of the PFMA deals with Public Entities.

3.8 The fiduciary duties of accounting authorities are stipulated in section 50 of the PFMA, which reads as follows:

"(1) The accounting authority for a public entity must –

- (a) exercise the duty of utmost care to ensure reasonable protection of assets and records of the public entity;*
- (b) act with fidelity, honesty, integrity and in the best interest of the public entity in managing the financial affairs of the public entity;*
- (c) on request, disclose to the executive authority responsible for that entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature; and*
- (d) seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interest of the state".*

3.9 Section 51 deals with the general responsibilities of accounting authorities. It *inter alia* state as follows:

"(1) An accounting authority for a public entity-

(a) Must ensure that that public entity has and maintains –

- (i) Effective, efficient and transparent systems of financial and risk management and internal control;*
- (iii) An appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost –effective;*

(b) Must take effective and appropriate steps to –

- (ii) Prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity*

(e) must take effective and appropriate disciplinary steps against any employee of the public entity who-

- (i) contravenes or fails to comply with the provisions of this Act*
- (ii) commits and act which undermines the financial management and internal control system of the public entity, or*
- (iii) makes or permits an irregular expenditure or a fruitless and wasteful expenditure*

(h) must comply, and ensure compliance by the public entity, with the provisions of this Act or any other legislation applicable to the public entity."

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- 3.10 In terms of section 55(1) (a) of the PFMA, the accounting authority must keep full and proper records of the financial affairs of the public entity.
- 3.11 Section 56 of the PFMA authorises the accounting authority to delegate any of its powers to an official of the public entity. Such delegations:
- Is subject to any limitations imposed by the accounting authority
 - May be to a specific person or holder of a post
 - Does not divest the accounting authority of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- 3.12 Section 57 deals with the responsibilities of other individuals *and inter alia* state that any official in a public entity must:
- Ensure that the system of financial management and internal control established is carried out within his/her area of responsibility
 - Is responsible for the effective and efficient use of financial and other resources in his/her area of responsibility
 - Must take effective and appropriate steps to prevent, within his/her area of responsibility any irregular expenditure and fruitless and wasteful expenditure
 - Must comply with the provisions of this Act and any delegations and instructions.
- 3.13 In terms of section 1 of the PFMA **fruitless and wasteful** expenditure is defined as "expenditure made in vain and would have been avoided had reasonable care been exercised".
- 3.14 **Irregular expenditure** is defined as expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including:
- The PFMA
 - The state Tender Board Act, No 86 of 1968, or any regulations made in terms of this Act, and
 - Any Provincial Legislation providing for procurement procedures in that Provincial Government.
- 3.15 Section 51(b)(ii) of the PFMA further provides that an accounting authority for a public entity must take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity.

3.16 With regard to budgeting, section 52 of the PFMA, directs PRASA to do the following:

"The accounting authority for a public entity listed in schedule 2 or a government business entity listed in schedule 3 must submit to the accounting officer for a department designated by the executive authority responsible for that Public entity or government business enterprise, and to the relevant treasury at least 1 month or another period agreed by National Treasury before start of the financial year

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

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

3.17 Section 83 of the PFMA deals with financial misconduct by accounting authorities and officials in a public entity. It *inter alia* states

"(1) The accounting authority for a public entity commits an offence of financial misconduct if that accounting authority wilfully or negligently –

(a) Fails to comply with the requirement of section 50,51,52,53, 54 or 55 or

(b) Makes or permits and irregular expenditure or a fruitless and wasteful expenditure.

(2) If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.

(3) an official of a public entity to whom a power of duty is assigned in terms of section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty".

National Treasury Regulations in terms of the PFMA

3.18 The National Treasury issued Regulations in terms of section 76 of the PFMA in Government Gazette No 27388 – Vol 477, dated 15 March 2005 (Regulation Gazette No 8189).

3.19 Paragraph 16A6.1 states *"Procurement of goods and services, either by way of quotations or through a bidding process, must be within the threshold values as determined by the National Treasury."*

3.20 Paragraph 16A6.4 states *"If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required good or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority."*

3.21 Paragraph 9.1.1 of the National Treasury Regulations of March 2005 states that:

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

National Treasury Practice note 8 of 2007/2008

3.22 The practice note is issued in terms of section 76 (4) (c) of the PFMA and is intended to regulate the threshold values within which accounting officers / authorities may procure goods, works and services by means of petty cash, verbal / written price quotations or competitive bids.

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

3.24 *"Accounting officers / authorities should invite competitive bids for all procurement above R 500 000"*.

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

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

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

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

PRASA SCM policy of 2009

3.27 Conduct at PRASA relating to the procurement of goods and services is principally regulated by its own corporate SCM policy dated 26 February 2009. PRASA implemented a SCM policy on 26 February 2009, ostensibly approved by the Chairman of the Board of Control (**Appendix 3**). This document regulates the suggested conduct at PRASA relating to the procurement of goods and services. The policy communicates upfront that it seeks to give

effect to applicable constitutional, legal, government policy and National Treasury SCM guidelines relating to authorised procurement of goods and services.

- 3.28 It is worth noting that the six phased Supply Chain Management cycle (incorporating Demand Management, Acquisition Management; Logistics Management; Disposal Management; Risk Management; and Regular Assessment of Supply Chain Performance), that is captured in the PRASA SCM Policy comes from paragraph 16A3.2 of Treasury Regulation which seeks to provide an integrated framework that seeks to simplify compliance with the legal framework for public functionary involved in the procurement of goods and services. Compliance with PRASA's policy barring the threshold for the procurement of goods without a tender, automatically seeks compliance with the constitutional and legal policy framework. In the same token, a violation of the PRASA SCM Policy translates into contravention of the national legal framework on procurement.
- 3.29 Paragraph 2.2 of the policy states "*PRASA will in compliance with Sec 217(1) of the Constitution of South Africa ensure that when contracting for goods and or services shall do so in accordance with a system, which is fair, equitable, transparent, competitive and cost effective. The SCM regulatory framework provides in section 3 (i) that the Accounting Officer of an institution must develop and implement an effective and efficient SCM system for acquisition of goods and services and for the development, maintenance, management, and implantation of this policy rests with the Group Chief Executive Officer (GCEO) and Board of Control (BoC)*"
- 3.30 Paragraph 2.3 of the policy *inter alia* states, "*This policy and procedure shall apply to PRASA and any of its Business Units or Subsidiaries and all employees must adhere to its provisions at all times. This policy and procedure shall apply at all levels and types of procurement and disposal contracts issued by PRASA*"
- 3.31 The Finance, Capital Investment and Tender Committee and its role etc. is dealt with in paragraph 9.2 of the policy. In terms of the Policy the committee shall comprise of 3 (three) non-executive directors and the Group Chief Executive Officer (GCEO). The responsibilities of this committee *inter alia* include:
- Consider recommendations from the GCEO for the Board's approval of tenders
 - Consider procedures followed by the TPC and all other involved with the procurement, taking cognisance as far as procedure, substance and value for money is concerned
 - Ensure that preference is given to entities that are black owned
 - Approve recommendations on bids, quotations or offers as per delegation of authority
 - Condone or reflect a submission for non- compliance with the SCM policy.

Group Chief Executive Officer

- 3.32 In terms of paragraph 9.3, the Group Chief Executive Officer (GCEO) has the following responsibilities:
- Appoint the chairperson, members and secretary of the CTPC
 - Appoint the chairperson, members and secretary of the DTPC in consultation with the Divisional Chief Executive Officers

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- Approve preferential procurement targets in line with what the BoC (Board of Control) has approved
 - Approve tenders as per delegation of authority
 - Consider and recommend to the BoC SCM related policy and procedures and/or any amendments thereto in conjunction with Exco
 - Approve of appointments, irrespective of value, outside of the normal process in emergencies.

3.33 Paragraph 9.3.8 of the SCM policy states that the GCEO has the following responsibility:

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

Maintain high standard of professional; ethics

3.35 Accordingly, when considering entering into, extending and cancelling contracts, PRASA, was and still is required to exercise a high standard of professional ethics and act in accordance with the duty required of state functionary to correct an irregularity once it is brought to its attention.

3.36 It is also worth noting that section 33 of the Constitution imposes a duty on any administrator to ensure just administrative action, incorporating among others, the right to be lawful, reasonable and procedurally fair. This duty is critical with regard to the cancellation of contracts. It does not mean of course that summary cancellation of contracts is prohibited where there are rational reasons and reasonable grounds for cancellation of a contract.

Corporate Tender and Procurement Committee

3.37 Paragraph 9.4 state as follows regarding the Corporate Tender and Procurement Committee (CTPC) *"The CTPC is established with the objective to perform the functions as indicated below. The CTPC is a cross-functional committee appointed by the GCEO. It shall comprise of at least six members each with an alternate member, and not more than eight, of whom at least two members are a SCM Practitioners and one from Finance..."*

3.38 The CTPC's function *inter alia* include:

- Consider the procedure followed by the CFSC's, DTPC's, RTPC's and all other involved with the procurement and disposal of goods and services, taking due cognisance as far as procedure, substance and value for money is concerned
- Approve recommendations in respect of bids, quotations or offers as per Delegation of Authority for Corporate office purchase
- Make recommendations to the GCEO in respect of tenders as per Delegation of Authority

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- Review deviations from normal bid procedures and inform the GCEO or individuals of adverse trends or specific events where the CTPC believes the SCM Policy guidelines are not being followed
 - Condone or reject a submission for non-compliance with the SCM Policy or reserve a decision pending further information or clarification of a specific matter.

Divisional Tender and Procurement Committee.

3.39 The Divisional Tender Procurement Committee (DTPC) is a cross-functional committee appointed by the GCEO and upon recommendation by the DCEO. It shall comprise of at least four members, and not more than six, of whom at least two members are a SCM Practitioners and Finance. The DTPC may (where appropriate) invite an expert to advice on the particular tender. In the event that they need to invite an expert, they must seek approval of the Divisional CEO.

3.40 The DTPC's functions *inter alia* include:

- Considering the procedure followed in procurement and disposal of goods and services, taking due cognisance as far as procedure, substance and value for money is concerned for tenders of their specific Division; this excludes tenders of national contracts
- Approving recommendations in respect of bids, quotations or offers as per Delegation of Authority for division purchases
- Recommending to the CTPC for request for confinement as per Delegation of Authority, decide on requests for shortlisting for bids with a value not exceeding R5 million
- Making recommendations to the CTPC in respect of the tenders as per delegation to authority
- Reviewing deviations from normal bid procedures and inform the GCEO or individuals of adverse trends or specific events where the DTPC believes the SCM Policy guidelines are not being followed
- Approving or condoning the employment of limited bidding in emergencies where the value does not exceed R5 million for the specific division's purchases
- Approving on requests for confinement as per delegation of authority for specific divisional purchase.

Regional Tender and Procurement Committee

3.41 The Regional Tender Procurement Committee (RTPC) is a cross-functional committee appointed by the Divisional CEO. It shall comprise of at least six members each with an alternate member, and not more than eight, of whom at least two members are SCM Practitioners.

3.42 The RTPC's primary functions are *inter alia* to:

- Consider the procedure followed in procurement and disposal of goods and services, taking due cognisance as far as procedure, substance and value for money is concerned for tenders of their specific region; this exclude tenders of national contracts

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- Recommend to the DTPC for request for confinement as per Delegation of Authority decide on requests for short-listing for bids with a value not exceeding R5 million.
 - Make recommendations to the Regional Manager in respect of tenders as per delegation of authority
 - Review deviations from normal bid procedures and inform the Divisional CEO or individuals of adverse trends or specific events where the RTPC believes the SCM Policy guidelines are not being followed
 - Approve or condone the employment of limited bidding in emergencies where the value does not exceed R10 million for the specific Region's purchases.

Chief Procurement Officer

3.43 In terms of the policy, the Chief Procurement Officer (CPO) *inter alia* has the following responsibilities:

- Overall management of the SCM function within PRASA
- Ensure implementation of SCM policies and procedures
- Negotiate and implement a Service Level Agreement (SLA) between end user departments and SCM, which will contribute to improved service delivery to the directorates based on existing and future performance standards
- Approve items as per delegation of authority in terms of the procurement procedures and escalate matters of a value more than the relevant approval authority. The minimum amount is determined by the relevant delegated authority
- Approve, within delegated authority, amendments in respect of orders or contracts not covered by existing prescriptions, notwithstanding the fact that the approval of such amendments may result in increased prices or other contractors being prejudiced. Recommend amendments above delegated authority to the CTPC.

End user

- 3.44 In terms of the policy, an end user is an authorised employee of PRASA that requests SCM involvement, support, consultation, or the performance of activities associated with the acquisition of goods or services.
- 3.45 It is the responsibility of the end user to:
- Request SCM's involvement, support or consultation in the performance of activities associated with the acquisition of goods or services
 - Accurately obtain proper budget approval, where applicable, as well as to maintain proper documentation to support the direction given to SCM
 - Clearly describe their need/requirements to enable SCM to produce accurately and timeously. The description of the requirement(s) should be sufficient enough be transmitted by a second party to a supplier and be delivered correctly without further clarification.

Cross-Functional Sourcing Committee

- 3.46 The Cross Functional Sourcing Committees (CFSC) are cross-functional teams who appoint teams, appointed by the CPO in consultation with end user managers. They CSGC constituted of at least three members of whom at least one member should be a SCM Practitioner and the other specialists from end user departments. Independent experts can assist the CFSC, with approval of the GCEO. The CFSC performs *inter alia* the following functions:
- Designing bid specification format
 - Checking bids specifications
 - Compile bid document
 - Compile evaluation criterion
 - Ensure completeness of bid documents
 - Take into account when preparing specifications PRASA's preferential procurement targets when formulating specifications
 - Facilitate the allocation of evaluation criteria and weightings
 - Arrange and manage bid briefing sessions and handle bidder enquiries
 - Conduct administrative compliance evaluation of all proposals in terms of Tax Clearance Certificate
 - Conduct evaluation of all bids according to the evaluation criteria stipulated in the bid document
 - Ensure that all potential suppliers are compliant with all relevant legislation through ensuring the completion of background checks on potential vendors
 - Compile a supplier recommendation report to the CTPC
 - Ensure that the bid process complies with policies, procedures and regulations
 - Recommend the withdrawal of bids after closing time, amendment, and cancellation after awarding, transfer and cession of contracts
 - Maintain records to ensure the existence of an audit trail

- Perform all monitoring activities, inclusive of achievements in terms of preferential procurement and report them to the Senior Manager: SCM as required.

Methods of procurement

3.47 The following is stated regarding single source/confinement paragraph 11.3.7.

"This occurs where the needs of the business preclude the use of the competitive bidding process and for practical reasons only one bidder is approached to quote for goods and/or services.

This method can only be used for:-

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

If it's an emergency as defined in Clause 11.3.6 above, the decision to make use of a single source shall be motivated for approval and ratifications by the GCEO."

3.48 Paragraphs 11.4.7 and 11.4.8 of the SCM Policy states the following in respect of invitation for bids:

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

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

3.49 Paragraph 11.3.3 of the SCM policy stated the following regarding unsolicited bids:

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

- That the unsolicited bid is a unique concept or offering
- That the offering of the bid cannot be provided efficiently through competitive bidding process
- That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited bid.

3.50 According to paragraph 11.7.1 of the SCM policy the following is stated in respect of appointment of Consultants:

"For the purpose of this policy; the term consultant includes; among others; consulting firms; engineering firms; construction managers; management firms; procurement agents; inspection agents; auditors; other multinational organization, investment and merchant banks, universities, research agencies, government agencies nongovernmental organizations (NGOs) and individuals".

3.51 Paragraph 12.3.5 of PRASA's SCM policy of 2014 (implemented on 29 May 2014) provides similar than Clause 11.7 of the 2009 SCM policy regarding unsolicited bids.

3.52 The bidding methods described above in clause 11.3 will also apply when consultants need to be appointed.

3.53 Paragraph 11.3 deals with the bidding methods and *inter alia* state as follows:

"A request for quotation is allowed for procurement not exceeding R 350m. All requisitions above R 350m shall be submitted for the invitation of bids. In respect of procurement below R 350m the following apply: Three written quotes should be obtained from the supplier on the database. In the event that potential suppliers are not available on the Approved Suppliers Database, quotations can be obtained from any other suppliers provided the authorization has been granted as prescribed in clause 11.2.1 above"

3.54 We understand from various SCM managers in PRASA that the value threshold referred to is R350 000 and not R350 million. They all indicated that it is common knowledge that the value threshold is R350 000 and the policy is mistakenly reflect "R350m". Mr Chris Mbatha (Mr Mbatha), the former Chief Procurement Officer and current Chief Information Officer (CIO) also confirmed this aspect during an interview with him.

3.55 In terms of paragraph 11.2.1 of the SCM policy, SCM shall develop and maintain an Approved Supplier Database. This paragraph state:

In pursuance of this requirement, SCM shall:

Categories the suppliers on the database according to the goods/services they provide, HDI status, locality and a record of past performance indicating whether the supplier has been restricted or not;

Ensure that the supplier database is kept up to date;

Annually, through newspapers commonly circulating locally, corporate website, and any other appropriate ways, invites prospective suppliers of goods and services, construction works and consultancy services to apply for listing as accredited prospective suppliers; and

This database must be used for purpose of obtaining quotations. Only in the event where none of the suppliers can meet the requirements of the quote should quotations be obtained from outside the Approved Supplier Database. A motivation to obtain quotes from suppliers not on the database is lodged with the CPO for approval before sending the quotes to the suppliers".

3.56 Paragraph 11.3.1.2 states the following in respect of the request for quotation:

"Request for quotations must be in writing by means of a letter, facsimile or electronically (e-mail), containing precise and detailed specifications from the onset as contained in the authorized Purchase Requisition."

3.57 Paragraph 11.7.3 state the following in respect the approach followed on appointment of Consultants.

The following approaches will be used for appointments of consultants:

- *Quality and cost based selection (QCBS)*
- *Quality based selection (QBS)*
- *Selection under fixed budget*
- *Least cost selection*
- *Selection based on consultants qualifications*
- *Single source selection*
- *Single of individual consultants".*

3.58 Paragraph 11.3.2 provides that "a competitive bidding process is applicable when the estimated total value of the requirement is more than R350 million. This process must be followed irrespective of the type of service or product required." We reiterate that all role players interviewed indicated that this is a typing error and the correct value is R350 000.

3.59 In respect of bids below R350 thousand, three written quotations must be obtained from the suppliers on the database. Only in the event where none of the suppliers can meet the requirements, should quotations be obtained from suppliers not on the database, whereby a motivation must be lodged with the Chief Procurement Officer for approval.

3.60 PRASA SCM Policy provides further at paragraph 11.4.7 for the bids to be advertised in the print media or any publication if and when necessary.

3.61 Paragraph 11.3.1 of the PRASA SCM Policy provides that "a request for quotation is allowed for procurement not exceeding R350 million (sic). All requisitions above R350 million shall be submitted for the invitation of bids." We ascertained from interviews that the threshold is 350 thousand rand and that reference to "350 million" in paragraph 11 of the Policy is an error.

3.62 Paragraph 11.3.1.1 of the PRASA SCM Policy provides that "in respect of procurement of below R350 million (sic) three written quotes should be obtained from suppliers on the database. In the event that potential suppliers are not available on the Approved Supplier Database, quotations can be obtained from any other suppliers provided the authorisation has been granted as prescribed in clause 11.2.1".

3.63 Paragraph 11.3.3 of the PRASA SCM Policy provides that "*unsolicited bids are generally prohibited unless approved for consideration by the GCEO. In approving their consideration, the GCEO shall take the following into account:*

- *That the unsolicited bid is a unique concept or offering*
- *That the offering of the bid cannot be provided efficiently through competitive bidding processes*
- *That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited bid."*

3.64 In terms of Paragraph 11.3.5 of the Policy "Purchases made for 'emergency situations' where competitive bidding would be inappropriate is limited to the following types of situations:

- *Disasters (e.g. damage from cyclones, floods, fire (sic), etc.*
- *Systems failures (including supporting items which could affect the system)*
- *Security risk*
- *During emergencies the required goods, works or services may be obtained by means of quotations by preferably making use of the departmental supplier database. A motivation of the emergency purchase should be submitted to the GCEO for ratification."*

3.65 In terms of Paragraph 11.3.6 of the Policy "*Sole sourcing exist where there is only one source (supplier) available in the market. A sole source may make a special product or technology that no one else does. Where such a situation exist, competitive bidding is not advisable. All sole sourcing motivations must be submitted to the GCEO or for approval prior to entering negotiations with the sole source"*.

3.66 Paragraph 11.3.7 of the Policy provides that single source/confinement:

"Occurs where the needs of the business preclude the use of competitive bidding process and for practical reasons only one bidder is approached to quote for goods and/or services.

This method can only be used for: -

- *Appointment of professional services such as legal, financial, technical contracts and security where unique expertise and/or security are required or*
- *If it is an emergency as defined in Clause 11.3.6 above.*

The decision to make use of a single source shall be motivated for approval and ratification by the GCEO."

3.67 Paragraph 8.1 of the PRASA SCM Policy provides that:

"If a SCM personnel or other PRASA employee or other role player, or any close family member, partner or associate or such official or other role player:

- *has any private or business interest in any contract to be awarded*
- *conduct activities that could reflect negatively on the reputation of the agency and its personnel...*

The staff members must disclose this interest to the GCEO and withdraw from participating in any manner whatsoever in the process relating to the contract."

PRASA 2014 SCM policy

- 3.68 PRASA implemented a revised SCM policy in 2014. We obtained a copy of this policy (**Appendix 4**). However, this policy document is not dated and the implementation date is not clear from the document itself. This policy is very similar with regard to the methods of procurement as the 2009 policy.
- 3.69 For this reason, we do not summarise this policy for purposes of this report. However, where specific paragraphs of this policy is applicable to the appointment of a specific service provider, we do refer to the specific paragraph (s) policy in the detailed discussion of the respective suppliers below.
- 3.70 We endeavoured to ascertain when PRASA implemented this policy. Mr Phoma sent us a document with subject "*Audit Outcomes: A Comprehensive SCM Instruction Directive*" (**Appendix 5**) dated 13 October 2014. Dr Phungula signed this document on 10 October 2014. According to this document, the board approved 2014 SCM policy on 29 May 2014 although it was not signed by the previous board chairperson and the GCEO. Mr Phoma also provided us with the Board approval that confirms it was approved on 29 May (**Appendix 6**). However, it appears that the fact that the board approved the 2014 SCM on 29 May 2014, was only communicated on 13 October 2014.
- 3.71 Paragraph 9 of this instruction document deals with record keeping and states as follows "
- "9.1 All SCM departments should ensure that their filing systems are in order and that documents are readily available should they be required by internal or external stakeholders*
- 9.2 Files should also be complete or the relevant supporting documents should be easily retrievable. Some of the issues that were experienced during the audit of the 2013/2014 financial year include:*
- 9.2.1 Document requested to the process under review not being in the possession of the SCM department*
- 9.2.2 Documents to support the assertions by management are missing and cannot be found*
- 9.2.3 Documents requested are not submitted in an acceptable timeframe and are only produced following a formal communication of finding from the AGSA, and*
- 9.2.4 Files are provided to the auditors, but the documents in the file are not complete.*
- 9.3 All files should have the SCM checklists pated on the cover and all the boxes should be ticked indicating that the file is complete. Once this step is concluded, the files should be reviewed for quality, e.g. minutes on the file are signed, the approved recommendation is signed by a duly authorized (delegated) individual etc."*

- 3.72 This document stipulates the retention of documents functionary of the SCM division of PRASA. This document does not refer to supporting documents of other divisions, such as the finance division and other end user divisions. However, it appears that PRASA has not implemented this directive effectively. This aspect should be addressed.
- 3.73 PRASA should create similar compulsory instructions for all division within PRASA on oversee that it is distributed to all PRASA employees with a compulsory notification to the heads of the respective division from each employee that they noted, read and understood the instruction.

National Treasury SCM Guidelines of February 2004

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

Demand management

Introduction

- a) *Demand management is the first phase of SCM. The objective is to ensure that the resources required to fulfil the needs identified in the strategic plan of the institution are delivered at the correct time, price and place and that the quantity and quality will satisfy those needs. As part of this element of SCM, a total needs assessment should be undertaken. This analysis should be included as part of the strategic planning process of the institution and hence will incorporate the future needs.*
- b) *It is vital for managers to understand and utilise sound techniques to assist them in their planning, implementation and control activities. As part of the strategic plan of the institution, resources required for the fulfilment of its obligations should be clearly analysed. This includes a detailed analysis of the goods, works and services required, such as how much can be accomplished, how quickly and with what materials, equipment, etc."*

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

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

3.77 Paragraph 1.3.2.2 of the National Treasury SCM Guidelines states that Demand Management entails:

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

3.78 Paragraph 4 of the National Treasury SCM Guidelines states the following:

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

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

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

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

- 3.80 The general approach in terms of the National Treasury SCM Guidelines dated February 2004 is captured in Paragraph 5.4.1 that states:

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

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

- 3.81 Paragraph 5.4.2 states that:

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

- 3.82 Paragraph 5.4.3 states that:

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

- 3.83 Paragraph 5.4.4 states that:

"When appropriate, the accounting officer / authority may include under the special conditions of contract, the following or similar condition: A service provider may not recruit or shall not attempt to recruit an employee of the principal for purposes of preparation of the bid or for the duration of the execution of this contract or any part thereof".

- 3.84 Paragraph 5.16.1.1.1 states that:

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

Powers and Authority of the Board and Delegation of Authority

Powers and Duties of the Board

- 3.85 The Board is empowered to exercise all the powers and authorities to lead, control and manage PRASA and to delegate any or all of such powers to an official(s), employee(s) and any other person and/or to a committee(s) of PRASA, subject to existing PRASA Policies and the provisions set out therein.
- 3.86 The approval of the Board must be obtained for all matters that are beyond the authority delegated herein.
- 3.87 According to the tender approval there are various categories set out in the Delegation of Authority ranging from R10 million to R100 million for the GCEO.
- 3.88 The threshold for Operating tenders:
- a) GCEO: R100 million
 - b) CEOs of Subsidiaries: R50 million.
- 3.89 The threshold for Maintenance and material CEOs of Subsidiaries:
- a) CEO: R20 million
 - b) CFO: R20 million
 - c) CPO: R10 million.

4. Findings relating to the appointment of Take Note 368 CC and the payments to this supplier

Background

4.1 PRASA identified a corridor within its rail network that is highly vulnerable to crime and security breaches. PRASA sought to address this security concern by implementing a new early detection security system (forewarning) on the Bonteheuwel to Phillipi corridor (stretch of 10.3 kilometres) to address the security concerns and mitigate the incidents of crime and breaches within this corridor. The following challenges were identified by PRASA's Corporate Security through their Security Risk Threat Vulnerability Assessment:

- Vandalism to coaches
- Vandalism to Real Estate Assets
- Vandalism of Rail
- Cable Theft.

4.2 We could not ascertain when PRASA's Corporate Security established the security risk, because the documents we were provided with do not indicate this and we did not interview Mr Matakata.

Method of procuring services from Take Note

4.3 Initially, we did not obtain any documents from PRASA relating to the history of this matter. Mr Mbatha's Personal Assistant, Ms Chantel Maseng provided minutes of the Corporate Tender and Procurement Committee (CTPC) via email on 10 September 2016, after we had met with Take Note's CEO (**Annexure A1**). We discuss this meeting in more detail below.

Recommendation report

4.4 On 17 February 2015, PRASA's CTPC met. According to the minutes, the meeting was a continuation of two previous meetings that were conducted on 02 and 09 December 2014 respectively (**Annexure A2**). However, we were not provided with minutes of the previous meetings. According to the minutes, the following members of the CTPC attended the meeting on 17 February 2017:

- Mr Mbatha (Chairman)
- Ms Constance Monkwe (Secretary)
- Dr Phungula (Member)
- Mr Vincent Kobue (Member)
- Ms Yvonne Page (Member).

4.5 In paragraph 1 of this report PRASA indicates that it spent R382 million in the past three years in replacement cost, resulting from cable theft and damage to PRASA property. PRASA established dedicated cable theft units nationally to curb these incident, but it has not proved to be as effective as envisaged.

4.6 In paragraph 2 the following is *inter alia* stated: "*Take Note (Pty) Ltd, a WBO (Woman Black Owned) company and part of the Woman in Rail initiative, has presented the early cable theft and perimeter intrusion together with aero scout surveillance unique solution to PRASA's security and technical team on the 9th September and again on 16th September 2014.*

This submission seeks the approval of the Group Chief Executive Officer to implement pilot action of this system in support of other security solutions to curb rampart cable theft in the Cape Flats".

4.7 On 01 March 2015, the CPO issued a Recommendation Report to the GCEO, the report outlined the differences between the conventional method that has been used to monitor the corridor (man-manned method) and the proposed Early Detection Cable Theft Solution method. Both methods' were dissected and advantages and disadvantages of each were outlined.

4.8 The Recommendation Report deals with the reasons for using confinement as a preferred option to procure Take Note's services and states: "*Confinement occurs where the needs of the business preclude the use of the competitive bidding process and for practical reasons only one or more suppliers is / are approached to supply quote(s) for goods or services..... this method of procurement may only be considered for professional services such as Legal, Financial, Technical contracts where unique skills are required".*

Confinements are also typical for emergencies in respect of security considerations and systems failures".

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- 4.9 Paragraph 12.3.8 of the 2014 SCM policy states as follows in respect of when confinement may be used

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

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

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

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

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

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

- 4.10 In paragraph 12.3.6 of the SCM policy of 2014, a security risk is an example of emergency situations.

- 4.11 The 2014 Policy also deals with unsolicited bids and states as follows:

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

12.3.5.1 That the unsolicited tender is a unique concept offering;

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

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

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

- 4.12 Paragraph 4.2 reflects that this submission is security related and proposes a cable that needs to be buried under the surface. It further reflects that the matter is respect of technical expertise that PRASA's Security Group has considered unique in the country so far. This report emphasises that the solution by Take Note is an Advanced Early Detection solution that primarily focuses on forewarning, which will reduce the incidents of cable theft and damage to other PRASA property.

- 4.13 Although the work envisaged was of a security nature, there is no indication in any of the documents that this was an emergency. However, it is clear from paragraph 12.3.8 of the 2014 policy that all aspects mentioned in the subparagraphs of the SCM policy need not be present and the grounds for confinement can be limited to one aspect referred to in the policy. According to the policy, these grounds are applicable as alternatives. However, there is no indication in the document that the needs of PRASA's business precluded PRASA from the use of a competitive bidding process.

- 4.14 However, from the interview with Ms Luthuli, the CEO of Take Note, it appears that Take Note researched a security concept unique to the South African environment and then presented a business case to PRASA. Because of this presentation by Take Note, this process was initiated. We discuss this in more detail below.
- 4.15 In paragraph 7 of the recommendation report, it is stated that PRASA and Take Note were proposing a pilot project in the Bonteheuwel area as opposed to a full solution and proposed a project period of 6 months.
- 4.16 According to the document, Take Note was recommended to implement an Early Detection Cable Theft Solution on behalf of PRASA on the 10.3km corridor between Bonteheuwel and Phillipi. The project was estimated to cost R18 000 000.00 and the service provider was to be secured through a confinement process.
- 4.17 Mr Montana approved Take Note's appointment on confinement on 01 March 2015. We understand from interviews conducted with Mr Mbatha and Ms Luthuli that Take Note's appointment was a pilot project. Mr Montana endorsed the approval as follows:
- "The results of the Pilot Project in the Cape Metropolitan Operational area should be presented to me within four (4) months from the date of commencement of the Pilot Project. The results may help PRASA to implement a fully sledged and long term solution to the enormous challenge and risks presented by cable theft on the Commuter Rail Network"*
- 4.18 Based on this Recommendation report, a Scope of Work was drafted (**Annexure A3**) for the project and included the following items:
- Ground survey and system design
 - Installation of underground Seismic Sensor cable of some 10.3 kilometres in the Bonteheuwel area
 - Deployment of Aerostat Hawk Eye
 - Integrate the system to the NOC.
- 4.19 Take Note provided PRASA with a financial proposal and the stated cost of the monitoring system for the approximate 10 kilometre corridor was R18 000 000.

First Contract entered into between PRASA and Take Note

- 4.20 Ms Matshidiso Mosholi (Ms Mosholi), who is the Senior Manager Procurement and Tendering at PRASA Corporate prepared a Notice to Proceed to Take Note (**Annexure A4**) on 04 March 2015. The notice was based on the recommendation signed (by Mr Montana) dated 01 March 2015. This notice effectively authorised Take Note to begin with the implementation of the advanced early detection cable installation project on the corridor between Bonteheuwel and Phillipi pending the conclusion of a contract between PRASA and Take Note.

- 4.21 On 05 March 2015, Mr Mantsane approved the Scope of Work for the project valued at R18 000 000, for the installation of the Early detection perimeter intrusion and Aerostat monitoring on the Bonteheuwel-Phillipi corridor in the Western Cape, covering 10.3 kilometres (**Annexure A5**).
- 4.22 PRASA and Take Note entered into a contract valued at R18 000 000.00 (inclusive of VAT and disbursements). The contract's commencement date was 05 March 2015 with a completion date of 04 July 2015. Ms Luthuli signed the contract documents on 20 April 2015 on behalf of Take Note and Mr Montana signed on behalf of PRASA on 18 May 2015 (**Annexure A6**).
- 4.23 The estimated project cost is summarised in the recommendation report as follows:

Table 3: Estimated cost for appointment of Take Note

| Percentage | Milestone | Description | Milestone Value |
|------------|---|--|-----------------|
| 15% | Initial Equipment | 1 kilometre of Seismic Sensor Cable and Relay boxes. | R2.7m |
| 5% | Engineering Design | Design of the network location and comprehensive report of the entire system in the specific corridor. | R0.9m |
| 10% | Installation and configuration 1.5km of 10.3km | Installation of Configuration of the first kilometre with Seismic Sensor Cables and software | R1.8m |
| 10% | Installation and configuration 1.5km of 8.8km | Installation of Configuration of the first kilometre with Seismic Sensor Cables and software | R1.8m |
| 10% | Installation and configuration 1.5 kilometres of 7.3 kilometres | Installation of Configuration of the first kilometre with Seismic Sensor Cables and software | R1.8m |

| Percentage | Milestone | Description | Milestone Value |
|------------|---|--|-----------------|
| 10% | Installation and configuration 1.5 kilometres of 5.8 kilometres | Installation of Configuration of the first km with Seismic Sensor Cables and software | R1.8m |
| 10% | Installation and configuration 1.5 kilometres of 4.3 kilometres | Installation of Configuration of the first kilometre with Seismic Sensor Cables and software | R1.8m |
| 10% | Installation and configuration 1.5 kilometres of 2.8 kilometres | Installation of Configuration of the first kilometre with Seismic Sensor Cables and software | R1.8m |
| 10% | Installation and configuration 1.5 kilometres of 1.3 kilometres | Installation of Configuration of the first kilometre with Seismic Sensor Cables and software | R1.8m |
| 10% | Installation and configuration 1.3 kilometres of 1.3 kilometres | Installation of Configuration of the first kilometre with Seismic Sensor Cables and software | R1.8m |

4.24 The total calculated milestone above is 11.8 kilometres, whilst the project was in respect of a stretch of only 10.3 kilometres. According to the schedule above the project should cost PRASA an estimated R15 600 000. According to the above schedule as provided, the kilometres to be covered is 1.5 kilometres more at a cost of R2.4m (1 kilometre calculated at R1.36 million excluding design and sensor cable and boxes).

Second Contract entered into between PRASA and Take Note

4.25 On 08 December 2015, Mr Matakata, prepared a variation order (**Annexure A7**) recommending an extension of Take Note’s contract. According to the variation order motivation, PRASA and Take Note were to extend their contract wherein Take Note was to

implement and maintain the Advanced Early Detection Security after the first implementation to ensure that it is operating effectively and to determine if it is feasible for a national rollout.

- 4.26 The amount expected to be incurred in the proposed Variation Order was valued at R4 104 000 inclusive of VAT and disbursements. The estimated work was six months. We also endeavoured to meet with Mr Matakata, but to date of this report, we have not met with him, despite attempts from PRASA's SCM division to arrange this. We conclude that Mr Matakane cannot or will not cooperate with the investigation.
- 4.27 Mr Matakata drafted the motivation for Variation and addressed it to Mr Gingcana and the then Acting Group Chief Executive Officer, Mr N Khena. Mr Gingcana supported the motivation and signed it on 08 December 2015. Mr Khena approved the motivation by signing it on 08 December 2015.
- 4.28 PRASA prepared an Addendum to the main agreement after Mr Khena approved the motivation (**Annexure A8**). Ms Luthuli signed the Addendum on behalf of Take Note on 08 March 2016. Mr Khena, who was the then Acting GCEO for PRASA signed the Addendum on 09 March 2016.
- 4.29 The Addendum detailed the following:
- The terms of the main agreement remain in full force when read with the addendum, however, PRASA prepared an Addendum to the main agreement in approving the Variation Order
 - The scope of work remains the same as per the Main Agreement and as stated in the Addendum. Should there be conflict, the addendum prevails over the initial main agreement

- The addendum shall be in force from the date it is signed and 7 months thereafter. The total cost to be expended due to the addendum is R4,104 000 payable in the following manner:

Table 4: Detail of variation on Take Note

| Item | Period | Monthly fee | Value |
|-------------------------|---------------|--------------------|-------------------|
| Variation at 10% | Once Off | N/A | R1 800 000 |
| Maintenance and support | 6 months | R300 000 | R1 800 000 |
| Total excl. VAT | | | R3 600 000 |
| VAT | | | R504 000 |
| Total incl. VAT | | | R4 104 000 |

Payments made by PRASA to Take Note

- 4.30 We requested documents relating to payments to Take Note for the services rendered, such as purchase requisitions, purchase orders, invoices, and progress certificates. To date of this report, PRASA has not provided any of the documents to us. We requested these documents from PRASA on various occasions and conclude that PRASA does not have these documents at its disposal. We also endeavoured to establish who PRASA's project manager is from PRASA SCM division on numerous occasion, but despite our efforts, PRASA's SCM division has not provided this information to us.

4.31 However, we received a list of payments made to Take Note from Ms Ramabi, a SCM Contract Administration Officer at PRASA, which we understand she extracted from PRASA's SAP system (PRASA's system). We summarise the detail of these payments (as per PRASA's system) in the table below:

Table 5: Payments to Take Note

| Payment Number | Payment Date | Amount paid (ZAR) |
|----------------|-----------------|-----------------------|
| 2000015106 | 15 May 2015 | 10 800 000.00 |
| 2000015500 | 19 June 2015 | 3 600 000.00 |
| 2000015967 | 31 July 2015 | 3 600 000.00 |
| 2000017785 | 5 February 2016 | 300 000.00 |
| 2000018281 | 1 April 2016 | 1 800 000.00 |
| 2000018575 | 13 May 2016 | 300 000.00 |
| Total | | R20 400 000.00 |

Meeting with Take Note

4.32 We met with Ms Luthuli on 08 September 2016. The meeting focused on the circumstances that led to the appointment of Take Note, as well as to provide Take Note the opportunity to provide us with relevant documents.

4.33 Ms Luthuli prepared a file of documents for us relevant to this specific project.

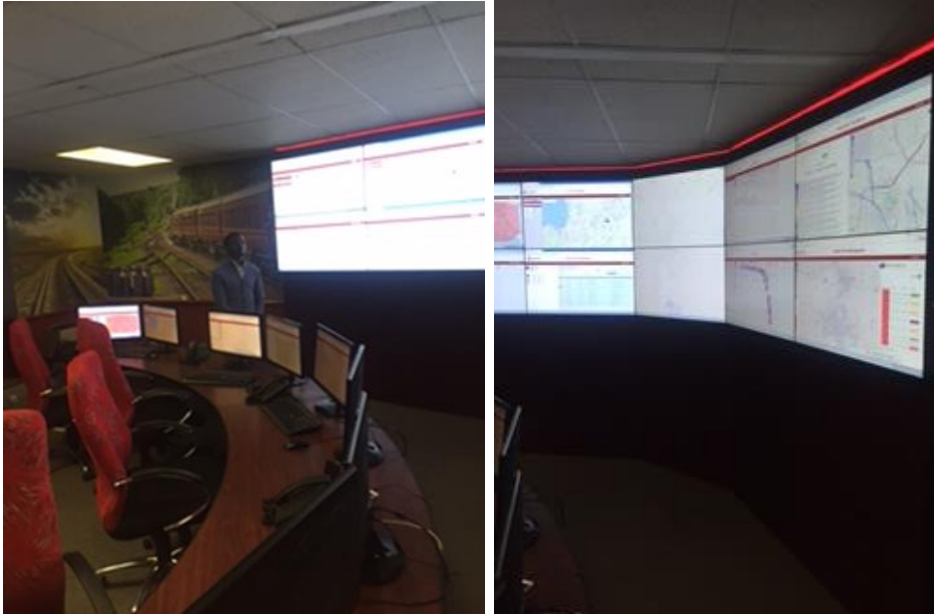
4.34 Ms Luthuli informed us that:

- She and some of her employees did research into the reasons for trains being delayed, because of cable theft and how incidents of cable theft can be curbed
- She got developers involved to assist to develop a methodology to *inter alia* avoid cable theft, specific to South Africa
- She presented the development plan and business model to Mr Mbatha, who was PRASA's CIO at the time
- Mr Mbatha was impressed with the development programme and suggested that it be presented to Mr Montana, which she did
- Mr Montana indicated that PRASA needed to get the Group Security Officer on board as well, which eventually happened
- Mr Montana informed her and others that he wanted to appoint Take Note on a confinement, because this project would be a pilot project for PRASA and involved security of PRASA assets etc.

- Mr Montana envisaged executing this pilot project in the worst space as far as theft of cable and other PRASA assets are concerned and the mentioned stretch in the Western Cape was then identified
 - It was amongst others discussed that the physical guarding of assets is not the most effective route and that forewarning, such an alarm system that is activated is more effective
- 4.35 Ms Luthuli further indicated that Take Note developed a project charter (**Annexure A9**) and informed us that the technology used was developed by various engineers. She further indicated that
- The items used were calibrated to avoid false alarms being activated
 - The solution presented to PRASA was a technical nature and the first solution of this nature that was ever presented
 - Take Note spent a lot of person-hours into the development of a workable solution that focused on South Africa and the countries diversity and needs.
- 4.36 Ms Luthuli also indicated that Take Note and PRASA met regularly to discuss the progress and project charter to ensure that the project continued as envisaged. She confirmed that whilst Take Note was rendering the services, there was always a PRASA official on site to ensure that the work was done in accordance with the project charter. Ms Luthuli provided us with minutes of meetings where it was *inter alia* decided that PRASA officials would be present on site.
- 4.37 Ms Luthuli indicated that this project is successful and reduced the incidents of cable theft and damage to property on this specific corridor with 95%. She also provided us with a success report, which she prepared for PRASA and indicated that the work and monitoring of this corridor led to the arrest of various would be cable thieves. Ms Luthuli indicated that the whole corridor stretch is monitored from a control room in Johannesburg at Take Note's office. Should an alarm be activated or something untoward noticed on the surveillance cameras, a response team is notified immediately, which then immediately attend to the concern at hand on the ground.

4.38 We took photos of the control room at Take Note's office. These photos are included in the figure below:

Figure 1: Control room at Take Note's office



Payment information received from Take Note

4.39 Ms Luthuli indicated that PRASA did pay Take note in accordance with the agreed upon payment schedule. Ms Luthuli provided Take Note invoices issued to PRASA in respect of this project to us. We do not attach the copies of the invoices to this report. However, these documents can be made available upon request. We summarise the detail of invoices in respect of the initial contract for R18 million in the table below:

Table 7: Invoices issued by Take Note in respect of initial contract

| Invoice Number | Invoice Date | Invoice Amount (ZAR including VAT) |
|-----------------------|---------------------|---|
| INVTK0199 | 30 March 2015 | 900 000.00 |
| INVTK0200 | 30 March 2015 | 2 700 000.00 |
| INVTK0201 | 30 March 2015 | 1 800 000.00 |
| INVTK0202 | 30 March 2015 | 1 800 000.00 |
| INVTK0203 | 30 March 2015 | 1 800 000.00 |
| INVTK0204 | 30 March 2015 | 1 800 000.00 |
| INVTK0205 | 30 March 2015 | 1 800 000.00 |

| Invoice Number | Invoice Date | Invoice Amount (ZAR including VAT) |
|----------------|---------------|------------------------------------|
| INVTK0206 | 30 March 2015 | 1 800 000.00 |
| INVTK0207 | 31 March 2015 | 3 600 000.00 |
| Total | | R18 000 000.00 |

4.40 With regard to the addendum, Ms Luthuli provided us with invoices as summarised in the table below:

Table 8: Invoices issued by Take Note in terms of second contract

| Invoice Number | Invoice Date | Invoice Amount (ZAR including VAT) |
|----------------|-----------------|------------------------------------|
| INVTK0209 | 19 January 2016 | 300 000.00 |
| INVTK0210 | 25 March 2016 | 300 000.00 |
| INVTK0211 | 25 March 2016 | 1 800 000.00 |
| INVTK0213 | 7 June 2016 | 300 000.00 |
| INVTK0214 | 30 June 2016 | 300 000.00 |
| INVTK0215 | 25 July 2016 | 300 000.00 |
| Total | | R3 300 000.00 |

4.41 We understand from Ms Luthuli that PRASA has to pay one more invoice, which Take Note will submit by the end of September 2016.

4.42 Ms Luthuli indicated that it has always been her understanding that PRASA endeavours to invite prospective bidders on an open tender process if the pilot project proved to be successful. This project was a huge success, but she has not heard of any RFP issued by PRASA to perform similar services on other corridors in South Africa that are problematic.

-
- 4.43 Ms Luthuli indicated that PRASA did receive value for money, not only from the actual surveillance system and constant monitoring and reaction by Take Note, but also because all the items, such as alarms, cameras and various other electrical equipment are now the property of PRASA. Ms Luthuli provided us with an asset register reflecting all the movable assets that Take Note provided, which are currently the property of PRASA (**Annexure A10**). In addition, we understand from an interview with Mr Gingcana that the theft of PRASA's property in that specific stretch was curbed and it therefore appears that the state received value for money from the services rendered by Take Note.
- 4.44 We do not attach all the documents we received from Ms Luthuli as annexures, as several of these documents do not relate to the scope of our investigation. However, we can make these documents available upon request.

Conclusion about Take note's appointment

- 4.45 Confinement is dealt with in both the 2009 and 2014 policy. It is not a preferred method of appointing suppliers. It is disconcerting that proper documents dealing with the reason(s) for the deviations from normal prescribed procedure is not amongst other procurement documents. We only received this document after we met with Ms Luthuli from Mr Mbatha's personal assistant. It is essential that procurement related documents should be kept on a single file per case, which PRASA did not do in this instance. The method of procuring services through deviations should generally be discouraged, as it creates an environment susceptible to abuse. Not only do such practices undermine fair competition, there is no doubt that there is a growing negative impact on quality and cost effective pricing.
- 4.46 We conclude that that it appears that the deviation from a competitive procurement procedure was justified in this particular instance. We base this on the fact that Take Note on own accord designed a solution based on forewarning, which was unique to the Rail Network at that stage. The decision to appoint Take Note on confinement to conduct a pilot project on a problematic corridor to ascertain the effectiveness thereof is plausible in the circumstances.
- 4.47 Although it is clear that the theft of cable on that rail stretch in Cape Town has been problematic, could be regarded as a security risk. Cable theft is an ongoing issue in South Africa and poses a security risk. Considering the criteria to be applicable for a confinement in the 2014 SCM policy, emergency is one criterion. It appears from the interpretation of the policy that the different criteria is applicable in the alternative. The solution's aim was to curb theft of PRASA assets effectively and from the available evidence, it did have the desired effect. In addition, the solution also involved technical expertise, which is one of the criterion that could justify an appointment based on confinement.
- 4.48 The available evidence also suggest that PRASA did receive value for money from this project. We are not in a position to comment on the exact rand value for money PRASA received, but conclude that PRASA did receive value for money. It should also be noted that it was not our mandate to determine the exact rand value of money for PRASA.

- 4.49 However, we do understand from an interview with Mr Gingcana that the theft of PRASA's property in that specific stretch was curbed and it therefore appears that the state may have received value for money from the services rendered by Take Note.
- 4.50 Considering all of the above, we are of the view that Take Note may not be the only service provider that can render these type of services. Should PRASA decide to secure other Railway corridors within South Africa using the same or principally the same solution, we are of the considered view that PRASA should do so via an open tender process, which is fair, transparent, cost effective and competitive. It is imperative that PRASA test the market before it embark on any such projects in future.

5. Findings relating to the appointment of Mtiya (Pty) Ltd and the payments to this supplier

Background

- 5.1 According to a recommendation report (discussed in paragraph 5.12 below), PRASA Enterprise Development strategy plays a significant role in the achievement of South Africa's economic growth and transformation agenda. This initiative, in compliance with the Broad Based Black Economic Empowerment (BBBEE) guidelines, will *inter alia* contribute to sustainable job creation, acceleration and the sustainable growth of Small Medium Enterprises.
- 5.2 PRASA envisaged appointing female owned service providers to achieve its milestones. The objectives of this *inter alia* included:
- The development and support of small medium enterprises and women industrialist within the PRASA supply chain
 - Maximising Enterprise productivity
 - Stimulation of economic growth and job creation
 - Technical skills development
 - Creating, retaining and sustaining the Commuter Rail knowledge base through structured research and development.
- 5.3 We obtained a resolution (**Annexure B1**) which was approved by Mr Montana on 28 October 2013 and signed by Ms Matshidiso Mosholi (Ms Mosholi), a Senior Manager Procurement, which approved the transaction value as follows:

"The Department of Trade and Industry has agreed to enter into a 3 year Enterprise Development Partnership with PRASA where they will co-fund all the initiatives on a 50:50 ratio split. The latter translates to a R150M fund at R60 million for PRASA Gauteng region and R30 million each for the rest of the PRASA regions (Western Cape, KwaZulu Natal and the Eastern Cape) over the next 3 years with the option to extend the funds for the duration of the Women in Rail Programme".

Method of procuring services of supplier

- 5.4 PRASA issued a Request for Proposal (RFP) for Enterprise Development Advisor and Implementation Service Provider for "*The Women in Rail Programme and Current Small Medium Enterprises*" on 06 May 2013 with reference *HO/BD/303/04/2013* (**Annexure B2**). The RFP was advertised on 05 May 2013 in the Sunday Times and on 06 May 2016 in the Sowetan (**Annexure B3**) with a closing date of 04 June 2013 at 12:00. The PRASA contact person was Ms Mercia Leburu-Tsawane (Ms-Tsawane), a Sourcing Specialist at PRASA. In terms of the RFP, PRASA scheduled a compulsory briefing session at PRASA House, 1040 Burnett Street, Pretoria on 10 May 2013. The closing date for the submission of tenders was 04 June 2013.
- 5.5 It appears from the attendance register (**Annexure B4**) of the briefing session that 91 interested suppliers attended the briefing session. It is not clear from the attendance register when the briefing session was held.
- 5.6 We obtained a document titled "*SUPPLY CHAIN MANAGEMENT – TENDER OPENING REGISTER*" (**Annexure B5**), which reflects that PRASA officials opened 23 tenders on 05 June 2013. This document reflects the same reference number as the RFP. It further appears from the undated Bid Evaluation Committee (BEC) Report (**Annexure B6**) that PRASA received 23 tenders from prospective bidders. However, 13 bids were eliminated due to non-compliance and ten bids were evaluated further.
- 5.7 According to the BEC report the BEC were appointed in terms of PRASA's SCM policy. The following individuals formed part of the BEC:
- Dr Phungula – Supply Chain Management
 - Ms Jaqueline Beukes – Finance
 - Ms Tsawane – Sourcing Specialist in SCM
 - Mr Hurbert Makhubela – Legal
 - Mr Clifford Mdlankomo – Business Development.
- 5.8 We further obtained declarations of interest by all BEC members. All the above members declared that they do not have any interests or were in relationships with any of the respective bidders. The 13 eliminated bids that were not evaluated on functionality were those of:
- Engeli
 - Loliwe Rail Engineering
 - Letsema Consulting
 - PLP Group
 - Sebata
 - Mvelase-Korffie
 - Technoserve
 - BEESS
 - Claudia
 - Mbokodo Rail

- MEDO
- Integrated Business Solutions
- Strategic Sourcing Consulting.

5.9 The ten bids evaluated on functionality, BBBEE, price etc. are listed below. However, there are no evaluation scores reflected in the BEC report, which is of concern, because it makes it difficult to follow the processes:

- Bosch-Ulwazi
- Gobela
- Mtiya
- Segakgweng
- Eskilz
- Evolut
- AIDC
- Raizcorp
- Mahlatsi
- Mzansi.

5.10 According to the BEC report the technical evaluation elements considered were as summarised in the table below:

Table 6: Evaluation weightings

| Elements | Weighting |
|--------------------------------|-----------|
| Enterprise Development | 50% |
| Project Management | 20% |
| Benchmarking and Best Practise | 10% |
| Information Technology | 10% |
| Research and Development | 5% |
| Policies and Regulation | 5% |
| ED Reporting | 5% |

5.11 We note that the total of the weighting criteria s per the the BEC report and summarised in the table above is 105%. In our view, this is an example of the SCM division and BEC members not performing their respective duties diligently.

5.12 According to paragraph 7.4 of the BEC report, only bidders who achieved 70 points for the technical evaluation, would be considered for price (90%) and BBBEE (10%).

- 5.13 According to the BEC report, three bids received the minimum of 70 points for the technical evaluation and were further evaluated on pricing. We list these tenderers and the scores (as per the BEC report) in the table below:

Table 7: Evaluation on price

| Bidder | Pricing | Points |
|-----------------------|-----------------|--------|
| Mtiya | R38 129 374.80 | 83% |
| Segakgweng Consulting | R19 589 846.93 | 78% |
| Raizcorp Arize | R110 420 674.11 | 79% |

- 5.14 We reviewed the scoresheets from the BEC members. From these documents, it appears that each BEC member scored the various tenders individually, because it is clear from the score sheets that different members allocated different points to the respective bidders (**Annexure B7**).

- 5.15 According to the BEC report, the same three bids were evaluated on BBBEE. We list these tenderers and the scores in the table below:

Table 8: BBBEE Evaluation

| Bidder | Score | BBBEE level |
|-----------------------|-------|-------------|
| Mtiya | 8 | 3 |
| Segakgweng Consulting | 10 | 1 |
| Raizcorp Arize | 8 | 3 |

- 5.16 According to the BEC report the approved budget for this project is reflected as R16 million. None of the tenders that was evaluated on price (and BBBEE), offered price was within this threshold.
- 5.17 Paragraph 13 of the BEC report deals with the motivation to recommend Mtiya to be appointed, despite the fact that Mtiya did not offer the lowest price, but overall scored the highest points. It *inter alia* emphasises that transparency of the bidders' pricing is critical. It *inter alia* states, "All bidders at the tender briefing were informed to match their price offer to given criterial elements to facilitate collaboration between outsourced and insourced resources. The key negotiating lever for co –sources skills are monthly hours contracted to PRASA over the twelve month period".

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- 5.18 The report further states that Segakweng Consulting's price did not match the given criteria and Raizcorp Arize's price did not follow the structures criteria and was out of proportion with PRASA's budget figure of approximately R35 million. This figure contradicts the earlier budget figure of R16 million as stated in the BEC report. We could not obtain an explanation for this apparent contradiction from this figure and the figure of R16 million referenced in the same document (refer paragraph 5.16 above).
- 5.19 The BEC then recommended that the CTPC appoint Mtiya as preferred bidder for an amount of R15 788.00. This price differs from the price that Mtiya ostensibly offered in its tender document. We did not receive any tender documents from any of the bidders and can therefore not comment further in this respect. There is no indication in the document we received from PRASA how this recommended price was derived at.
- 5.20 We found no evidence that PRASA negotiated a lower price with Mtiya and Mtiya did not offer the lowest price. It is not clear from the available documents how the price was derived at. In our view, this renders the process questionable.
- 5.21 We obtained a recommendation report for adjudication for the CTPC (**Annexure B8**), which *inter alia* indicates "*the price offer of Mtiya is well structured to accommodate co-sourcing initiative of PRASA. Contracted monthly hours per resource are clearly indicated as communicated at tender briefing to all bidders. The price offer is greatly responsive to PRASA requirements as reflected by evaluation criteria requirements*".
- 5.22 Paragraph 11.2 of the CTPC report deals with the motivation for the recommended company to be appointed. It *inter alia* states "*The RFP stipulated that only tenderers who would have achieved 70% threshold for Technical Evaluation will be evaluated for their financial tender. Only Mtiya, Segakweng and Raizcorp achieved the 70% threshold, therefore they were the only three tenderers evaluated further (Financial Evaluation. Due to budgetary constraints and identified in-house resources, the outsourced resources of recommended company (Mtiya Dynamics). The evaluation exercise resulted in a significant saving for PRASA and the Enterprise Development scope is still deliverable with the revised figure as originally envisaged*".
- 5.23 Paragraph 11.3 of the report deals with reasons for price elimination. It states "On matching price offers to structured resource requirements as indicated in the detailed evaluation criteria, it was observed that the only Mtiya Dynamics was compliant (Refer to Annexure D)". It is not apparent from the document itself what this assertion was based upon.
- 5.24 The aspect of pricing as it appears in the BEC report is repeated in the CTPC report. Paragraph 20 of the report states "The Group Chief Executive Officer's Approval is hereby sought to appoint Mtiya Dynamics (Pty) Ltd for The Enterprise Development Advisor and Implementation-Women In Rail Programme for over a period of 12 months for a reduced amount of R16 000.000.00 subject to Mtiya Dynamics (Pty) Ltd acceptance of the reduced amount, which is in line with the budget of R16 000.000.00".
- 5.25 This amount differs from the amount in the notice to appoint and the contract itself, which we discuss in more detail below.

- 5.26 The recommendation was signed by Dr Phungula as the Acting CPO on 08 October 2013, and approved and by Mr Montana on 19 November 2013.
- 5.27 PRASA issued a notice of appointment to Mtiya dated 02 December 2013 (**Annexure B9**), which refers to a tender that has been approved with reference number HB/BD/001/04/2013 for an amount of R14 894 761.20. It should be noted that this reference number does not correspond with the reference number in the RFP and the Consultancy Agreement entered into between Mtiya and PRASA as referred to below.
- 5.28 Mtiya addressed a letter to PRASA on 02 December 2013, ostensibly signed by Dr Thami Mazwai (Dr Mazwai), Executive Chairperson of Mtiya. The letters served to indicate to PRASA that Mtiya accepted the offer (**Annexure B10**).
- 5.29 It appears from our review of available documents that PRASA appointed Mtiya after an open tender process was followed and all tenders received were evaluated and considered. We reiterate that we did not receive any of the actual tenders submitted and could therefore not re- evaluate the tenders. In addition, this is not part of our mandate.

Contract entered into between PRASA and supplier

- 5.30 We obtained a Consultancy agreement entered into between PRASA and Mtiya (**Annexure B11**), duly signed by Mtiya's representative in December 2013 and by Mr Montana on 29 April 2014. Clause 1.14 of the agreement states "*Effective date means 2 December 2013, notwithstanding the date of signature*". The agreement further states that the project term as a period of 12 months from the effective date at a contract price of R14 894 761.20, which corresponds with the acceptance letter dated 2 December 2013.
- 5.31 In terms of paragraph 1 of the scope of work approved and signed by Ms Pearl Munthali, the Group Executive: Business Development, the objectives of the programme were:
- The development and support of small medium enterprises and women industrialist within PRASA supply chain
 - Maximising Enterprise productivity
 - Stimulation of economic growth and job creation
 - Technical skills development
 - To create, retain and sustain the commuter rail knowledge base through structured research and development.

Payments made by PRASA to supplier

5.32 We requested documents pertaining to payments from Ms Ramabi. M Ramabi provided us with electronic information available on PRASA's financial system, as well as invoices issued by Mtiya to PRASA. We summarise the detail of the payments as per PRASA's system in the table below:

Table 9: Payments to Mtiya

| Payment Number | Payment Date | Amount paid (ZAR) |
|-----------------------|---------------------|--------------------------|
| 2000011629 | 25 April 2014 | 430 000.00 |
| 2000011734 | 8 May 2014 | 1 280 000.00 |
| 2000012376 | 15 August 2014 | 3 230 209.74 |
| 2000013771 | 10 October 2014 | 3 230 507.63 |
| 2000014951 | 13 May 2015 | 2 734 298.85 |
| 2000017595 | 5 January 2016 | 1 994 872.51 |
| Total | | R12 899 888.73 |

5.33 It is noteworthy that PRASA effected payments to Mtiya after the contract period, being the last payment on 05 January 2016 for R1 994 872.51. It is not clear if PRASA and Mtiya extended the contract period. We did not receive any documents indicating an extension of the contract period. Furthermore, it is noteworthy that according to PRASA's financial system, the cumulative amount paid to Mtiya is less than the amount stated in the consultancy agreement. It is however, not clear whether PRASA effected further payments to Mtiya. We received no information to suggest this.

5.34 We obtained hard copies of the following invoices. We do not attach copies of these documents. However, we can make these documents available upon request. The amounts of the invoices correspond with the amount as per PRASA's financial system:

- INA10042-R430 000.00
- INA10045-R1280 000.00
- INA10049-R3 230 209.74
- INA10063-R2 734 298.85
- INA10082-R1 994 872.51
- INA10054-R3 230 507.63.

5.35 The invoices appear to be signed off by an unknown PRASA official, confirming that Mtiya delivered what it was supposed to and was entitled to the payments. The cumulative amount of these invoices is R12 899 888.73. It should, however, be noted that we did not have insight into any documents or other form of deliverables by Mtiya as PRASA did not provide us with such documents.

5.36 According to our calculations, it appears that the outstanding amount due to the Mtiya, in terms of the contract is R1 994 872.47. It is however, not clear whether Mtiya rendered services to PRASA to justify a payment of the above mentioned amount remaining in the contract budget.

5.37 In an endeavour to obtain additional information, we compiled a letter in terms whereof additional information was requested from Mtiya. We understand that PRASA forwarded this letter to Mtiya. To date of this report, Mtiya has not responded to this request for documents and other assistance. We attach a copy of the letter by PRASA to Mtiya (**Annexure B12**).

Conclusions on Mtiya's appointment

5.38 It is evident that PRASA issued a RFP and that the RFP was properly advertised. Several prospective tenderers attended the briefing session and twenty three tenders were submitted.

5.39 The tenders that were found to be compliant with the criteria in the RFP was considered for evaluation and only three tenders were subsequently evaluated on price and BBBEE as only these 3 scored the minimum points required on functionality.

5.40 Considering the scoresheets by the BEC members it appears that the BEC members scored these three tenders individually. It appears that the process was in line with PRASA's SCM policy and other legislative requirements in that it was open, fair, transparent, competitive and cost effective. Although it is not clear how the final price was derived at (considering the limited information at our disposal), we are of the view that a proper process was followed to appoint and subsequently pay Mtiya.

- 5.41 Although we were not provided with any deliverables we did not detect any irregularities in the payments to Mtiya.
- 5.42 We do not recommend any further action in respect of this contract.

6. Findings relating to the appointment of Worldwatch Trading and the payments to this supplier

Background

- 6.1 PRASA did not provide us with any contract(s) been Worldwatch Trading (Worldwatch) and PRASA. PRASA only provided us with submission prepared for Mr Montana's approval to extend various security contracts between PRASA and several security service providers. According to documents relating to extensions of various security contracts (as discussed in paragraph 6.4 to 6.14 below), PRASA requires security services in all its divisions in the day to day functioning of its operations. All security requirements are supported by security risks threats and vulnerability assessments. Therefore, PRASA is dependent on service providers to render security related services at train stations, bus depots etc.
- 6.2 PRASA could not embark in 2012 on a national security tender process as it needed to ensure that it made appropriate budget preparations with due consideration for Private Security Industry Regulatory Authority (PSIRA) guidelines that are aligned to security sectoral wage determinations. The Group Security budget at the time could not accommodate the market related prices for private security as regulated by PSIRA, hence adequate time was required to prepare for a national security tender.
- 6.3 The then Acting Chief Procurement Officer, Mr Mbatha submitted various recommendation reports to the Group Chief Executive Officer wherein he recommended that twenty three security services suppliers' contracts be extended. The reasons provided for the contract extension was that it was necessary to provide for adequate time for an open tender process to be followed. An ostensible contract between PRASA and Worldwatch was one of the contracts dealt with in the extension recommendation and subsequent approval. As indicated, we were despite repeated requests, not provided with the initial contract between PRASA and Worldwatch, nor did PRASA provide us with any extensions of the contract. As alluded to in the detailed discussion in section 4 above, we did not interview Mr Matakata, who in our view, would have been able to provide relevant information in this respect.

First extension

- 6.4 The recommended contract extension was for a period of eight months from December 2012 to July 2013 (**Annexure C1**). The recommended amount to be paid to Worldwatch was R6 017 832.00.
- 6.5 It appears from a submission prepared for Mr Montana's approval that on 04 February 2013, an approval was granted for a period of 12 months at a total contract cost of R9 026 748.00, even though the recommendation was for a period of eight months. This equates to a monthly contract amount of R752 229.00.
- 6.6 It appears from the payment schedule that PRASA paid an amount R2 416 914.00 to Worldwatch for the period 15 May 2013 to 31 March 2014.
- 6.7 We are therefore uncertain whether payments were made for the period January 2013 to April 2013.

Second extension

- 6.8 The recommended contract extension, because PRASA was not ready to issue a RFP was for a period of seven months from 01 April 2014 to 31 October 2014. The recommended amount to be paid to Worldwatch was R3 425 973.60. Dr Phungula made the recommendation on 03 April 2014. Mr Montana approved the extension for 12 months from 01 April 2014 to 31 March 2015 at a total contract cost of R5 873 097.00, though the recommendation was for a period of seven months to provide PRASA sufficient time to issue a RFP for security services, which was in line with requirements as set by PSIRA. (**Annexure C2**). This equates to a monthly contract amount of R489 424.40.
- 6.9 Ms Mosholi signed the final approval on 29 May 2014.
- 6.10 It appears from the payment schedule that PRASA paid an amount R2 080 055.40 to Worldwatch for the period 02 June 2014 to 31 March 2015.

Third Extension

- 6.11 It appears from the documents we were provided with that Worldwatch's contract was again approved for a month to month extension from 01 April 2015 at a contract amount of R489 424.80 per month (**Annexure C3**).
- 6.12 It appears from the payment schedule that PRASA paid an amount of R208 005.54 to Worldwatch per month instead of the approved contract amount of R489 424.80. The total amount paid is R2 288 060.94 for the period 04 June 2015 to 05 May 2016.

Method of procuring services of supplier

- 6.13 We endeavoured to obtain the initial contract between PRASA and Worldwatch and documents relating to the extensions, however, to date we have not been provided with these documents. From our review of the documents we obtained, which are limited to submission to extend security contracts (including Worldwatch), it is however not clear whether proper procedures were followed to initially procure the services of Worldwatch.

Documents dealing with Worldwatch's initial appointment were not provided to us, despite various requests in this regard.

- 6.14 In the circumstances, we conclude that Worldwatch extension may have been irregular. It can be expected that the documents relating to the initial procurement should be readily available, yet these documents are not at PRASA's disposal.
- 6.15 According to the information we were provided with, it appears that the initial contract value in respect of Worldwatch prior to the extension was R6 874 200.00 with a contract period from December 2011 to November 2012. In our view the lack of these documents justify a conclusion that Worldwatch's initial appointment and all subsequent extensions of the contract between PRASA and Worldwatch may have been irregular.

Payments made by PRASA to Worldwatch

- 6.16 We requested documents relating to payments from Ms Ramabi. Ms Ramabi provided us with electronic information available on PRASA's financial system. We summarise the detail of the payments as per PRASA's system in the table below:

Table 10: Payments to Worldwatch

| Payment Number | Payment Date | Amount (ZAR) |
|-----------------------|---------------------|---------------------|
| 2000008679 | 15 May 2013 | 304 152.00 |
| 2000008893 | 14 June 2013 | 304 152.00 |
| 2000008966 | 14 June 2013 | -304 152.00 |
| 2000009040 | 18 June 2013 | 304 152.00 |
| 2000009481 | 7 August 2013 | 34 200.00 |
| 2000009492 | 8 August 2013 | 269 952.00 |
| 2000009639 | 29 August 2013 | 290 016.00 |
| 2000009781 | 13 September 2013 | 290 016.00 |

| Payment Number | Payment Date | Amount (ZAR) |
|-----------------------|---------------------|---------------------|
| 2000010026 | 15 October 2013 | 154 071.00 |
| 2000010773 | 19 December 2013 | 154 071.00 |
| 2000010929 | 23 January 2014 | 154 071.00 |
| 2000011104 | 14 February 2014 | 154 071.00 |
| 2000011459 | 31 March 2014 | 154 071.00 |
| 2000011494 | 31 March 2014 | 154 071.00 |
| 2000011948 | 2 June 2014 | 208 005.54 |
| 2000012003 | 13 June 2014 | 208 005.54 |
| 2000012224 | 15 July 2014 | 208 005.54 |
| 2000012513 | 28 Augustus 2014 | 208 005.54 |
| 2000012574 | 28 Augustus 2014 | -208 005.54 |
| 2000012637 | 1 September 2014 | 208 005.54 |
| 2000012706 | 1 September 2014 | -208 005.54 |
| 2000013232 | 30 September 2014 | 208 005.54 |
| 2000013419 | 31 October 2014 | 208 005.54 |

| Payment Number | Payment Date | Amount (ZAR) |
|-----------------------|---------------------|---------------------|
| 2000013731 | 28 November 2014 | 208 005.54 |
| 2000013933 | 19 December 2014 | 208 005.54 |
| 2000014160 | 18 February 2015 | 208 005.54 |
| 2000014280 | 27 February 2015 | 208 005.54 |
| 2000014474 | 31 March 2015 | 208 005.54 |
| 2000015398 | 4 June 2015 | 208 005.54 |
| 2000015502 | 19 June 2015 | 208 005.54 |
| 2000015653 | 30 June 2015 | 208 005.54 |
| 2000016113 | 14 August 2015 | 208 005.54 |
| 2000016625 | 30 September 2015 | 208 005.54 |
| 2000017204 | 1 December 2015 | 208 005.54 |
| 2000017461 | 18 December 2015 | 208 005.54 |
| 2000017775 | 5 February 2016 | 208 005.54 |
| 2000017990 | 8 March 2016 | 208 005.54 |
| 2000018505 | 5 May 2016 | 416 011.08 |

| Payment Number | Payment Date | Amount (ZAR) |
|----------------|--------------|----------------------|
| Total | | R6 785 030.34 |

- 6.17 We endeavoured to obtain hard copies of the payments listed above as well as invoices relating thereto in an endeavour to ascertain if services may have been rendered by Worldwatch to PRASA's satisfaction. However, to date, we have not been provided with these documents.
- 6.18 It should be noted from the table above that payments reflected are only from May 2013 to May 2016. It is therefore not clear whether the supplier was paid from December 2012 to April 2013. Despite several requests to PRASA SCM division, PRASA did not provide us with any further documents or information.
- 6.19 We endeavoured to arrange an interview with Mr Matakata, but to date we could not secure a meeting with him. We understand from Mr Phoma that he also endeavoured to facilitate a meeting with Mr Matakata, but that Mr Matakata did not respond to any of his requests. In light of this aspect, we find that Mr Matakata cannot or will not cooperate with the investigation.

Conclusion in respect of Worldwatch

- 6.20 We received no documents in respect of Worldwatch's initial appointment, nor did we receive any subsequent contracts between Worldwatch and PRASA. Furthermore, it appears that PRASA did not provide us with all electronic evidence relating to payments to Worldwatch. PRASA did not provide us with any hard copy documents relating to payments to Worldwatch.
- 6.21 In the absence of any appointment and payment related documents, we conclude that the appointment and payments may have been irregular. PRASA has an obligation to retain the documents. It appears that these documents are not at PRASA's disposal and/or that PRASA does not want to provide these documents to us.
- 6.22 The amount of the irregular expenditure is R6 785 030.34. We recommend that this irregular expenditure be reported in terms of section 55 (2) (b) (i) of the PFMA.
- 6.23 As indicated in the detailed section of our findings (refer paragraph 6.1 and 6.2 above), PRASA could not embark in 2012 on a national security tender process as it needed to ensure that it made appropriate budget preparations with due consideration for PSIRA. Irrespective of this aspect, we found no evidence that PRASA ever embarked on a national tender and continues to extend current contracts. We conclude that PRASA's Security Group Services should pay more attention to this aspect to ensure a national appointment process, which is fair, equitable, transparent, cost effective and competitive. We are of the view that PRASA is creating its own emergency in this respect and that this may well lead

to an abuse of a proper procurement process. This is an aspect that PRASA should address in the near future.

- 6.24 In our view, Mr Matakata as the Chief Security Officer is responsible to ensure that all matters related to security are dealt with in accordance with prescripts. It appears that Mr Matamata had no interest in co-operating with this investigation. We are of the view that Mr Matakata may have contravened section 57(1)(c) of the PFMA in that he failed to take effective steps to prevent irregular expenditure in his area of responsibility.
- 6.25 In the circumstances, we recommend that PRASA (in collaboration with NT) consider appropriate disciplinary action against Mr Matakata in this respect.
- 6.26 Mr Montana approved all the extensions and may also have contravened section 57(1)(c) of the PFMA in that he caused irregular expenditure in his area of responsibility by approving all the extensions of the contracts. Mr Montana resigned and we do not comment further in this respect.
- 6.27 In terms of section 34 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 (PRECCA) any person who holds a position of authority and who knows or ought to have known or suspected that another has committed an offence of corruption, or fraud or theft involving R100 000.00 or more, is obliged to report such knowledge or suspicion or cause it to be reported to the South African Police Services (SAPS).
- 6.28 The electronic payment information provided to us by PRASA may not be accurate. In the circumstances, we recommend that NT consider verifying payments to Worldwatch through forensic data analysis of PRASA's payment data. If additional payments are confirmed, it may in our view be irregular and/or fraudulent, because there is no evidence to support otherwise. We can assist in this respect.

7. Findings relating to the appointment of Group Five Construction (Pty) Ltd and the payments to this supplier

Background

- 7.1 PRASA awarded a contract in the amount of R66 357 660 (including VAT) to Group Five Coastal (Pty) Ltd (Group Five) to construct a new Train Drivers Mess Facility in Cape Town.
- 7.2 Group Five forwarded an acceptance letter to PRASA dated 27 June 2014 (**Annexure D1**), although the contract was only signed in October 2014. In this letter, Group Five referred to PRASA's appointment letter dated 19 June 2014. According to PRASA's acceptance letter, the site handover date is stipulated as 4 August 2014.

Method to procure services of Group Five

- 7.3 It appears from our review of the available documents that PRASA issued a RFP in respect of this tender. We obtained copies of an advertisement by PRASA in newspapers and on the Construction Industry Development Board (CIDB) indicating that the tender was advertised with reference HO/CRES/WC/395/11/2013 (**Annexure D2**).
- 7.4 According to documents at our disposal (**Annexure D3**), nine prospective tenderers attended the compulsory clarification meeting, including Group Five.
- 7.5 On 17 January 2014 (on the closing date for submission of tenders), four tenders were received by the following bidders who all attended the clarification meeting:
- Lantra Construction CC
 - Boshard Construction
 - Superway Construction
 - Group Five.
- 7.6 On 31 January 2014, the CEO of PRASA Corporate Real Estate Solutions (CRES), Mr Tara Ngubane appointed the following PRASA officials as BEC members (**Annexure D4**):
- Mr Michael Baloyi – Senior Engineer as Chairperson
 - Mr Kwesiga
 - Mr Sunnyboy Nhlapo – National Risk and Safety Manager as member
 - Me Ntathi Kasane – SCM Manager as member.

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- 7.7 All the BEC members signed a declaration of interest in which they declared that they have no interest or were in any relationship with any of the prospective bidders (**Annexure D5**). The declarations signed by each BEC member indicate that the technical evaluation was done on 28 January 2014.

BEC report

- 7.8 We obtained documents signed by each BEC member that indicate that the technical evaluation was done on 28 January 2014. It appears from our review of available documents, that the BEC compiled an evaluation report, which was reiterated and repeated in the adjudication report under the auspices of Dr Phungula (**Annexure D6**). The document reflects that Dr Phungula compiled the report. None of the BEC members signed this document. It is not clear when this document was compiled, but Dr Phungula signed it on 12 May 2014 and thereby recommended the appointment of Group Five to construct a new Train Drivers Mess Facility, including alterations at Cape Town station. Mr Montana approved the appointment on 16 May 2015.
- 7.9 According to the report, the construction period was estimated at 13 months, to commence on 01 April 2014 and completed by 30 April 2015.
- 7.10 Paragraph 4 of the report deals with the evaluation process and states that the tenders were evaluated based on the criteria set out and shared with all bidders at the clarification meeting. The report *inter alia* states that "*The technical evaluation committee deliberated on the criteria and resolved on amending the weighting for the purpose of fairness and getting the right company for the project. The rating/scoring was kept as per criteria and the weighting only changed between finance position and the method statement to allow the companies to demonstrate approach and methodology of execution of the project. The criteria/requirement set was converted into a scientific matrix to ensure that the bidders were fairly assessed*".
- 7.11 We were not provided with this matrix as referenced in the BEC report.
- 7.12 It is not clear from the BEC report when this decision was made, but it seems that this happened after the closing date for the submission of tenders. On 13 September 2016, we met with Mr Mdluli to ascertain if he can shed some light on this aspect. Mr Mdluli indicated that although he is the SCM manager at PRASA CRES, he has no knowledge of this matter and was not in a position to elaborate as to what this decision entailed. Mr Mdluli referred us to Mr Kwesiga and further confirmed that this matter was referred to PRASA Corporate for final approval as the value exceeded the delegation of PRASA CRES' CEO and the approval of the GCEO was required in the circumstances. Mr Mdluli informed us that Mr Kwesiga is still working at PRASA CRES and other BEC members resigned from PRASA.

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- 7.13 It is not clear from the report exactly how the evaluation criteria were amended and how this may have affected the bids submitted. We found no documents to indicate that this aspect was communicated to bidders who submitted bids. We contacted Mr Kwesiga on 29 September and forwarded the BEC report to him via email. Moreover, it appears from the timeline of events that the BEC made this decision after the submission of the bids, which may adversely affect the tenders of some tenderers.
- 7.14 The report further states, "The submission or lack thereof will positively or negatively affect the bidders because on the balance of the scale and based on experience it would be assumed that the bidders have the capacity or resources to execute the project."
- 7.15 On 05 October 2016, we met with Mr Kwesiga to discuss paragraph 4 of the BEC report in an endeavour to ascertain exactly what happened that led to the wording of paragraph 4 of the BEC report. We understand that Mr Kwesiga is a senior project manager for PRASA for some years and this is the reason for him being part of the BEC. Mr Kwesiga explained that the BEC report is incorrectly worded and indicated that the incorrect wording was used when the report was compiled. Mr Kwesiga explained that the BEC did not amend any weighting criteria. He indicated that the BEC debated the weighting criteria and where the criteria were vague, the BEC decided on how the criteria should be interpreted. Mr Kwesiga explained that the correct word should have been 'amplified'.
- 7.16 Mr Kwesiga explained that the BEC merely debated on how to consider the bidders' financial records to ensure that the recommended bidder is in a financial position to commence and finish the project within the stipulated timeline. The BEC did not only consider the financial position of the bidders, but also their respective records of accomplishment. This is not a deviation from PRASA's SCM Policy.
- 7.17 Mr Kwesiga indicated that none of the bidders was prejudiced by this decision. Similarly, Mr Kwesiga explained that the BEC considered the methodologies offered by the respective bidders on the specific project, considering the nature of the project. He reiterated that the Train Mess for train drivers was erected on existing structures and the BEC duly considered this aspect and in doing so specifically decided that a generic methodology would not be sufficient. Mr Kwesiga indicated that to his recollection this was confirmed in the scope of work that was part of the RFP. The BEC considered aspects on how the bidder would move in confined spaces with machinery and deliver concrete in confined spaces. Mr Kwesiga indicated that the BEC's approach did not prejudice any bidders.
- 7.18 According to the report, only Group Five and Boshard Construction scored the required 70 points on the technical evaluation. Lantra Construction and Superway Construction did not score the required 70 points and these tenders were not considered further. The tenderers scored as follows on the technical evaluation:
- Boshard Construction – 91.5 points
 - Group Five – 84.8 points
 - Superway Construction – 60.3 points
 - Lantra Construction – 39.points.

- 7.19 We obtained the scoresheets by all the BEC members. From these documents it appears that the BEC scored the various tenders individually and not together, because the scoring on the respective sheets differ (**Annexure D7**).
- 7.20 The BEC recommended that the contract be awarded to Group Five and the recommendation was then referred to GCEO, due to the value of the work. Group Five's price was lower than that of Boshard Construction. The CEO of PRASA CRES' delegation is up to 50 million and any contracts above R50 million must be approved by the GCEOP.
- 7.21 The report served before Mr Montana on 16 May 2014 after Dr Phungula recommended Group Five's appointment on 12 May 2014. Mr Montana approved the appointment on 16 May 2014 (**Annexure D8**).
- 7.22 PRASA forwarded an appointment letter to Group Five on 19 June 2014. The contract value is stipulated as R66 357 660.00. Group Five forwarded an acceptance letter to PRASA dated 27 June 2014 (**Annexure D9**).

Contract between Group Five and PRASA

- 7.23 PRASA and Group Five entered into a contract on 06 October 2014 (**Annexure D10**). However, the contract date is stipulated as 25 August 2014. The contract entered into between PRASA and Group Five is the standard 'Principal Building Agreement' used for construction projects in the public sector. In terms of this general agreement, Group Five's tender forms part of the contract and the contract value is the contract value that Group Five offered in its tender document.

Payments by PRASA to Group Five

- 7.24 We obtained copies of all invoices and payment certificates relating to the work done by PRASA from Mr Gwala at PRASA CRES. Mr Gwala provided us with copies of all available payment certificates and invoices for Group Five. From our review of these documents, it appears that PRASA paid the contract amount to Group Five from 25 September 2014 to 08 March 2016. We summarise the detail of these payments in the table below:

Table 11: Payments to Group Five

| Payment Certificate date | Payment Certificate signed | Invoice Number | Payment Number | Payment Date | Amount paid (ZAR) including VAT |
|---------------------------------|-----------------------------------|-----------------------|-----------------------|---------------------|--|
| 25 September 2014 | Yes | 287 | 2000012112 | 21 October 2014 | 2 949 590.15 |
| 23 October 2014 | Yes | 302 | # | 14 November 2014 | 1 254 592.48 |
| 20 November 2014 | Yes | 323 | 2000012748 | 15 December 2014 | 4 554 303.73 |
| 20 January 2015 | Yes | 350 | # | 03 February 2015 | 7 028 615.48 |
| 5 February 2015 | Yes | 360 | 2000013540 | 13 February 2015 | 3 409 505.16 |
| 18 March 2015 | Yes | 394 | 2000014363 | 31 March 2015 | 2 825 205.23 |
| 25 May 2015 | Yes | 427 | 2000015449 | 20 June 2015 | 5 964 112.85 |
| 29 June 2015 | Yes | 445 | 2000015734 | 15 July 2015 | 4 685 796.23 |
| 28 July 2015 | Yes | 463 | 2000016188 | 14 August 2015 | 5 225 985.91 |
| 25 August 2015 | Yes | 480 | 2000017482 | 12 November 2015 | 6 260 585.69 |
| 28 September 2015 | Yes | 497 | 2000017482 | 12 November 2015 | 4 503 048.95 |
| 27 October 2015 | Yes | 509 | 2000017783 | 30 November 2015 | 1 473 261.92 |
| 25 November 2015 | Yes | 527 | # | # | 2 046 117.93 |
| 26 January 2016 | Yes | 548 | 2000019076 | 15 February 2016 | 825 155.22 |
| 25 February 2016 | Yes | 559 | 2000019543 | 15 March 2016 | 7 365 226.14 |
| 8 March 2016 | Yes | 567 | 2000019543 | 15 March 2016 | *5 986 556.92 |
| Total | | | | | R66 357 66.99 |

*This payment appears to be a retention payment, which was made in terms of the contract, although it was made outside the period in which the work was done by Group Five. This is in accordance with the contract

The remittance advice which includes a payment number and/or payment date was not provided to us

- 7.25 We did not visit the site where Group Five rendered the services. On 12 October 2016, we forwarded email correspondence to Mr Kwesiga and requested his assistance to obtain photographs of the project. Mr Kwesiga replied on 13 October 2016 and provided us with a PRASA project close out report (**Annexure D11**) and photos of the project. The close out report deals with the milestones that were achieved.
- 7.26 The photos depict the project site before and after the erection of the Train Drivers' Mess (**Annexure D12**). Mr Kwesiga also arranged for photos from his colleagues in Cape Town that depict the current state of the Train Mess (**Annexure D13**). From the pictures it appears that the project deliverable is neat and in good condition.

Conclusion in respect of Group Five

- 7.27 From our review of available documents, it appears that PRASA appointed Group Five in line with prescribed procedures and that payments made to Group Five were made in line with Group Five's tender and the agreement between PRASA and Group Five.
- 7.28 As per PRASA's delegations, the matter was referred to Mr Montana for final approval after the evaluation process. Mr Montana then approved the appointment.
- 7.29 Mr Gwala provided us with all available payment documents to Group Five. PRASA paid Group Five in accordance with the contract and PRASA officials and independent engineers signed off on each payment certificate. The project was completed successfully and seemingly, PRASA received value for money. We are not in a position to comment on the rand value of money received and reiterate that this aspect is not part of our mandate.
- 7.30 We do not recommend any further action in respect if this contract.

8. Findings relating to the appointment of Bombardier African Alliance and the payments to this supplier

Background

- 8.1 PRASA advertised a Tender for the Design, Construction and Implementation of a New Railway Signalling System in the Durban Area (HO/INF (S)/222/10/2011) on 06 November 2011.

Method to procure services

- 8.2 PRASA appointed Siyaya Consulting Engineers (Siyaya) as Technical Advisors for the Tender. Siyaya prepared the RFP and handed same to PRASA on 08 November 2011. (**Annexure E1**).
- 8.3 Prospective bidders had to purchase the RFP and we attach proof of payment from the prospective bidders as **Annexure E2**.
- 8.4 We set out in the table below the timelines in respect of this Tender.

Table 12: Process followed

| Item | Date |
|--|---------------------|
| Advertise/Issue RFP | 06-08 November 2011 |
| Compulsory Briefing Session (Annexure E3) | 15 November 2011 |
| Compulsory Site Visit (Annexure E4) | 17 November 2011 |
| Close written queries | 06 December 2011 |
| RFP Close date | 30 January 2012 |
| Commencement of Technical Evaluation | 03 February 2012 |
| Appointment of Bid Evaluation Members | 10 February 2012 |
| Kick-Off Meeting Bid Evaluation Committee | 19 February 2012 |
| Last Date of Technical Evaluation Session | 08 March 2012 |

The evaluation

- 8.5 The BEC compiled a comprehensive report signed on 13 March 2012 (**Annexure E5**).
- 8.6 The following bid evaluation process was followed:

Table 13: Bid Evaluation process

| Process level | Process description |
|----------------------------------|--|
| Verify completeness | The bid is checked for completeness and whether all required documentation, certificates; verify completeness warranties and other bid requirements and formalities have been complied with. Incomplete Bids will be disqualified. |
| Verify compliance | The Bids are checked to verify that the essential RFP requirements have been met. Non-compliant bids will be Disqualified. |
| Detailed Evaluation of Technical | Detailed analysis of Bids to determine whether the bidder is capable of delivering the project in terms of business and technical requirements. The minimum threshold for technical evaluation is 70%, any bidder who fails to meet the minimum requirement will be disqualified and not proceed with the evaluation of Price and BBBEE. |
| BBBEE | Evaluate BBBEE Evaluation |
| Price Evaluation | Bidders will be evaluated on price offered. |
| Scoring | Scoring of Bids using the Evaluation Criteria. |
| Recommendation | Report formulation and recommendation of Preferred and Reserved Bidders |
| Best and Final Offer | PRASA may go into the best and final offer process in the instance where no bids meets set requirements of the RFP and/or the bids are to close in terms of points awarded. |
| Approval | Approval and notification of the final Bidder. |

8.7 PRASA received proposals from six bidders (**Annexure E6**). The bids received were from:

- Actom (Pty) Ltd
- Ansaldo STS (Pty) Ltd (Ansaldo)
- Bombardier Africa Alliance Consortium
- General Electric Transportation Consortium (General Electric)
- Siemens Limited
- Thales Maziya Consortium.

8.8 General Electric and Ansaldo were disqualified for non-compliance due to insufficient Construction Industry Development Board (CIDB) levels.

8.9 The technical evaluation comprised of a technical evaluation matrix (50 points) and 5 points were reserved for localisation. We set out the results below:

Table 14: Technical evaluation scores

| Bidder | Weighted Score(out of 50) | Percentage |
|--|---------------------------|------------|
| Actom (Pty) Ltd | 3.93 | 7.86% |
| Bombardier Transportation Africa Alliance Consortium | 36.65 | 73.1% |
| Siemens Ltd | 37.1 | 74.2% |
| Thales Maziya Consortium | 38.69 | 77.38% |

8.10 The three bidders that achieved the 70% threshold were Bombardier, Siemens and Thales. Thus, only three bidders proceeded to the next phase of the evaluation process.

8.11 The table below is the combined score for technical evaluation and localisation:

Table 15: Score for technical and Localisation

| Bidder | Weighted Score | Percentage |
|------------|----------------|------------|
| Bombardier | 39.85 | 79.7% |
| Siemens | 39.59 | 80.8% |
| Thales | 42.26 | 83.98% |

8.12 The following table indicates the BBBEE scores awarded to the bidders based on 10 points, thus the weighted BBBEE scores:

Table 16: BBEEE Weighted scores

| Bidder | Weighted Score |
|------------|----------------|
| Bombardier | 6.19 |
| Siemens | 4.79 |
| Thales | 5.9 |

8.13 On completion of the financial evaluation the following scores were awarded for the financial component:

Table 17: Financial Evaluation

| Bidder | Price(ZAR) Including VAT | Points |
|------------|-----------------------------|--------|
| Bombardier | R1 319 058 678 | 35 |
| Siemens | R1 428 309 652.74 | 32.1 |
| Thales | R1 608 995 338.40 | 27.31 |

8.14 The final combined scores were as follows:

Table 18: Final Scores

| Bidders | Technical | BBBEE | Financial | Total points | Rankings |
|------------|-------------------|-------|-----------|--------------|----------|
| Bombardier | R1 319 058 678 | 6.19 | 35 | 81.04 | 1 |
| Siemens | R1 428 309 652.74 | 4.79 | 32.1 | 77.29 | 2 |
| Thales | R1 608 995 338.40 | 5.9 | 27.31 | 75.20 | 3 |

Recommendation by BEC

8.15 The BEC recommended that:

- Bombardier be appointed as the preferred bidder
- Siemens be appointed as the reserved bidder

- the Negotiation Team enter into negotiations with the preferred bidder and if the negotiations are successful, the GCEO sign an agreement with the preferred bidder
- Should the negotiations not be successful with the preferred bidder the reserved bidder should be appointed as the preferred bidder and the Negotiation Team should enter into negotiation with the preferred bidder (who was the reserved bidder) and if the negotiations are successful, PRASA signs an agreement with the preferred bidder
- That if the decision of the BEC is irregular, incorrect and/or flawed the BAC to make a decision that it consider fair and just.

Contract and Payments

- 8.16 We have received a copy of the contract¹ between PRASA and Bombardier without the annexures setting out the payment schedule. The contract is for a period of five years and was signed by Mr Montana on 22 March 2013. The contract value is R1 288 772 839.74.

8.17 We note from the PRASA payment system that to date, PRASA has made payments in the amount of R427 414 191.40 in respect of the project, at the date of this report. However, the contract is still in place until April 2018. We set out the payments below.

Table 19: Detail of payments

| Per system | | | Invoice Detail | | | | |
|------------|-----------------|--------------|--------------------------|------------------|----------|----------------|---------------------------|
| Assignment | Document Number | Payment Date | Amount in local currency | Date | Inv Ref | Invoice value | Description |
| 20130405 | 2000008356 | 05/04/2013 | 135 165 291.60 | 06-Apr-13 | INV00001 | 135 165 291.60 | Upfront payment milestone |
| 20141015 | 2000013279 | 15/10/2014 | 29 546 880.73 | 01-Jun-14 | INV00003 | 29 546 880.73 | Payment Cert No 2 |
| 20150218 | 2000014149 | 18/02/2015 | 43 329 702.28 | No documentation | | | |
| 20150703 | 2000015720 | 03/07/2015 | 50 555 874.25 | 16-Apr-15 | INV00005 | 50 555 874.25 | Payment Cert No 5 |
| 20150818 | 2000016146 | 18/08/2015 | 43 612 198.16 | 09-Jun-15 | INV00007 | 43 612 198.16 | Payment Cert No 6 |
| 20151130 | 2000017199 | 30/11/2015 | 38 250 049.69 | 18-Sep-15 | INV00008 | 38 250 049.69 | Payment Cert No 7 |
| 20160126 | 2000017710 | 26/01/2016 | 37 226 839.17 | 02-Nov-15 | INV00010 | 37 226 839.17 | Payment Cert No 8 |
| 20160331 | 2000018189 | 31/03/2016 | 49 727 355.52 | 22-Feb-16 | INV00011 | 49 727 355.52 | Payment Cert No 9 |
| 20160719 | 2000018979 | 19/07/2016 | 29 365 662.94 | 13-May-16 | INV00012 | 29 365 662.94 | Payment Cert No10 |
| 20160919 | 2000019523 | 19/09/2016 | 74 655 817.37 | 08-Aug-16 | INV00013 | 74 655 817.37 | Payment Cert No11 |

Findings in respect of the payment review

- 8.18 We obtained an extract of payments in respect of BAA from PRASA. In order to verify the payments listed, we requested the supporting documentation. We received supporting documentation from Mr Johan Edwards (Mr Edwards), who informed us that this was the information that he was able to find. We verified the provided supporting documentation against the listed payments and note the following:
- 8.18.1 No supporting documentation was provided for a payment in the amount of R43 329 702.28, with an ostensible payment date of 18 February 2015
- 8.18.2 We received a full set of payment documentation for the Upfront payment milestone in the amount of R135 165 291.60, invoice number INV00001.
- 8.18.3 For the remaining payments, we received invoices and payment certificate details, no payment documentation (such as remittance advice) was provided. For the purposes of this review, we have compared the amount recorded as per PRASA's system (presumably by PRASA's finance division) to the invoiced amount. We found no discrepancies in this comparison, and have assumed that if the amount is recorded as paid on the system, and agrees to the invoice amount, that the amount was actually paid. Further work would need to be conducted to validate payments (e.g. detailed review of bank statements) if further comfort over payments is required.
- 8.19 In order to assess contractual compliance, we compared the invoices and payments made to Schedule G (Payment Milestones) of the contract. The foreword notes the following: "*An updated payment schedule will be provided together with the submission of the detailed time programme as indicated in clause 9.3.1 of the contract agreement (i.e. 28 days from date of contract signature)*". We have not had sight of the updated payment schedule and therefore cannot conclude on whether the payments to Bombardier were in terms of the contract.
- 8.20 We note from the available documentation that, in most cases, the invoice was accompanied by a signed letter from GIBB Engineering and Architect. The signed letter includes a detailed calculation of the certified invoice value, this in line with best practice.

Conclusion

- 8.21 PRASA issued a RFP and appointed Technical Advisors to assist with the evaluation of tenders received, due to the technical complexity of the tenders and project.
- 8.22 From the available documents and interviews conducted, it appears that PRASA followed an appointment process in line with legislation and PRASA's SCM Policy at the time.
- 8.23 Our review of the supporting documentation in respect of the payments to Bombardier, did not reveal any concerns, except that in respect of one payment supporting documents were not provided. PRASA should provide these documents. We recommend that PRASA should provide the outstanding documents relating to the one payment and in future ensure that such documents are kept in line with applicable legislation, such as section 55 (1)(a) of the PFMA.

9. Findings relating to the appointment of Thales Maziya Consortium and the payments to this supplier

Background

- 9.1 On 13 December 2011, PRASA issued RFP for a five-year project entailing the Design, Construction and Implementation of a new Railway Signalling System for the Cape Town Area, as well as for a Centralised Traffic Control Centre in Bellville, Cape Town (**Annexure F1**).
- 9.2 On 17 January 2012, a compulsory briefing session was held to brief prospective bidders on the project and to respond to any questions that might have been raised by prospective bidders (**Annexure F2**). On 19 January 2012, a compulsory site visit was held in Cape Town to familiarise the prospective bidders with the Cape Town railway system (**Annexure F3**).

Method to procure services of Thales

- 9.3 From our review of available documents and an interviews conducted with Messrs Baltac and Emeran it appears that PRASA issued a RFP in respect of this contract. We did not receive the RFP. We requested this document from PRASA, but have not received same at the date of the report.
- 9.4 PRASA held a compulsory briefing session for prospective bidders on 17 January 2012 for tender "*HO/INF (S) 223/12/2011 – NEW SIGNALLING SYSTEM FOR THE WESTERN CAPE REGION.*" From the register, it appears that, 36 prospective bidders attended the session. All the bidders who ultimately submitted bids to PRASA attended the briefing session (refer Annexure F2).
- 9.5 In addition, PRASA held a compulsory site visit on 19 January 2012. All the bidders who ultimately submitted bids attended the compulsory site visit (refer Annexure F3). All the bidders who ultimately submitted bids to PRASA did collect the tender documents from PRASA (**Annexure F4**).

- 9.6 The BEC compiled a comprehensive report signed on 22 May 2012 (**Annexure F5**). It is evident PRASA appointed Siyaya to assist with the evaluation of tenders. It appears that the BEC report was compiled and signed by Mr Mkahensa Mabunda from Siyaya. The report was approved by Mr Emeran from PRASA, who signed the BEC report in his capacity as chairperson of the BEC.
- 9.7 It is worth noting that section 16.1 of the RFP stipulated that: *"Bidders shall ensure that they comply with all the requirements of the RFP and if Bidders fail to comply with such requirements it shall be at the sole discretion of PRASA either to allow the Bidder to comply or disqualify the Bidder"*.
- 9.8 The RFP stipulated that bidders must achieve a minimum of 70% of the technical component to proceed to the BBBEE and financial evaluation. The threshold was set at 70% to ensure that the bidder who is successful in this tender is able to deliver the signalling solution required.

The evaluation

- 9.9 We summarise the tender process followed as per the BEC report in the table below:

Table 20: Process followed

| Item | Date |
|---|------------------|
| Advertise/Issue RFP | 13 December 2011 |
| Briefing Session | 17 January 2012 |
| Site Visit | 19 January 2012 |
| Close written queries | 31 January 2012 |
| RFP Closes | 13 April 2012 |
| Commencement of Technical Evaluation | 20 April 2012 |
| Appointment of Bid Evaluation Members | 15 May 2012 |
| Kick-Off Meeting Bid Evaluation Committee | 19 May 2012 |
| Last Date of Technical Evaluation Session | 21 May 2012 |

9.10 The following seven bidders in alphabetical order (as per the table below) submitted tenders by the closing date:

Table 21: Detail of tenders submitted

| Bidder Full Name | Abbreviated Name |
|--|--------------------------|
| Actom (Pty) Ltd | ACTOM |
| Ansaldo STS South Africa (Pty) Ltd. | Ansaldo |
| Bombardier Transportation Africa Alliance Consortium | Bombardier |
| General Electric Transportation Consortium | GE |
| Invensys Rail Dimetronic | Invensys Rail Dimetronic |
| Siemens | Siemens |
| Thales Maziya Consortium | Thales |

9.11 The evaluation criteria as set out in the RFP are summarised in the table below:

Table 22: Evaluation criteria as per RFP

| Evaluation criteria | Weighting |
|----------------------------|------------------|
| Technical * | 55% |
| Pricing | 35% |
| BEE | 10% |
| Bank Rating | Compliance |
| Security Screening | Compliance |
| TOTAL | 100% |

9.12 The following bid evaluation process was stipulated in the RFP:

Table 23: Bid Evaluation process

| Process level | Process description |
|----------------------------------|--|
| Verify completeness | The bid is checked for completeness and whether all required documentation, certificates; verify completeness warranties and other bid requirements and formalities have been complied with. Incomplete Bids will be disqualified. |
| Verify compliance | The Bids are checked to verify that the essential RFP requirements have been met. Non-compliant bids will be disqualified. |
| Detailed Evaluation of Technical | Detailed analysis of Bids to determine whether the bidder is capable of delivering the project in terms of business and technical requirements. The minimum threshold for technical evaluation is 70%, any bidder who fails to meet the minimum requirement will be disqualified and not proceed with the evaluation of Price and BBBEE. |
| BBBEE | Evaluate BBBEE Evaluation |
| Price Evaluation | Bidders will be evaluated on price offered. |
| Scoring | Scoring of Bids using the Evaluation Criteria. |
| Recommendation | Report formulation and recommendation of Preferred and Reserved |
| Best and Final Offer | PRASA may go into the best and final offer process in the instance where no bids meets set requirements of the RFP and/or the bids are to close in terms of points awarded. |
| Approval | Approval and notification of the final Bidder. |

9.13 We summarise the detail of the weighted scores of the respective bidders in the table below:

Table 24: Technical evaluation scores

| Bidder | Weighted Score(out of 50) | Percentage |
|--|---------------------------|------------|
| Actom (Pty) Ltd | 22.21 | 44.42% |
| Ansaldo STS South Africa (Pty) Ltd. | 33.21 | 66.42% |
| Bombardier | 35.36 | 70.72% |
| General Electric Transportation Consortium | 20.59 | 41.18% |
| Invensys Rail Dimetronic | 32.21 | 64.42% |
| Siemens | 36.09 | 72.18% |
| Thales | 39.26 | 78.52% |

9.14 Only 3 (three) bidders received the minimum score on the technical evaluation:

- Bombardier – 70.72%
- Siemens - 72.18%
- Thales 78.52 %.

9.15 The evaluation for BBBEE was undertaken and the following are the points that were awarded to the three Bidders. The results are summarised in the table below:

Table 25: Evaluation score

| Bidder | Weighted Score |
|------------|----------------|
| Bombardier | 5.42 |
| Siemens | 4.59 |
| Thales | 5.49 |

- 9.16 Thereafter, the bids were evaluated for the financial component of the RFP. On completion of the financial evaluation the following scores were awarded for the financial component:

Table 26: Financial Evaluation

| Bidder | Price (ZAR Including VAT) | Points |
|------------|---------------------------|--------|
| Bombardier | R1 830 054 237,90 | 35 |
| Siemens | R1 864 771 512.08 | 25.06 |
| Thales | R2 349 924 681,60 | 34.34 |

- 9.17 All the different components of evaluation being Technical, BBBEE and Financial were added together. It should be noted that certain pages of the BEC report have not been provided and we do not have the section of the report detailing the final scores allocated. We interviewed Messrs Baltac, Emeran and Mbatha about the evaluation process. These gentlemen were all members of the BEC. They all indicated that the process was adequately considered and scored by the BEC. They further indicated that before the BEC did the evaluation, Siyaya also performed an in depth and independent evaluation of the tenders. They all indicated that the BEC functioned independently from Siyaya. All the individuals interviewed could not explain the missing pages in the BEC report and referred us to the SCM division. We raised this aspect with SCM via email and received no reply about the missing pages of the BEC report.
- 9.18 The technical evaluation matrix was issued with the RFP as Appendix. The technical evaluation was based on the evaluation matrix. The seven bidders that met the compliance requirements were evaluated. The technical component of the RFP accounts for 55 points out of 100 points. It must be noted that 5 points out of the 55 had been reserved for localisation. The table below indicates the weighted scores that bidders achieved on technical evaluation which is 50 points:

Table 27: Technical evaluation results

| Bidder | Weighted Score(out of 50) | Percentage |
|--|---------------------------|------------|
| Actom (Pty) Ltd | 22.21 | 44.42% |
| Ansaldo STS South Africa (Pty) Ltd. | 33.21 | 66.42% |
| Bombardier | 35.36 | 70.72% |
| General Electric Transportation Consortium | 20.59 | 41.18% |

| Bidder | Weighted Score(out of 50) | Percentage |
|--------------------------|---------------------------|------------|
| Invensys Rail Dimetronic | 32.21 | 64.42% |
| Siemens | 36.09 | 72.18% |
| Thales | 39.26 | 78.52% |

9.19 The table below is the combined score for technical evaluation and Localisation:

Table 28: Score for technical and Localisation

| Bidder | Weighted Score | Percentage |
|------------|----------------|------------|
| Bombardier | 38.86 | 77.72% |
| Siemens | 39.59 | 79.18% |
| Thales | 42.26 | 84.52% |

BBBEE Evaluations

9.20 The Request for Proposals required Bidders to achieve 26% equity for them to achieve 50% of the 10 points allocated in the evaluation criteria for BBBEE. The BBBEE evaluation is based on the BBBEE components scorecard that was developed for this project and issued with the Request for Proposals.

9.21 The BBBEE score card entails the following elements:

- Ownership of Equity (shares) by Black People
- Management of the business by Black People
- Subcontracting to Black People; and
- Socio Economic impact of the project.

9.22 In accordance with the RFP evaluation process, only the bidders who achieved the 70% or more of the technical evaluation would be evaluated for BBBEE and financial components of the bid. Thus, only Bombardier, Siemens and Thales were evaluated for BBBEE. The following table is the BBBEE scorecard with the scores awarded to the three Bidders:

- 9.23 The following table indicates the BBBEE scores awarded to the Bidders based on 10 points, thus the weighted BBBEE scores:

Table 29: BBEEE Weighted scores

| Bidder | Weighted Score |
|------------|----------------|
| Bombardier | 5.42 |
| Siemens | 4.59 |
| Thales | 5.49 |

Pricing Evaluation

- 9.24 The BEC report we obtained lacks several pages that deal with the price evaluation. It does, however, reflect that Thales scored the second highest points for price (34.34 points), being the second best pricing bid.
- 9.25 The table below shows the proposed price escalation index proposed by the bidder (Thales):

Table 30: Thales Price index

| Index Component | Proportion | Index Reference |
|------------------------------|-------------|-----------------|
| 1. Fixed portion | 10% | n/a |
| 2. Labour cost | 33% | Seifsa C 3 |
| 3. Building and construction | 8% | Seifsa Table G |
| 4. Copper price | 8% | Seifsa Table F |
| 5. Steel price | 8% | Seifsa Table M |
| 6. Production price index | 33% | Seifsa Table U |
| Total | 100% | |

- 9.26 According to the BEC report, Thales proposes that the offshore portion of their price, the percentage of which is not stated, should be adjusted using the Portuguese Index Reference for the CPI equivalent and the copper index. This will be a negotiation point should Thales be the preferred bidder. Thales gave an undertaking that the project specific operational and capital requirements will be funded from project generated cash, as well as from the company's general operating cash flows, available banking facilities or funding from shareholders until such time that the project is self-funding.

Detail of bidders that met requirements of technical evaluation

Bombardier Transportation Africa Alliance

9.27 The bidding entity is a consortium of companies made up of:

- Bombardier Transportation South Africa (Pty) Ltd registration number 1995/011405/07
- ERB Technologies (Pty) Ltd registration number 2003/005392/07
- Basil Read (Pty) Ltd registration number 1962/002313/07
- Stimela Infrastructure (Pty) Ltd (trading as Tractionel Enterprise) registration number 1982/010497/07
- Bakara Engineering cc registration number 2010/077599/23
- R&H Railway Consultants (Pty) Ltd registration number 2000/009424/07.

9.28 According to the bid document, all these entities will be actively involved and no additional sub-contractors are mentioned.

Siemens

9.29 The bidding entity is Siemens Limited supported by Siemens Germany. Siemens Limited registration number 1923/007514/06 and is 70% owned by Siemens Germany and 15% owned by Business Venture Investments No 626 (Pty) Ltd ,which is in turn is 100% owned by New Millennium Telecommunications (Pty) Ltd (which is 42,5% owned by Rixaka Holdings (Pty) Ltd and 57% owned by Wheatfields Investment No 127 (Pty) Ltd) and 15% owned by Linacre Investments (Pty) Ltd, which is 100% owned by Sekunjalo Investments (Pty) Ltd (which is 100% owned by Haraas Trust and Haraas Trust has two beneficiaries) (Sarah Surve and Rayhaan Surve).

Thales

9.30 The bidding entity is Thales Maziya Consortium, a consortium of companies made up of Thales defence Systems (Pty) Ltd registration number 1967/007267/07. Thales Portugal S.A registration number 507775597, subsidiaries of Thales Group and Maziya General Services CC 199/014056/23.

9.31 Thales would make use of the following sub – contractors:

- Cioffi and Associates
- Farisinani Construction Projects (Pty) Ltd
- Dimension Data
- Masigita Properties No 22 CC
- Technical Evaluation.

Recommendation by BEC

9.32 The BEC assisted by Siyaya declared that it was satisfied that the process was fair, just and equitable and thus in accordance with section 217 of the Constitution of the Republic of South Africa and the PRASA Procurement Policy.

9.33 The BEC having discharged its duties in accordance with the authority and powers granted to it by the GCEO made the following recommendations to the Bid Adjudication Committee (BAC) that:

- Thales be appointed as the preferred bidder
- Bombardier be appointed as the reserved bidder
- the Negotiation Team enter into negotiations with the preferred bidder and if the negotiations are successful, PRASA signs an agreement with the preferred bidder
- Should the negotiations not be successful with the preferred bidder the reserved bidder should be appointed as the preferred bidder and the Negotiation Team should enter into negotiation with the preferred bidder (who was the reserved bidder) and if the negotiations are successful, PRASA signs an agreement with the preferred bidder
- That if the decision of the BEC is irregular, incorrect and/or flawed the BAC to make a decision what it deems as being fit, fair and just.

Finance Capital Investment and Procurement Committee

9.34 We obtained minutes of the Finance Capital Investment and Procurement Committee (FCIPC) held on 19 July 2012 and signed by Dr Bridgette Gasas as Chairperson (**Annexure F6**). The following individuals attended the meeting:

- Dr Bridgette Gasas (Dr Gasas) – Chairperson
- Mr Montana
- Mr Xolile George (Mr George) – Member
- Mr Ntebo Nkoenyane (Mr Nkoenyane) – Member
- Mr Mawethu Vilana (Mr Vilana) – Member.

9.35 We noticed that various BEC members also attended this committee.

9.36 The Design, Construction and implementation of a new Railway Signalling system in Cape Town was discussed during the meeting. It was highlighted that seven tenders were submitted to PRASA. During this meeting the FCIPC was requested to recommend for Board approval the appointment of Thales as the preferred bidder at a price of R1 608 995 338.40 (including VAT) and Bombardier be appointed as the reserved bidders.

9.37 The FCIPC resolved *“The FCIP Committee having considered and satisfied that the process was in accordance with the Request for Proposal and was fair, just and equitable as required by section 217 of the Constitution of the Republic of South Africa and the PRASA Policy would recommend the following to the Board for approval:*

- a) *Thales Mayiza Consortium being appointed as the preferred bidder for Design, Construction and Implementation of a new Railway Signalling System in the Cape Town Area in the total amount of R1 608 995 338.40 (Incl VAT);*
- b) *Bombardier African Alliance Consortium be appointed as the reserved bidder;*
- c) *The Negotiation Team be appointed by the GCEO to enter into negotiations with the preferred bidder and if the negotiations are successful. GCEO sign an agreement with the preferred bidder;*

d) *Should the negotiations not be successful with the preferred bidder, the Negotiation Team should enter into negotiations with the reserve bidder, and upon successful negotiations, GCEO signs an agreement accordingly."*

Letter to preferred bidder

9.38 PRASA addressed a letter to Thales on 27 July 2012, signed by the former CPO, Mr Mbatha. The letter served to inform Thales that it had been appointed as the preferred bidder and that Bombardier was the reserved bidder (**Annexure F7**). The letter *inter alia* states "*Lastly take note that the procurement process will only be completed once we have appointed the Final Bidder. In this regard, PRASA, will contact you for contract negotiation, including but not limited to price, training and BEE.*"

9.39 Although it is clear that the FCIPC referred the matter to the PRASA Board for final approval, we did not obtain any documents to indicate that this matter did in fact serve before the Board and that the Board approved the recommendation by the FCIPC.

Letter of appointment

9.40 On 25 March 2013, PRASA issued a letter to Thales indicating that the tender had been awarded to Thales, following successful negotiations between PRASA and Thales. Mr Montana signed the letter on behalf of PRASA (**Annexure F8**). Thales addressed a letter to PRASA dated 10 May 2013 (**Annexure F9**) that served to confirm that Thales received the contract agreement from PRASA and accepted the terms thereof. The letter refers to various provisos, which are not relevant for this review. This letter was ostensibly signed on behalf of Thales' CEO, Mr Patrick Oszczeda.

Contact entered into between Thales sand PRASA

9.41 According to Mr Baltac, an agreement was entered into, following lengthy negotiations between PRASA and Thales. PRASA provided us with the 'negotiation handbook' between PRASA and Thales. However, this document is not relevant for purposes of our mandate.

9.42 We obtained a copy of the agreement from PRASA SCM division (**Annexure F10**). An unknown individual signed the contract on behalf of PRASA on 25 March 2013 and an unknown official signed the contract on behalf of Thales on 10 March 2013.

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- 9.43 Thales forwarded a letter, which appears to be an acceptance letter to Mr Mbatha on 10 May 2013. This document deals with various aspects of the contract. The letter *inter alia* states as follows in paragraph 5: "*the documents forming the contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:*
- (a) *the contract agreement (this document including the appendix to tender)*
 - (b) *Annexures "A" to "O" of the Contract Agreement*
 - (c) *the Letter of Acceptance*
 - (d) *the RFP*
 - (e) *the Negotiation Handbook, and*
 - (f) *Contractors Bid and any other documents forming part of the Contract. "*
- 9.44 This wording in the letter is included in the contract in clause 3.5.1 of the contract.
- 9.45 Although the contract period was 5 years as per the RFP, the actual contract date was manually changed and initialled by an unknown individual from 31 March 2012 to 31 June 2018. Mr Baltac indicated to us that there were unexpected delays and this was the reason for the contract period being extended. According to Mr Baltac, these delays were mainly because of difficulty that Thales experienced in obtaining the correct software to continue with the signalling project. There was also ongoing negotiations about method of payment in ZAR or in Euros etc. This detail is not part of our mandate and we do not elaborate further.
- 9.46 The nature of the work is reflected as "*Design, Construction and Implementation of a New Railway Signalling System and Installation of the New Cape Town Centralised Traffic Control in Bellville.*" The contract value is reflected as R1 864 771 512.08 (including VAT).
- 9.47 The payments process is captured in the contract and it entails the inspection of work by a technical advisor appointed by PRASA as well as the inspection of work by qualified officials from PRASA. It further entails the issuing of progress certificates and proper sign off by various stakeholders that the work is satisfactorily done, before the finance division will process the payment to Thales.

Payments made by PRASA to Thales

- 9.48 In addition, we endeavoured to obtain the documents relating to payments PRASA made to Thales. Based on an interview with Mr Baltac, we understand that PRASA has paid Thales approximately R400 million of the contract value to date.
- 9.49 According to Mr Baltac, PRASA follows a very stringent process in payments to Thales. The payment process *inter alia* include that Mr Baltac and various other individuals must sign the invoices as confirmation that the work has been done satisfactorily, before Finance would effect payment. Mr Baltac also indicated that the GCEO approves each payment after all relevant individuals have signed the invoice(s).

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- 9.50 On 20 June 2016, Mr Baltac provided us with a SAP printout relating to all payments made to Thales in terms of the contract (also included in electronic information provided to us on 25 October 2016). According to the electronic information, PRASA made a total of 11 payments, amounting to R379 508 301.25 to Thales for the period August 2013 to September 2016. We received limited supporting documents from Ms Rose Manyosa (Ms Manyosa), a financial manager at PRASA Corporate in Hatfield on 22 July 2016. The documents reflect valid supporting documents for two payments totalling R197 126 931.46 (including VAT).
- 9.51 Despite various requests from Mr Phoma and us, we did not receive any additional information relating to the payments made to Thales.
- 9.52 On 20 October 2016, we forwarded email correspondence to Mr Baltac and requested him to provide outstanding supporting document relating to Thales. Mr Baltac replied on the same date and instructed one Mr Johan Edwards (Mr Edwards) to provide us with the documents required.
- 9.53 On 25 October 2016, Mr Edwards provided us with additional supporting documentation in respect of the remaining nine payments. We documented in a working paper (**Annexure F11**), the detail of our testing of the supporting documents in relation to all payments. The payments were mainly related to construction work and there were supporting payment certificates for the invoices, signed by a number of parties, including Mr Edwards.

Conclusion in respect of Bombardier and Thales

- 9.54 PRASA issued a RFP and appointed Technical Advisors to assist with the evaluation of tenders received, due to the technical complexity of the tenders and project.
- 9.55 From the available documents and interviews conducted, it appears that PRASA followed an appointment process in line with legislation and PRASA's SCM Policy at the time.
- 9.56 With regard to payments made to Thales, Mr Baltac informed us that all payments were made following a stringent process, which entails appropriate segregation of duties and appropriate supporting documentation. Our review of the supporting documentation in respect of the payments to Thales, did not reveal any concerns.
- 9.57 We do not recommend any further action in respect of this contract. Similar to Bombardier, we recommend that PRASA ensure that proper records in respect of this contract is kept in line with section 55(1)(a) of the PFMA.

General concern appoint the appointments of suppliers to perform work relating to Signalling Systems

- 9.58 From our interviews with Messrs Baltac, Emeran and Mbatha, we ascertained that they were members of the BEC in respect of three Signalling contracts awarded to service providers, which are:
- Siemens – Gauteng Region. We understand that this was a phased process and all phases were awarded to Siemens
 - Bombardier – Durban Region
 - Thales – Cape Town Region.
- 9.59 We understand that the first contracts were awarded to Siemens. We did not review the tender(s) awarded to Siemens and can therefore not comment on this process, although we understand from all our interviews that Bombardier and Thales also tendered for the Gauteng Regions.
- 9.60 It is evident that the evaluation and negotiation processes in respect of the contracts to Bombardier and Thales overlapped. Although the different contracts were for different geographical areas, it all required the same work and skill level.
- 9.61 In the circumstances it is peculiar that Siemens was the preferred bidder for one region and Bombardier and Thales the preferred bidders for other regions. It is questionable that in one tender a specific supplier is regarded as the preferred bidder, but based on the same methodology another tenderer is the preferred bidder for a different geographical area.
- 9.62 Although Messrs Baltac, Emeran and Mbatha all indicated during the respective interviews that the fact that Siemens was awarded the Gauteng contract, played no role in the decisions to recommend that Durban be awarded to Bombardier and Cape Town to Thales, we find the timeline of the events strange. It might have been a scenario of selective decision making to ensure that different contracts be awarded to different service providers. It should, however, be noted that we found no concrete evidence to corroborate this concern.

10. Findings relating to the appointment of PMSA (Pty) Ltd and the payments to this supplier

Background

- 10.1 According to documents reviewed relating to this contract (discussed in more detail in paragraphs 10.6 to 10.8 below), during 2012, PRASA's Strategic Asset Development identified the need to capacitate the divisions with skilled resources on capital projects planning and management on PRASA capital projects in general.. This was in response to the increasing capital investments and the need to plan the projects in view of the Medium Term Expenditure Framework to ensure readiness to spend per funding cycle.

Method of procuring services of supplier

- 10.2 On 27 July 2012, PRASA issued a RFP for the appointment of a Consultant to provide Programme Management Services as per the attached copy of the Executive Summary (**Annexure G1**). According to the Executive Summary provided, PRASA's SCM spearheaded the process of sourcing Project Management companies to submit their company profiles with Curricula Vitae (CVs) of experienced Programme Managers that PRASA can evaluate and recommend through the Enterprise Programme Management Office (EPMO) office based on the following requirements:
- Portfolio Analysis
 - Provide a strategic business analysis role
 - Oversight of entire Business Unit/Departments portfolio of projects
 - Execution of CAPEX projects within the Business Unit/Department
 - Assist the Project Managers in execution of project activities
 - Overall Business Unit/Department administration of projects
 - Assist Project Managers with budgets and compilation of Business Cases in preparation of the next Capital Budgeting Cycle
 - Monitor the updates of the project/programme information on Enterprise Project Information Centre
 - Impart knowledge and skills to project managers.

- 10.3 Mr Vince Gama, who was responsible for Programme Managers and their job descriptions at PRASA was tasked by Mr Piet Sebola, who was then the Group Executive Asset Development to assist the SCM in procuring the services of required Programme Management companies. PRASA provided us with an Executive Summary report of the process, compiled by Mr Thami Sithole, Senior Manager: Monitoring and Reporting on 12 April 2016 (**Annexure G2**). PRASA initially required the companies to provide them with six Project Managers. Four companies submitted bids and three were recommended. The three companies that were recommended were PMSA (Pty) Ltd (PMSA), Focus Project Managers and Nkambule & Associates.
- 10.4 We endeavoured to obtain an evaluation report, but to date of the report, we did not receive an evaluation report from PRASA. After the recommendations, two programme managers from Focus Project Managers pulled out, citing other commitments according to the Executive Summary. Focus Project Managers withdrew from the process after PRASA had already awarded a contract to them. Although we requested original tender documents, we were only supplied with copies of two contract extensions and memorandums relating to the appointment of PMSA.
- 10.5 From the executive summary report, it would appear that the process followed in the tender process from a copy of the first contract entered into between PRASA and Nkambule & Associates and PMSA, was as set out in the table below (as per the executive summary).

Table 31: Process followed

| Item | Date |
|---|-------------------|
| Advertise/Issue RFP | 27 July 2012 |
| Dates contractors' letters of appointment were issued | 29 September 2012 |
| Date appointments accepted | 09 November 2012 |
| Signing of Contract | 26 November 2012 |

10.6 Although we were not provided with all tender documentation requested, the following copies of documents were provided:

- Briefing Attendance Registers
- Email exchanges among Messrs Vince Gama, Mbatha, Piet Sebola and Ms Tholo Dikobe discussing different stages of the procurement process including the project managers' CVs
- PMSA's insurance indemnity certificate from MARSH
- PMSA's Tax Clearance Certificate
- PMSA's BEE Verification Certificate
- The CV of Mr Hans Dlamini from PMSA.

The evaluation

10.7 No formal evaluation documents were provided to us. The evaluation team's appointment process, score sheets, minutes of evaluation meetings and the BEC's recommendations were not supplied to us. Some of the processes followed are contained in the initial contract entered into between PRASA and Nkambule & Associates in terms of timelines. We used this source of information for purpose of this report.

Contracts entered into between PRASA, Nkambule & Associates and PMSA

10.8 Three entities, namely: PMSA, Focus Project Managers and Nkambule & Associates were appointed. Focus Project Managers withdrew its tender. On 29 September 2012, letters of appointments were issued by PRASA to PMSA and Nkambule & Associates. The two entities accepted the offers on 09 November 2012. (**Annexure G3**). From the Executive Summary report, it appears that a fourth entity submitted a bid to PRASA as well, but the name of this entity is not reflected in the documents. In our view, this is an example of a poor audit trail that could expose PRASA to reputational risk.

10.9 According to the contracts entered into (refer Annexure G3), the combined total contract amount was R6 600 000 (R4 950 000 for three Project Managers from PMSA and R1 650 000 for one Project Manager from Nkambule & Associates) in 2012. The contracts were subsequently extended twice and are still in place at a total cost of R20 077 200.00 which covers the period from 16 October 2016 until 31 October 2016 (**Annexure G4**). We discuss the extensions in more detail below.

10.10 According to the contract, PMSA was to perform the following duties:

- The service provider shall at all times perform its obligations in accordance with or in compliance with PRASA's performance requirements as defined in the scope of works.

10.11 The service provider's obligations are supposed to be contained in more detail in Annexure A of the initial contract that was concluded on 23 November 2012. However, a copy of the Annexure to the agreement was not supplied to us.

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First extension of the initial contract entered into between PRASA and Nkambule & Associates and PMSA (Approved on 17 December 2013)

- 10.12 On 17 December 2013, Ms Mosholi approved a motivation for the renewal (**Annexure G5**). According to the motivation for additional funding from the EPMO, a 100% contract extension was needed for the initial contracts entered into between PRASA, PMSA and Nkambule & Associates. The fees were R4 950 000 for PMSA and R1 650 000 for Nkambule & Associates (including of VAT). The contract period for each contract was from 01 November 2013 to 31 October 2014. Dr Phungula recommended the contract extensions on 17 December 2013 and Mr Montana approved both extensions on 12 December 2013.

Second extension of the initial contract entered into between PRASA, Nkambule & Associates and PMSA

- 10.13 On 23 January 2015, Dr Phungula recommended contract extensions for both Nkambule & Associates and PMSA at an increased rate of 5.6% (only for the period 16 October 2015 to 16 October 2016) of the initial contract (**Annexure G6**). These contract extensions were for two financial years. The contracts were for the period 16 October 2014 to 15 October 2015, for a total contract amount of R4 950 000 and 16 October 2015 to 15 October 2016 for a total contract amount of R5 227 200 in favour of PMSA. The contract extensions were approved by Ms Martha Ngoye, the then Acting GCEO on 23 January 2015 (**Annexure G7**).
- 10.14 These contract extensions were for two financial years. The contracts were for a period 16 October 2014 to 15 October 2015 and 16 October 2015 to 15 October 2016 (two-year extension). For both financial years the contracts were to cost PRASA R4 950 000 and R5 227 200 in favour of PMSA and R1 650 000 and R1 742 400 in favour of Nkambule & Associates.
- 10.15 According to Addendum 2 to the initial contract (as provided), PMSA was to perform the following services:
- The service provider shall execute and complete the services effective from 16 October 2014 in accordance with the terms and conditions contained in contract/agreement no HO/EPMO/254/02/2012 signed by the parties on 23 November 2012.

Payments made by PRASA to PMSA

- 10.16 The cumulative values of contracts between PRASA and PMSA is R20 077 200 and the contracts were effective from October 2012 to October 2016. The contract values between PRASA and PMSA were valued as follows:
- R4 950 000 between 16 October 2012 and 15 October 2013
 - R4 950 000 between 16 October 2013 and 15 October 2014
 - R4 950 000 between 16 October 2014 and 15 October 2015
 - R5 227 200 between 16 October 2015 and 15 October 2016.

- 10.17 This comes to a total of R20 077 200 for the period 16 October 2012 to 15 October 2016. According to PRASA's payment records, (as provided to us by Mr Ramabi in May 2016), PRASA paid PMSA a total amount of R16 592 398.00. This amount appears to be in line with the contracts entered into, considering the last contract only terminates in October 2016.
- 10.18 We have requested original proof of payments from PRASA and to date have only received the payment information as per PRASA's system. The payments could thus not be independently verified. We requested these documents on numerous occasions from PRASA's SCM division and did not receive it.

Table 32: Payments to PMSA

| Date of payment | Payment amount (ZAR) |
|-------------------|----------------------|
| 31 January 2013 | 550 000.00 |
| 28 March 2013 | 550 000.00 |
| 16 July 2013 | 825 000.00 |
| 17 September 2013 | 825 000.00 |
| 15 October 2013 | 825 000.00 |
| 31 October 2013 | 825 000.00 |
| 15 April 2014 | 1 375 000.00 |
| 30 May 2014 | 825 000.00 |
| 15 July 2014 | 825 000.00 |
| 21 July 2014 | 825 000.00 |
| 15 August 2014 | 412 500.00 |
| 30 September 2014 | 412 500.00 |
| 31 October 2014 | 412 500.00 |
| 19 December 2014 | 412 500.00 |
| 05 May 2015 | 2 062 500.00 |
| 30 June 2015 | 825 000.00.00 |
| 15 July 2015 | 412 500.00 |
| 31 August 2015 | 412 500.00 |

| Date of payment | Payment amount (ZAR) |
|-----------------|----------------------|
| 19 May 2016 | 2 979 898.80 |
| Total | 16 592 398.80 |

Conclusions on PMSA’s appointment and payments.

- 10.19 Based on the discussion in this report, it seems that PRASA did follow some form of tender process to invite and evaluate possible service providers. However, it is disconcerting that PRASA failed to provide us with copies of the documents used during the procurement process. In the absence of these documents, the appointment of PMSA and Nkambule & Associates may be irregular.
- 10.20 PRASA’s SCM Policy dated February 2009 *inter alia* provides under paragraph 9.9.16 that CFSC should ‘*Maintain records to ensure existence of audit trail*’. This is the situation in respect of all evaluation committees and adjudication committees. No such records were maintained in respect of PMSA and records supplied were incomplete. According to paragraphs 9.2.7 and 9.6.6 of the new PRASA SCM Policy of 2014, both the Supply Chain Management Department and the BEC have a duty to ‘*Maintain records to ensure existence of a proper audit trail*’
- 10.21 Furthermore, even though PRASA and the two entities entered into a contract with options to extend them, PRASA should have opted for an open tender at least after the first contract had lapsed to afford other prospective services providers an opportunity to tender for such services after a competitive process. According to the first contract, under clause 3.4, “*On agreement by both parties, PRASA may request additional work/services or approve variations on the original scope of work, after receiving and approving required proposals for such work/services. A variation addendum to this agreement will be signed by both parties and become part of this agreement and conditions.*” PRASA failed to supply us with Annexure A to the main contract. This Annexure ostensibly contains the scope of work and detail relating to PMSA’s responsibilities in terms of the contract. There is no evidence that PRASA received proposals for such work before continuing with the addendum. In the absence of proper documentation, the contracts and extensions of contracts between PRASA and PMSA may be irregular.
- 10.22 In the absence of supporting documents relating to payments, we are of the view that all expenses incurred by PRASA for payments to PMSA may be irregular expenditure (also expenses to Nkambule & Associates). The total of irregular expenditure in respect of PMSA is R16 592 398.80.
- 10.23 In our view, the PRASA Board should take appropriate action to ensure proper controls are put in place to avoid a similar occurrence.
- 10.24 PRASA’s Accounting Authority at the time should be held accountable for possibly having contravened section 50(1) (a) of the PFMA in that it failed to ensure reasonable protection

of procurement records and the Accounting Authority should report the irregular expenditure in terms of section 55 (2) (b)(i) of the PFMA

11. Findings relating to the appointment of Marble Arch Cleaning Services and the payments to this supplier

Background

- 11.1 According to documents we received, PRASA CRES identified various stations in Gauteng North, Gauteng West and Gauteng East that needed to be cleaned. The services entailed general cleaning services to be performed on a daily and weekly basis, such as cleaning of stations and depots. It appears the need also included some horticultural services to a limited extent, such as cutting of grass and trenching of trees etc.

Method of procuring services of Marble Arch

- 11.2 PRASA accordingly issued a RFP for the cleaning of these stations in Gauteng West, Gauteng North and Gauteng East on 03 May 2012 (**Annexure H1**) with reference *HO/CRES/249/04/2012*. In terms of the RFP, PRASA CRES scheduled compulsory briefing sessions in Pretoria on 10 May 2012 and Johannesburg on 09 May 2012 respectively (**Annexure H2**). The closing date for the submission of tenders was 28 May 2012.
- 11.3 We did not manage to obtain any information from PRASA CRES relating to the briefing sessions scheduled and the number of bidders that submitted bids.
- 11.4 We obtained a tender document that appears to be a tender submitted by Marble Arch (**Annexure H3**) for the cleaning of stations in Gauteng West (*HO/CRES/249/04/2012*), which is dated 25 May 2012. We also found a tender that Marble Arch submitted in respect of Gauteng East with reference *HO/CRES/250/04/2012* (**Annexure H4**). It is not clear if Marble Arch submitted tenders in respect of all the stations identified by PRASA CRES, due to a lack of documents.

- 11.5 PRASA CRES issued a notice to proceed to Marble Arch dated 01 November 2012, which refers to a tender dated 27 September 2012 that was approved for an amount of R802 000.08 per month for a period of 12 months (**Annexure H5**). It should be noted that the reference on this document is HO/CRES/248/04/2012 and refers to the cleaning of stations in Gauteng West. It should be noted that the reference on the tender by Marble Arch for Gauteng West reads HO/CRES/249/04/2012. This does not correspond with the reference on the acceptance letter.
- 11.6 In addition, we also obtained a notice to proceed to Marble Arch dated 01 November 2012. The subject of this letter reads "*CLEANING OF STATIONS IN GAUTENG NORTH: Mabopane*". In terms of this letter Marble Arch would perform the cleaning services for 12 months at a price of R113 867.91 (including VAT) per month. The PRASA reference on this letter is HO/CRES/248/04/2012 (**Annexure H6**). As indicated above, the tender that Marble Arch submitted with this reference was for Gauteng East, whilst this notice refers to only Mabopane in Gauteng North. It is in our view evident that PRASA's limited record keeping on this matter was poor and inconsistent.
- 11.7 We found a memorandum from the Executive Manager Facilities: PRASA CRES to the CPO dated 01 November 2012 with subject "*PERMISION TO ACCOMMODATE ADDITIONAL WORK*". The Executive Manager did not sign this document, but it appears that Mr Mbatha signed as the then CPO on 23 August 2013 (**Annexure H7**).
- 11.8 The purpose of this document is stated as follows: "*The purpose of the submission is to seek the Group CPO's permission to support the approval of awarding current cleaning contracts for stations that are not covered after the award owing to reasons listed below. The GCPO's attention is also alerted to the fact that this is a temporary measure to ensure corporate governance compliance and achieve operational efficiency*".
- 11.9 According to the document, various contracts were awarded to cleaning companies on 28 October 2012. During this process, it was discovered that a number of stations were not accommodated in the listing, due to stations being mistakenly omitted, specifically stations in Gauteng East.
- 11.10 In this document it was recommended that 16 additional stations be allocated to Marble Arch. The document inter alia states: "It is our strong contention that in order to address the current cleaning challenges in the affected stations. PRASA's interest will be best served by formalizing the stop gap arrangement that currently obtains for a period of additional 8 months. This will allow facilities management a sufficient space to beef up strengthen the specifications on Coach and Station Cleaning Contract."
- 11.11 It further states "Secondly, the reason for this rationale is to allow sufficient time for a new coach and station cleaning contract to be put out on tender under new specifications and also ensure that stations...(sic). Thirdly this assignment will be done on the same terms and conditions as it obtains from our current cleaning suppliers so that it is in line with our budget for 2014/2014 financial year and does not attract a 10% wage increase as promulgated recently".

11.12 It appears from documents that contracts with Marble Arch relating to Gauteng North and South were extended various times until end of April 2016. Due to limited documents provided by PRASA it is not clear what the financial value of the extended contracts entailed or how many times contracts were extended.

11.13 We again met with Mr Mdluli on 14 September 2016, and enquired from him if he has any other documents, besides the documents PRASA initially provided to us. Mr Mdluli reiterated that he has no other documents relating to contracts and /or payments and conceded that the documents that should be at PRASA's disposal, such as evaluation reports, adjudication reports, are not available at the SCM division at PRASA CRES. In addition, properly signed contracts and supporting documents for payments are not at PRASA CRES' disposal. Mr Mdluli indicated although SCM and Finance should have these documents, that he does not have any other documents which provide a proper audit trail relating to Marble Arch.

11.14 It is worth noting that we found no tender that Marble Arch submitted for Gauteng North.

Contract between PRASA CRES and Marble Arch

11.15 We found an agreement titled "*PERFORMAMNCE (sic) BASED CLEANING CONTRACT (PRASA CRES NATIONALY)*", which appears to have been signed by Marble Arch on 25 February 2013, but it was not signed on behalf of PRASA CRES (**Annexure H8**).

11.16 Clause 1.1 of this document refers to the Contract Price and states "*The price shall mean the fixed amount contained in the notice to proceed letter issued by PRASA CRES to the contractor*". Clause 5 of this document is titled "*Consideration*". Clause 5.1 states "*The monthly amount payable by PRASA CRES to the contractor for works performed in terms of this contract shall be R126 881.09 including VAT, Per month, in accordance with the tender submitted by the contractor and accepted by PRASA CRES and specified in the letter of acceptance*".

11.17 The cumulative value of this contract over a 12 month period would be R1 522 573.08.

11.18 The contract period is stipulated as 12 months. It should be noted that the amount payable by PRASA in terms of this document differs from the values as per PRASA's notices to proceed, being R802 000.08 per month and R113 667.91 per month respectively. It is thus clear that the amounts as per the acceptance letter and the unsigned contract differ. Mr Mdluli could not provide any explanation in this regard.

11.19 We found no other agreements or document relating to extensions of the contract with Marble Arch. We requested these documents from PRASA, but have to date of this report not received any additional documents

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- 11.20 Clause 4 of the document deals with the contracting terms. Clause 4.1 states "Notwithstanding the date of signature of this agreement, this contract shall be deemed to have commenced on 01 November 2012 and shall continue for a period of 12 calendar months. Should the contractor's performance be deemed to be a high quality in terms of improvements to the service deliverance, PRASA CRES may, at its sole discretion, elect to extend on the same terms and conditions for a further 24 calendar months". In terms of clause 4.3 of the document, should PRASA CRES elect to extend the contract, an allowance in favour of the contractor for an increase in the contract price in line with the inflation rate would be considered. This clause inter alia states "However, the percentage increase will not be more than 10% of the contract price".
- 11.21 The documents obtained by PRASA are incomplete and provide limited information. It is not clear how many contracts PRASA awarded to Marble Arch. PRASA did not provide any other documents relating to cleaning services by Marble Arch at stations in other regions, despite various requests. We requested more detailed documents from PRASA, but to date of the report, we have not received any additional documentation.

Payments made by PRASA to Marble Arch

- 11.22 We interviewed Mr Gwala, who referred us to Mr Bhengu. We obtained an electronic printout from Mr Bhengu reflecting payments that PRASA effected to Marble Arch (**Annexure H9**).
- 11.23 According to the electronic information received from Mr Bhengu, PRASA effected 98 payments to Marble Arch from 14 December 2012 to 09 May 2016. The cumulative value of these payments is R58 997 221.93. It is evident that this amount exceeds the contract value as referred to above significantly.
- 11.24 The total number of payments to Marble Arch, without supporting documents is alarming. We received supporting documents of 53 payments, which is a small portion of payments made. We discuss this in more detail below.
- 11.25 In addition to the electronic information relating to payments received from Mr Bhengu, we also received 53 hard copies of Marble Arch invoices issued to PRASA, which PRASA paid. The details as per these invoices are reflected on the electronic payment information we received. The cumulative amount of these 53 invoices is R4 129 057.31. From this, it is apparent that we did not receive the bulk of the hard copy information that support payments made by PRASA to Marble Arch. Thus, PRASA could not provide us with supporting document in respect of payments to Marble Arch valued at more than R54 868 144.00. The 53 invoices relate to cleaning services at Mabopane station and it appears that unknown PRASA officials signed the invoices as confirmation that Marble Arch did render the services as per the invoices. On the premise that the invoices were correctly endorsed, it appears from the review of the invoices that Marble Arch may have rendered cleaning services valued at R4 129 057.31. As indicated, these invoices were ostensibly endorsed by unknown PRASA officials to indicate the services were rendered.

- 11.26 On 26 September 2016 we again forwarded email correspondence to Mr Bhengu and required him to confirm if the electronic version of payments reflect all payments nationally to Marble Arch and if there are any other documents relating to payments, because it appears that the 53 invoices he handed to us only relate to Mabopane station in Gauteng North.
- 11.27 On 04 October 2016, Mr Bhengu indicated that the 53 invoices he provided us relate only to the Northern Gauteng regions. He indicated that the spreadsheet with these payments according to PRASA's system relates to the Southern and Northern Gauteng regions, but that he only had access to invoices in respect of the Northern Gauteng region.
- 11.28 We reiterate that we found no documents of a tender submitted by Marble Arch for stations in Gauteng North. In addition, we found no contract that deals with Gauteng North stations.
- 11.29 We requested all available documents from PRASA, but to date have not received all relevant documents. Neither Messrs Mdluli or Bhengu is in a position to provide us with additional information and also made it clear that they had no further knowledge of this matter.

Conclusion relating to the appointment and payments to Marble Arch

- 11.30 PRASA could not provide any documents relating to the method used to appoint Marble Arch. It appears that PRASA issued an RFP and arranged for compulsory briefing sessions. Other than this, PRASA could not provide us with any further documents or information relating to the procurement process followed to appoint Marble Arch or to award cleaning contracts to other service providers. PRASA could also not provide us with supporting documents in respect of payments totalling R54 868 144.00.
- 11.31 In the absence of these documents, we conclude that Marble Arch's appointment may have been irregular. Furthermore, any extensions of the contract with Marble Arch may also be irregular.
- 11.32 Flowing from the irregular appointment, we further conclude that all payments made to Marble Arch (totalling R58 997 221.93) for the Northern and Southern regions of Gauteng may be irregular expenditure.
- 11.33 In our view, the Accounting Authority at the time should be held accountable for financial misconduct in that it may have contravened section 50 (1) (a) of the PFMA in failing to exercise reasonable protection of procurement and financial documents. In terms of section 83(2) of the PFMA, all members of the Accounting Authority (PRASA's Board) should be held liable.
- 11.34 In terms of section 34 of PRECCA, any person who holds a position of authority and who knows or ought to have known or suspected that another has committed an offence of corruption, or fraud or theft involving R100 000.00 or more, is obliged to report such knowledge or suspicion or cause it to be reported to the South African Police Services (SAPS).

11.35 We accordingly recommend that PRASA (in collaboration with National Treasury) consider disciplinary action against PRASA Board members at the time for contravening section 50 (1) (a) of the PFMA.

12. Findings relating to the appointment of Internet Solutions, a division of Dimension Data (Pty) Ltd and the payments to this supplier

Background

12.1 According to documents received from PRASA in respect of this contract, PRASA's Corporate Office is located in Hatfield, Pretoria. All enterprise applications such as SAP, EPR, Ticketing Systems, etc. are dealt with at the Corporate Office. The regional offices are connected to the Corporate Office through the Internet Solutions' MPLS access to these applications and internet through Internet Solutions hosted by proxy servers. Internet emails are routed through the Head Office. The scope of the contract awarded to Internet Solutions (Pty) Ltd (Internet Solutions) *inter alia* included the following needs as identified by PRASA:

- Internet access for the PRASA enterprise
- Managed APN solution
- Hosted environment (space) with up to 42U rack space (for web servers, proxy, public facing services etc.)
- Complete network services for offices with less than 12 users/computers. That is provisioning of cabling, cabinet and a Cisco 2960 switch (payable once-off by PRASA)
- Provide onsite network support for offices with less than 12 people.

Method of procuring services of Internet Solutions

12.2 It appears from our review of the available documents that PRASA issued a RFP in respect of this tender. We obtained a copy of the submission for Adjudication Report (**Annexure I1**) detailing the process undertaken (including the evaluation process). Mr Thaodi Mapodile ostensibly compiled this document on 13 March 2013. Mr Joshua Kanjere recommended Internet Solutions' appointment on 14 March 2013 in a document addressed to the CTPC for approval.

12.3 According to this document, the tender process followed is as follows:

Table 33: Process followed

| Item | Date |
|---|---|
| Advertise/Issue RFP- Tender No: HO/ICT/133/12/2012 | 09 and 10 December 2012 |
| Contract validity Period | Three years |
| Method of advertising | Open Tender |
| Advertising Media | City Press, Pretoria News, The Star and The Citizen |
| Briefing Session | 13 December 2012 |
| Number of tenders received | Three |
| How tenders received | In sealed envelopes in Tender Box |
| Tenders received | <ol style="list-style-type: none"> 1. Internet Solutions, a division of Data Dimension (Pty) Ltd (Internet Solutions) 2. Enterprise Application Integration (Enterprise) 3. MTN Business |
| RFP Closes | 29 January 2013 at 14h00 |
| Dates contractor letters of appointment were issued | 29 September 2012 |
| Date appointments accepted | 09 November 2012 |
| Signing of Contract | 26 November 2012 |

12.4 According to the report (refer Annexure I1), Internet solutions, Enterprise and MTN Business submitted tenders to PRASA and their tenders were evaluated to determine their ability to deliver the required product to PRASA. After a final round of scoring the companies received total scores:

- Internet Solutions -71.6 points
- Enterprise - 0 points
- MTN Business – 41.7 points.

12.5 This meant that only Internet Solutions qualified to be considered on pricing as it achieved a score above a threshold of 70 points during the Technical Evaluation process (as stipulated in the Adjudication Report). We did not receive a RFP in respect of this tender, despite various requests to PRASA and a request to Internet Solutions. It appears that PRASA does not have the RFP at its disposal.

12.6 The Tenderers were evaluated using the following criteria (90/10 weighted system):

- Managed IP based connectivity requirements - 79 points
- Internet access requirements - 13 points
- Project implementation services - 5 points
- Bidder qualifications - 3 points.

12.7 The following individuals were part of the BEC:

- Ms Belindah Lehabe (Ms Lehabe) - Supply Chain Management
- Dr Phungula - CPO
- Mr Danny Baloyi (Mr Baloyi) - Finance
- Mr Thami Sithole (Mr Sithole) - EPMO
- Mr Willie de Bruyn (Mr De Bruyn) -ICT.

12.8 We obtained declarations by all the BEC members in which they declared that they have no interest or are in any relationships with any of the prospective bidders or in the process itself (**Annexure I2**).

12.9 We set out in the table below the results of the evaluation:

Table 4: Results of technical evaluation by the individual members of the BEC

| Evaluator | Internet Solutions | Enterprise application Integration | MTN Business |
|--------------------------------------|---------------------------|---|---------------------|
| Mr Baloyi | 90 | 0 | 33 |
| Mr De Bruyn | 77 | 0 | 50 |
| Dr Phungula | 81 | 0 | 47 |
| Ms Lehabe | 86 | 0 | 48 |
| Mr Sithole | 96 | 0 | 72 |
| Average Score | 72 | 0 | 42 |
| 100% for Technical Evaluation | 71.6 | 0 | 41.7 |
| Final Technical Score | 71.6 | 0 | 41.7 |

12.10 Internet Solutions was the only bidder that qualified to be evaluated on pricing as it obtained a final score of more than 70 points for the technical evaluation. Internet Solutions scored 8 on BBBEE and 90 on price. Internet Solutions scored a total of 98 points.

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- 12.11 Internet Solutions' offered price was R28 089 039.03 and the BEC recommended that the contract be awarded to Internet Solutions.
- 12.12 After the evaluation, Mr Takalani Mukwevho, who was the Acting: Chief Procurement Officer at the time recommended on 10 May 2013 that Internet Solutions be appointed for the Managed IP based connectivity service. The proposal was approved by Mr Montana on 24 May 2013 (**Annexure I3**), subject to the price being renegotiated as it was considered too high for this service.

Contract entered into between PRASA and Internet Solutions

- 12.13 Ms Mosholi prepared a notice of appointment notifying Internet Solutions that it had been appointed as a preferred bidder subject to a price negotiation of a 20% discount (**Annexure H13**). This document is not dated. PRASA forwarded another letter to Internet Solutions on 10 July 2013, which *inter alia* states, "Your revised offer is only 9%. PRASA's final offer is 15%. You are hereby given until Thursday 13 June 2013 to respond where after this offer expires".
- 12.14 Internet Solutions prepared a Pricing Revision letter on 10 July 2013 (**Annexure I4**). In the letter Internet Solutions advised PRASA of their final offer being R24 855 568.98.
- 12.15 After PRASA contacted Internet Solutions on two occasions to reduce its offered price, it was reduced from the initial price of R28 089 039.03 to a contract amount of R24 855 568.98 including VAT (**Annexure I5**). PRASA accepted the price reduction and Ms Mosholi prepared a notice of appointment on 10 July 2013 (**Annexure I6**). PRASA approved and signed the contract on 30 November 2015 (**Annexure I7**). The contract period was from 10 July 2013 to 30 September 2016 with a contract value of R24 855 568.98. 1
- 12.16 According to the contract entered into between PRASA and Internet Solutions, the contractor should provide a Managed IP Based Connectivity solution to connect PRASA sites countrywide under tender number HO/ICT/133/12/2012 which shall also include the following services:
- MPLS VPN
 - Last Mile Services
 - Select Internet Access
 - Managed APN
 - Secure Mail
 - Hosting Services
 - Firewall
 - VSAT.
- 12.17 Clause 10 of the agreement deals with payments and reflects that PRASA would pay Internet Solutions within 30 days after delivery of an invoice as per a payment schedule. All original invoices should be forwarded to PRASA's representative for acknowledgement and processing. It is not clear from the agreement who PRASA's representative would be.

Payments made by PRASA to Internet Solutions

- 12.18 We requested copies of proof of payments by PRASA to Internet Solutions. We only received a spreadsheet with a summary of all payments to Internet Solutions. We could not independently verify these payments. This reflects payments as per PRASA's system. We did not receive any hard copy documents in respect of these payments. The total payments made by PRASA to Internet Solutions between 15 July 2013 and 13 May 2013 amount to R23 593 029.76, which amount is in line with the contract value (according to the documents at our disposal).
- 12.19 We compiled a letter addressed to Internet Solutions, in which we requested payment information, such as invoices to PRASA etc. and in agreement with PRASA SCM forwarded this letter to PRASA to send to Internet Solutions. To date of this report, we have not received a response from Internet Solutions.
- 12.20 On 06 October 2016, we sent an email to Mr Mbatha as the CIO of PRASA relating to payments made to Internet Solutions. We requested Mr Mbatha for documents relating to payments made by PRASA to Internet Solutions. Mr Mbatha did not respond to this email (**Annexure I8**).
- 12.21 We obtained information relating to payments to Internet Solutions that is available on PRASA's system in an electronic format from Ms Ramabi. According to the electronic information provided, PRASA made the payments as summarised in the table below to Internet Solutions:

Table 34: Payments to Internet Solutions in the contract period

| Payment Number | Payment Date | Amount (ZAR) |
|----------------|--------------|--------------|
| 2000009262 | 15/07/2013 | 440 558.97 |
| 2000009772 | 13/09/2013 | 416 098.69 |
| 2000009884 | 30/09/2013 | 366 947.12 |
| 2000010042 | 15/10/2013 | 366 947.12 |
| 2000010195 | 31/10/2013 | 255 426.89 |
| 2000010260 | 15/11/2013 | 477 006.82 |
| 2000010306 | 15/11/2013 | -477 006.82 |
| 2000010331 | 15/11/2013 | 477 006.82 |
| 2000010753 | 19/12/2013 | 506 980.80 |
| 2000011033 | 31/01/2014 | 507 465.13 |
| 2000011139 | 19/02/2014 | 492 140.25 |

| Payment Number | Payment Date | Amount (ZAR) |
|-----------------------|---------------------|-----------------------|
| 2000011576 | 15/04/2014 | 478 733.47 |
| 2000011816 | 15/05/2014 | 902 459.98 |
| 2000011985 | 13/06/2014 | 516 147.56 |
| 2000013069 | 16/09/2014 | 1 960 714.12 |
| 2000013455 | 31/10/2014 | 953 908.43 |
| 2000013491 | 14/11/2014 | 668 979.66 |
| 2000013920 | 19/12/2014 | 847 217.27 |
| 2000014131 | 03/02/2015 | 781 072.74 |
| 2000014266 | 27/02/2015 | 757 081.71 |
| 2000014556 | 31/03/2015 | 772 101.95 |
| 2000014869 | 30/04/2015 | 792 810.91 |
| 2000015109 | 15/05/2015 | 825 792.41 |
| 2000015637 | 30/06/2015 | 785 361.58 |
| 2000017233 | 02/12/2015 | 4 921 263.50 |
| 2000017770 | 05/02/2016 | 30 636.12 |
| 2000017882 | 16/02/2016 | 524 528.06 |
| 2000017910 | 24/02/2016 | 604 146.89 |
| 2000017957 | 26/02/2016 | 913 479.87 |
| 2000018274 | 01/04/2016 | 890 439.56 |
| 2000018557 | 13/05/2016 | 836 582.18 |
| Total | | R23 593 029.76 |

Conclusions on Internet Solutions' appointment and payments

- 12.22 Based on documents provided (Evaluation member Attendance Registers and Score Sheets), it appears that PRASA did follow some form of tender process to invite and evaluate possible service providers. It is, however, disconcerting that PRASA failed to provide us with other documents used during the procurement process, such as the RFP and the proposal by Internet Solutions. The price reduction request by PRASA and the appointment of Internet Solutions appears to be in line with PRASA's SCM policy. However, we cannot comment of the scoring by the BEC members as we did not receive detailed documents relating to the criteria or the actual tender submitted by Internet Solutions.
- 12.23 Based on the available documents and an interview conducted with Mr Mbatha, it appears that PRASA followed an appointment process in line with legislation and PRASA's SCM Policy. However, Mr Mbatha indicated that PRASA did not keep the actual tenders submitted by prospective tenderers as part of a specific procurement file
- 12.24 However, the absence of any supporting documents relating to payments to Internet Solutions may render all expenditure incurred by PRASA as irregular expenditure. These payments total R23 593 029.76.
- 12.25 We are not in a position to comment whether PRASA received value for money from the services rendered by Internet Solution, because of a lack of any supporting documents. Should documents become available in this respect, we reserve the right to amend our findings in this respect. In our view, the lack of interest by the IT division to assist us with the investigation is shocking. We had difficulty in obtaining payments documents in respect of this matter, ETS and Datacentrix.
- 12.26 The situation is exacerbated by PRASA's poor retention of procurement documents. This is an aspect that should be addressed as a matter of urgency.
- 12.27 In addition, as the CIO of PRASA, Mr Mbatha may have contravened section 57(1) of the PFMA in that he failed to take reasonable and appropriate steps to prevent irregular expenditure in his area of responsibility. We recommend that National Treasury in conjunction with PRASA consider appropriate disciplinary action against Mr Mbatha.
- 12.28 In our view, the Accounting Authority at the time should be held accountable for financial misconduct in that it contravened section 50 (1) (a) of the PFMA in failing to exercise reasonable protection of procurement and financial documents. In terms of section 83(2) of the PFMA, all members of the Accounting Authority (PRASA's Board) should be held liable.
- 12.29 We accordingly recommend that PRASA (in collaboration with National Treasury) consider disciplinary action against PRASA Board members at the time for possibly contravening section 50 (1) (a) of the PFMA.

- 12.30 In terms of section 34 of PRECCA, any person who holds a position of authority and who knows or ought to have known or suspected that another has committed an offence of corruption, or fraud or theft involving R100 000.00 or more, is obliged to report such knowledge or suspicion or cause it to be reported to the South African Police Services (SAPS). The absence of any supporting documents relating to payments is questionable.
- 12.31 We further recommend that the irregular expenditure be reported in terms of section 55 (2)(b)(1) of the PFMA.

13. Findings relating to the appointment of Enterprise Technology Solutions (ETS) and the payments to this supplier

Background

- 13.1 We understand from documents reviewed (refer Annexure J1 below) that PRASA has been running the SAP application on ORACLE hardware since 2009. The system was designed to support five entity codes. During 2012 and 2013, two entity codes were added to the existing entity codes on the system. As a result, the system ran out of storage capacity and some functions had to be done manually. PRASA then had to request the procurement of accredited ORACLE Hardware.

Method of procuring services of supplier

- 13.2 On 26 February 2014, PRASA's procurement division requested approval to source service providers to supply the service required to maintain the SAP system and provide the necessary hardware. PRASA requested quotations from potential service providers who were accredited by Oracle. Mr Mbatha (as CIO) prepared and recommended the Request for Quotations (RFQ) on 25 February 2014 (**Annexure J1**).
- 13.3 We interviewed Mr Mbatha as to the reasons for requesting quotations, as opposed to a RFP, because it was foreseeable that the value of the services would be more than the value threshold for quotations as per PRASA's SCM Policy. Mr Mbatha indicated that SAP runs on ORACLE hardware and the need to expand was urgent. PRASA could not expand earlier due to a lack of funding. Mr Mbatha added that PRASA was aware that only a few service providers partnered with ORACLE and a RFQ was a quicker way to expand. The requirement that the hardware had to be ORACLE accredited would in any event be in a RFP and the result would have been the same and hence he requested that PRASA use a RFQ as opposed to a RFP. Mr Mbatha indicated that at the time he requested from Dr Phungula to use a RFQ, ORACLE had already provided PRASA with a letter confirming service providers who partnered with Oracle.

13.4 The letter from ORACLE to PRASA is dated 21 February 2014 (**Annexure J2**) and lists the service providers who partnered with ORACLE. The following ORACLE partners were confirmed as being accredited ORACLE hardware providers:

- Accenture
- Breakpoint Solutions
- Business Connexion (Pty) Ltd
- Enterprise Technology Solutions (Pty) Ltd (ETS)
- EOH Mthombo Pty
- Risk Technology Integration
- Storage Technology Services (Pty) Ltd.

13.5 Dr Phungula approved the RFQ on 26 February 2014 (**refer Annexure J1**)

13.6 PRASA forwarded the RFQ via email to the mentioned ORACLE accredited service providers via email on 04 March 2014 (**Annexure J3**). The closing date for submission of quotes was 07 March 2014. PRASA received five quotations via email on the closing date.

13.7 In the table below, we summarise the process followed (according to the recommendation report).

Table 35: Process followed

| Item | Date |
|--------------------------|------------------------|
| Advertise/Issue RFQ | 04 March 2014 |
| Contract validity Period | Three years |
| Method of advertising | RFQ to Oracle Partners |
| Advertising Media | Email |
| Closing date | 07 March 2014 |

13.8 PRASA received responses from five service providers, being:

- Risk Technology
- Breakpoint Solutions
- Enterprise Technology
- EoH Mthombo (Pty) Ltd
- Business Connexion (Pty) Ltd.

13.9 Despite our request, PRASA did not provide us with the actual responses by the five service providers. Therefore, we are not in a position to comment on the content of any of the responses and PRASA's subsequent evaluation of the responses.

13.10 According to point 3.1 of the Recommendation Report, the quotations were evaluated as per the Bill of Quantities (BOQ) issued. On 17 March 2014, an email was sent to all the service providers who submitted quotations with additional requirements that were omitted on the BOQ as stipulated below:

- Quantity of the Exadata storage software matches the quantity of required for a half rack (48x)
- The configuration services are included for both the super cluster and the ZFS storage systems
- Include migration services from the current environment to the environment including setting up for back-up
- Include all installation services for all hardware.

13.11 After this request, all five prospective bidders responded.

13.12 We summarise the detail of the prices quoted in the table below:

Table 36: Summary of Quotations received

| Supplier | Hardware quoted per proposal | Value added | Migration |
|---|------------------------------|----------------|--------------|
| Risk Technology (Pty) Ltd | Partially Quoted | R7 078 317.00 | No Migration |
| Enterprise Technology Solutions (Pty) Ltd | Fully Quoted | R13 694 234.00 | Applicable |
| Storage Technology Services (Pty) Ltd | Fully Quoted | R15 931 444.71 | Applicable |
| EoH Mthombo (Pty) Ltd | Fully Quoted | R16 548 183.00 | Applicable |
| Business Connexion (Pty) Ltd | Fully Quoted | R13 735 333.00 | No migration |

13.13 After the evaluation, ETS was recommended as it had quoted as per PRASA's requirements (**Annexure J4**). The evaluation report is *inter alia* intended to outline the process followed in the proposed procurement of a service provider to supply goods or services to PRASA. Mr Montana approved ETS's appointment for R13 694 234.00 (excluding VAT).

13.14 On 21 May 2014, Ms Mosholi prepared a Letter of Appointment addressed to ETS (**Annexure J5**). The letter was intended to inform ETS of their appointment by PRASA for the procurement of SAP Oracle Hardware at a total amount of R15 611 426.00 (Including VAT). The contract period was stipulated as 01 June 2014 to 31 May 2017.

13.15 ETS addressed a letter to PRASA on an unknown date in which it confirmed that they accepted PRASA's offer (**Annexure J6**).

- 13.16 Although the SCM policy is clear that a RFP should be issued for proposals exceeding R350 000, we are of the view that Mr Mbatha's version is plausible in the circumstances. The net effect of a RFQ process compared to a RFP process would have been the same, with the exception that the RFP process would likely have taken longer.

Contract between PRASA and ETS

- 13.17 PRASA did not supply us with a signed contract between itself and ETS. We thus do not have the scope of work or goods that ETS had to supply to PRASA as per the contract. It is alarming that PRASA cannot provide us with a copy of the contract, despite various requests, especially considering the fact that the contract period only expires 31 May 2017 and ongoing contract management would be required.
- 13.18 Similarly, as with outstanding documents for Internet Solutions (as discussed in detail above), this is an IT related matter that falls within the domain of Mr Mbatha as CIO. We conclude Mr Mbatha could have been more co-operative to obtain documents (specifically payment related documents) and the lack of cooperation by the IT division of PRASA as a whole is disconcerting.
- 13.19 In addition to our various request to PRASA, we also compiled a letter to ETS and agreed with PRASA that the latter would send the letter to ETS on our behalf, because ETS is a PRASA supplier. PRASA did send the letter to ETS via email, but ETS did not respond to this letter.

Payments made by PRASA to ETS

- 13.20 We also requested documents from PRASA relating to payments made to ETS (and proof of deliverables, if possible). To date of this report, we have not received any documents from PRASA in this respect, despite various requests from us in this regard. We reiterate that this is a current contract, which only expires by mid-2017. These documents should be readily available and there should be no reason for PRASA not to be able to provide these documents.

13.21 We obtained information relating to payments to ETS that is available on PRASA's system in an electronic format from Ms Ramabi. According to the electronic information provided, PRASA made the payments as summarised in the table below to ETS:

Table 37: Payments to ETS in the contract period

| Payment Number | Payment Date | Amount (ZAR) |
|----------------|--------------|-----------------------|
| 2000013313 | 16/10/2014 | 13 986 016.28 |
| 2000013321 | 16/10/2014 | 49 932.00 |
| 2000013984 | 19/12/2014 | 1 625 409.72 |
| 2000014777 | 24/04/2015 | 1 884 933.00 |
| 2000016394 | 15/09/2015 | 82 080.00 |
| Total | | R17 628 371.00 |

13.22 The total of these payments exceeds the amount as per the notice letter (R15 611 426.00 including VAT) by more than R2 016 945.00. There is no indication that a variation was ever sought and approved.

Conclusions on ETS' appointment and payments

13.23 From the available documents and interviews conducted, it appears that PRASA followed an appointment process in line with legislation and PRASA's SCM procedure. Although the value exceeded the threshold for quotations as per PRASA SCM policy, proper approval was obtained from Dr Phungula to issue RFQ based on a plausible.

13.24 It appears that the net effect would have been the same. However, there is not a proper audit trail for the deviation from the procedure as per Mr Mbatha's explanation. The acquisition in these circumstances cannot be considered to be an emergency as PRASA was aware of the situation and the fact that the contract period is three (3) years.

13.25 From the information made available to us, it appears that PRASA paid ETS significantly more than the amount as stipulated in the Letter of Appointment dated 21 May 2014. The software was to be procured at a total cost of R15 611 426 including VAT between 01 June 2014 and 31 May 2017. PRASA paid R2 016 945 more to ETS by September 2015. We conclude that this amount of R2 016 945 is irregular expenditure. It should be noted that we did not receive any variation order or document relating to this additional amount paid to ETS.

13.26 We are not in a position to comment whether or not PRASA received value for money from the R17 628 371.00 paid to ETS by September 2015, due to a lack of any supporting documentation. In light of the absence of any supporting documents relating to payments, we conclude that all the expenditure may be considered as irregular expenditure.

- 13.27 In addition, we conclude that Mr Mbatha in his capacity as CIO, might have contravened section 57(1) (c) of the PFMA in that he failed to take appropriate and effective steps to avoid irregular expenditure in his area of responsibility, being the R2 016 945 to ETS over and above the ostensible contract amount. We recommend that PRASA (in collaboration) with National Treasury consider instituting disciplinary action against Mr Mbatha in this respect.
- 13.28 In terms of section 34 of PRECCA, any person who holds a position of authority and who knows or ought to have known or suspected that another has committed an offence of corruption, or fraud or theft involving R100 000.00 or more, is obliged to report such knowledge or suspicion or cause it to be reported to the South African Police Services (SAPS). The absence of any documents relating to payments is questionable.
- 13.29 We further recommend that PRASA's Board report the irregular expenditure as alluded to in terms of section 55(2)(b)(i) of the PFMA.

14. Findings relating to the appointment of Lufthansa Consulting and the payments to this supplier

Background

- 14.1 PRASA Rail required assistance to develop a focused and market lead turn-around assessment and strategy for the long distance passenger rail business (Shosholozza Meyl).

Method of Procurement

Recommendation report dated 10 May 2013

- 14.2 In a document titled "*Recommendation Report*" dated 10 May 2013 (**Annexure K1**) to the GCEO motivated for the confined appointment of Lufthansa Consulting (Lufthansa) to cover the Shozalozza Meyl Marketing and Turn-around Strategy.
- 14.3 According to the document the Board took a resolution on 28 November 2012, to appoint an experienced outside company to develop a focused and market lead turn-around assessment and strategy for the long distance passenger rail business.
- 14.4 The motivation for the appointment is stated as follows:

"3.1 We believe the study should be concluded on an urgent basis in order to confirm and expand on existing strategic analysis available on the Shozalozza Meyl Business, especially to enable management and the BOC to engage with DOT and Treasury on the sustainability and subsidy requirements for Shozalozza Meyl Business.

3.2 Autopax went through the turnaround strategy under supervision of Lufthansa Consulting and their quality of work was found to be excellent. Lufthansa Consulting, as a results (sic) of their involvement at Autopax have organisational knowledge and study objectives / approach to conduct similar work for Shozalozza Meyl. Confirming the appointment to Lufthansa will accelerate the study with at least 2 months"

- 14.5 Mr Montana approved the request on 10 May 2013. Mr Montana approved the appointment on confinement, before PRASA rail commenced with a procurement process. We discuss this aspect in more detail below.

- 14.6 Mr Dries van der Walt (Mr Van Der Walt), Executive Manager Strategy and Benchmarking at PRASA Rail informed us that during a meeting he was present with *inter alia* the GCEO and CEO for PRASA Rail, Mr Mofi. During that meeting, it was communicated that Lufthansa was unresponsive to enquiries from PRASA. He was then tasked to approach other potential Service Providers.

PRASA Rail Process

- 14.7 On 23 July 2013, PRASA Rail provided the Terms of Reference (ToR) in respect of the turn-around strategy to the following companies:

- Hatch
- Lufthansa
- Blackstar
- McKinsey and Company
- Royal Haskoning DHV
- Aurecon
- PWC Consulting
- Mott MacDonald.

- 14.8 We note the following from the ToR (**Annexure K2**):

- Shosholoza Meyl was historically part of the Transnet Group, which was during this time heavily cross subsidised by freight rail operations, due to the synergies of operations on main line routes and possibilities of marginal cost attribution to Shosholoza Meyl's services, possible within the single business of Transnet Freight Rail (TFR)
- Shosholoza Meyl was transferred to PRASA when the passenger rail services and the long distance bus services (Autopax) were consolidated under one passenger transport entity, in order to provide more extensive and integrated public transport services in the metropolitan, regional and rural areas
- Prior to the transfer to PRASA, a due diligence study was conducted in 2008, confirming an ongoing funding(subsidy) requirement of R1,4 billion per annum, to fund the continuation of the long distance passenger operations, should the business be separated from freight operations
- The transfer of Shosholoza Meyl to PRASA was concluded through a Sale of Business Agreement with Transnet, which included the transfer of operating assets (trains and locomotives), employees and certain stations/properties, excluding rail lines
- Unlike the Metrorail commuter services where PRASA owns the metropolitan rail network, the long distance passenger rail services utilise the rail network of TFR, which is used for freight transport on the main line routes
- PRASA would therefore remain dependent on TFR for access to the freight rail network, as well as for other supporting services to operate and maintain the long distance trains and locomotives

- The cost of the access and locomotive hire charges alone, payable to TFR, amounts to R300 million per annum. The sale of Business Agreement was entered into for a 3 year period up to 31 March 2012, where after the rates and tariffs would be re-negotiated. (PRASA and TFR are currently in the process of re-negotiating the TFR tariffs and service level agreements)
- Funding for the long distance rail business was secured from Treasury in a once-off and decreasing Medium Term Expenditure Framework allocation from 2008/9 to 2010/11 of R500 million, R450 million and R424 million respectively
- Treasury decided not to fund the Shosholozza Meyl operations beyond 2010/11, with a dire impact on the financial position of PRASA where the Shosholozza Meyl business had cost PRASA R1.1 billion in operating cash, excluding R300 million capital requirement, over the past 24 months
- This arrangement is draining the much needed subsidy allocation for the Metrorail services, which are already under strain with its own shortages and cut backs on key services, operating personnel and maintenance
- As response to the financial position of Shosholozza Meyl and PRASA, as well as the impact of a shortage of locomotives since the take-over of the business, PRASA Rail had no choice but to commence with reduction and rationalisation of services over the previous 24 months
- This had a severe impact on the performance and availability of long distance passenger rail services, with the market also responding in switching to alternative modes due to the uncertainty and unreliable service offering
- The unreliable service offering has been largely attributed to constant locomotive shortages and failures and poor on-time performance due to Transnet network challenges
- Poor reliability because of the above has led to declining passenger numbers affecting the cost coverage and financial position of the Shosholozza Meyl business further. Because of the above challenges, the business had experienced a significant drop in passenger numbers from 3 million passengers per annum in 2009/10 to 1.4 million in 2011/12.

14.9 In addition, the ToR states that:

- The long distance rail business is at a cross roads in terms of its continuation as an important social service, and is faced with the following options:
 - Proceed under the current unfunded mandate and face liquidation
 - Terminate the long distance rail business
 - Secure a subsidy of R720 million per annum to restore service levels.
- Due to the current funding challenges, Mainline Passenger Services is faced with a challenge of either further rationalising/reducing the service to contain the huge costs of running the business and focus only on key strategic corridors/services or to terminate the service

- PRASA understands that closing down the long distance passenger rail business is not an ideal option in the interest of the country, however, the high costs of running this service continues to impact negatively on PRASA's financial position.

14.10 PRASA held a briefing session on 29 July 2013 (**Annexure K3**).

14.11 PRASA received proposals from the following bidders:

- Hatch Goba – R8. 69 million
- Lufthansa – R19.73 million
- Blackstar – R14.60 million
- McKinsey and Company – R44.80 million
- Royal Haskoning DHV – R8.43 million
- Aurecon – R3.41 million
- PWC Consulting/Mott McDonald JV – R4.685 million.

Evaluation Process

14.12 According to the ToR the criteria in evaluating proposals will include, but not be limited, to the following:

- Methodology
- Strategic approach
- Technical proposal (responding to the RFP)
- Knowledge of the Industry
- Project team experience
- Pricing proposal
- BBBEE considerations.

14.13 Mr Van der Walt provided us with technical evaluation sheets (**Annexure K4**) in respect of the bids.

14.14 In a memorandum dated 15 August 2013 (**Annexure K5**), it was stated that the Technical Committee consisted of:

- Mr M Ramutloa, Head, Long Distance Passenger Rail Services
- Dr D Mtimkulu, Executive Technical, Prasa Rail
- Mr H Emeran, Head Network Planning, Corporate
- Mr Van Der Walt.

14.15 It is further stated that the following companies were shortlisted based on the technical proposals and strategic approach to the project:

- Hatch Goba
- Lufthansa
- Aurecon.

14.16 The Committee recommended as follows:

"The Technical Committee recommends that Lufthansa Consulting be recommended to the CPO as the preferred service provider for the Long Distance Passenger Rail Turn-Around Strategy development. Based on their strategic approach presented and PRASA's satisfaction with their previous work done for PRASA on the Autopax Turn-Around Strategy. It is further recommended that Lufthansa be approached for a possible discount on their price proposal in line with South African Pricing benchmarks, due to the high Euro/Rand exchange rate."

14.17 Mr Van Der Walt explained that at the time of preparing the final recommendation letter, notification was received that a confined appointment had already been made to Lufthansa via the corporate office and therefore the two processes were integrated. Although the technical, price and BEEE evaluations were in the process of being finalised at Rail, it seems as if the corporate confined appointment then received precedence for the appointment, based on the confirmation from the Rail evaluations available.

14.18 In an Internal Memorandum dated 02 September 2013 (**Annexure K6**), Mr Maishe Bopape (Mr Bopape), Senior Manager: SCM PRASA Rail, motivated to the GCEO for the confined appointment of Lufthansa to the value of R18 925 500.00.

14.19 In this Memorandum Mr Bopape refers to the approval of the confined appointment dated 10 May 2013 (**Annexure K1**) and further states that:

- Lufthansa was approached for price negotiations and reduced their price from R20 603 222 to R18 925 500
- Lufthansa submitted a draft contract for consideration that needed to be vetted.

14.20 Mr Bopape recommended that the GCEO:

- Approves the negotiated contract value of R18 925 500
- Approves the 25% upfront payment
- Noted that PRASA Rail and the Legal Department were working on the contract and this will be signed off by the CEO of PRASA Rail, when concluded.

14.21 On 5 September 2013, Mr Montana approved the request and made the following handwritten comment:

"(1) contract Price capped at R15 Million

(2) No upfront payment for consulting service in PRASA".

Recommendation Report dated 6 September 2013

14.22 In this report (**Annexure K7**), Dr Phungula stated that the CTPC reviewed the framework agreement (**Annexure K8**) received from Lufthansa and raised the following concerns:

Article 5 Consultants Compensation

- Under this heading Lufthansa propose payment in Euros, 14 day pay cycle, 30% down payment for services, 8% administrative surcharge which is contrary to PRASA's practice

Article 9 Legal Provisions

- Under this heading Lufthansa proposes that the Framework agreement be governed and interpreted in accordance with the law of Switzerland, the request which was found to be unacceptable.

14.23 It was recommended that:

- The GCEO grant permission to Supply Chain Management to appoint Lufthansa to provide professional services for Mainline Passenger Rail Turn -around Strategy for an amount of R22 492 200
- A further contingency amount of 10% which translates to R224 922 be approved for use in the project as and when required, which will be managed by PRASA.

14.24 In an handwritten note (**Annexure K9**), Mr Montana responded as follows to Dr Phungula:

- He had already discussed the matter with Mr Mofi, CEO of PRASA Rail Operations and they agreed to cap the price at R15 million
- They also resolved that no upfront payment would be allowed
- He suggested that Dr Phungula take the matter from PRASA Rail SCM and deal with it at his level
- The proposal, in its current form, is not favourable to PRASA
- The confinement to Lufthansa is approved, subject to the above terms.

14.25 Dr Phungula addressed an appointment Letter to Lufthansa on 18 September 2013 (**Annexure K10**).

Contract with Lufthansa and payments to Lufthansa

14.26 The parties signed a Consultancy Agreement on 18 October 2013 (**Annexure K11**), setting out the tasks and deliverables. The contact value was R15 million payable as follows:

- 25% first invoice- after appointment letter and project commencement on site and delivery of high level concept presentation
- 35% second invoice- after delivery of phase 1
- 30% third invoice – after delivery of Phase 2
- 10% after approval of final delivery.

14.27 As per the agreement, Lufthansa had to deliver as set out schematically below:

| Phase | 1 Development of high-level turnaround concept | 2 Detailing of Decision Matrix | 3 Strategy Development |
|--------------|---|---|---|
| Tasks | <ul style="list-style-type: none"> ▪ High-level cost & revenue analysis ▪ High-level estimation of required amount of subsidy ▪ High-level status quo-analysis of market environment ▪ High-level technical assessment ▪ High-level benchmarking ▪ High-level organizational assessment | <ul style="list-style-type: none"> ▪ Detailed route network assessment ▪ Evaluation of improved maintenance ▪ Detailed analysis of technical and operational challenges ▪ Market size assessment and in-depth analysis of customer segmentation ▪ Product assessment and development ▪ Business analysis (revenue and cost scenarios) ▪ Route profitability analysis ▪ Detailing financial analysis | <ul style="list-style-type: none"> ▪ Identify potential strategies to make the business financially self-sufficient within mid-term period; <ul style="list-style-type: none"> ▪ Evaluate the different strategies with a high-level analysis: ▪ SWOT analysis ▪ High-level financial evaluation ▪ Workshop to present and discuss strategy options ▪ Select most relevant strategy, target market and positioning |
| Deliverables | <ul style="list-style-type: none"> ▪ High-level turnaround concept to be presented to Treasury ▪ Executive presentation | <ul style="list-style-type: none"> ▪ Network recommendation ▪ Overview of revenue-enhancing and value-added services & products ▪ Description of what other companies are doing to promote revenues and identify niche marketing ▪ List of infrastructure requirements | <ul style="list-style-type: none"> ▪ Recommendation for the best respectively most adequate strategy ▪ Management Workshop ▪ New organization chart |
| | Approx. 3-4 weeks | Approx. 2 months | Approx. 3 months |

14.28 We set out in the table below the payments made by PRASA to Lufthansa :

Table 38: Payments to Lufthansa

| Invoice Date | Invoice number | Amount (ZAR) | Amount paid (ZAR) |
|--------------|----------------|----------------------|----------------------|
| 10/10/2013 | 4130055 | 3 750 000.00 | 3 750 000.00 |
| 27/11/2013 | 4130075 | 5 250 000.00 | 5 250 000.00 |
| 14/02/2013 | 4140009 | 4 500 000 .00 | 4 500 000 .00 |
| 04/03/2013 | 4140010 | 1 500 000.00 | 1 500 000.00 |
| Total | | 15 000 000.00 | 15 000 000.00 |

14.29 We received invoices from Lufthansa to PRASA (**Annexure K13**). All the invoices were properly authorised for payment and paid as per the agreement.

14.30 Mr Van Der Walt advised that Lufthansa delivered on all the aspects of Project and provided us with a copy of the final report to PRASA (**Annexure K14**).

Conclusion

14.31 We note that we were unable to interview Mr Montana and Dr Phungula in order to obtain explanations from them.

14.32 On the available evidence, it appears that Mr Montana eventually approved the appointment of Lufthansa relying on the provisions of clause 11.3.7 of PRASA's SCM Policy dealing with confined appointments. The clause which states that:

"This occurs where the needs of the business preclude the use of the competitive bidding process and for practical reasons only one bidder is approached to quote for goods and/or services.

This method can only be used for:-

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

If it's an emergency as defined in Clause 11.3.6 above, the decision to make use of a single source shall be motivated for approval and ratifications by the GCEO."

- 14.33 PRASA in fact did follow a competitive process to point. Nothing precluded PRASA from completing the competitive process. No practical reasons existed to appoint Lufthansa on a confined basis at the time. This decision therefore appears irrational and tantamount to abuse of the confinement clause. Furthermore, it was unfair towards other bidders.
- 14.34 In the circumstances, we conclude that the appointment of Lufthansa was inconsistent with PRASA's own Procurement Policy, the PFMA and section 217 of the Constitution, which requires a fair, equitable, transparent, competitive and cost effective bidding process.
- 14.35 We therefore conclude that the appointment was irregular and all expenses incurred by PRASA relating to this contract should be classified as irregular expenditure. The irregular expenditure amounts to R15 000 000.00.
- 14.36 PRASA's Board should report this irregular expenditure in terms of section 55 (2) (b)(i) of the PFMA. In addition, the Board should ensure that proper controls be put in place (if not already) to avoid similar occurrence in future.
- 14.37 Based on the payment documents we received and the interview conducted with Mr Van Der Walt it appears that the services may have been rendered and that PRASA did receive value for money. However, we are not in a position to comment in the exact rand value for money and reiterate that this was not part of our mandate.
- 14.38 In our view, it is evident that Mr Montana was responsible for the irregular appointment and the resultant irregular expenses. Mr Montana resigned and we do not comment any further.

15. Findings relating to the appointment of Datacentrix (Pty) Ltd and the payments to this supplier

Background

- 15.1 We note that this tender falls outside the review period and it is not clear why it was included in the review.
- 15.2 During February 2010, Prasa issued a RFP to create a National Contract for acquisition and maintenance of printers for all PRASA entities for a three year period.
- 15.3 Based on the review of the available documents the need for this service derived from the following:
- In 2010, PRASA made a strategic decision to consolidate the management of printers and the programme was to be managed by ICT
 - Prior to this the management of printers was disparate with separate contracts in the different business areas
 - At PRASA Corporate there was a contract managed through HR for multifunction printers that was close to expiry
 - Autopax had printers that were past the end of life and were out of contract
 - Shosholoza Meyl used printers through a Transnet contract and payment was managed through Transnet
 - Intersite had a separate contract
 - The approach adopted by PRASA was to consolidate printing in the new PRASA environment
 - Given the disparate nature of the environment, a business analyst was tasked to define the business requirements. There was limited information to work with to determine accurate printing requirements at the time. Budget and expenditure patterns and paper consumption figures were used to determine the printing requirements.

Method of procurement

- 15.4 PRASA followed an open Tender Process for the procurement of the services. We set out below a summary of the process (**Annexure L1.**)

| Date advertised | 26 and 28 February 2010 |
|--|--|
| Method of advertising | In the following newspapers: <ul style="list-style-type: none">• Star• Sunday Times |
| Site Inspection / briefing session (Annexure O2) | 09 March 2010, 10h00 |
| Closing date & time | 01 April 2010,10h00 |
| Number of tenders issued / sold | 9 |

Proposals received from

- 15.5 Prasa received four tenders from the following service providers (**Annexure L2**):

- Datacentrix
- TSS Managed Services
- Kyocera Safika
- Moyahabo Sharp.

Evaluation process

- 15.6 Two tenderers, TSS Managed Services and Moyoba Sharp, were found to be non-responsive for failing to submit leasing prices and submit pricing for a printing room respectively.
- 15.7 Two Tenderers were further evaluated using the following criteria:

- Pricing 40 points
- Technical capability 40 points
- BEE status 10 points
- Security Screening 5 Points
- Bank Rating 5 Points

15.8 We set out in the table below the results of the evaluation:

| Bidder | Technical (40) | Pricing (40) | BEE/ Security/ Bank Rating | Total Scores | Total Including VAT (Estimated over 3 Years) |
|-------------------|----------------|--------------|-------------------------------------|--------------|---|
| Datacentrix | 32 | 40 | 15 | 87 | R14 397 581.99 |
| Kyocera Safika | 34 | 24 | 24 | 78 | R21 052 798.70 |

15.9 The BEC recommended Datacentrix be appointed at an amount of R13 038 947.00 as budgeted for. Mr Montana approved the appointment on 2 July 2010.

Contract and Payments

15.10 On 28 October 2010, the parties entered into an agreement (**Annexure L3**) for the provision of print services for a period of three years in the amount of R13 038 947.00. At the date this report we have not received any supporting documents relating to payments to Datacentrix. We have requested this documentation from Ms Liz Naidoo, Datacentrix CFO, who undertook to provide us with relevant documentation. Ms Naidoo committed to providing the documentation but we have not received it at date of this report.

15.11 However, we note the contents of a memorandum dated 25 July 2013 (**Annexure L4**), from the Group Chief Operating Officer, Mr Khena to the GCEO.

15.12 Mr Khena *inter alia* states the following:

- In 2010, PRASA made a strategic decision to consolidate management of printers and the programme was to be managed by ICT
- The approach adopted by PRASA was to consolidate printing in the new PRASA environment
- There was limited information to work with to determine accurate printing requirements at the time. Budget and expenditure patterns and paper consumption figures were used to determine the printing requirements
- In February 2010, PRASA went out on tender for an enterprise printing contract. The purpose of the tender was to create a national contract for acquisition and maintenance of printers for all PRASA entities
- Although the tender did not specify the number of required printers during the bid solicitation phase because of lack of information, at the awarding phase, the contract value was based on costing estimation for leases and usage of 140 printers. The estimation was based on the perceived printing requirements at the time as articulated in the analysis

- The process to request printers was communicated to all PRASA entities in October 2010
- Liaison with Datacentrix was managed through PRASA Corporate.
- The demand was managed at the local level, in terms of the requirement as well as the available facilities. Most of the requests were urgent and critical to operations. Local management made the recommendation to Corporate ICT. Corporate ICT provided the final instruction for delivery to the requesting BU/operating areas. The demand was influenced by new requirements, faulty "owned" printers and printers reaching end of life and the cancellation of the Transnet lease serving MLPS. Most of these printers had not been transparent to corporate office at the time of estimating the demand
- The control process was not adequate from two angles, the control of final numbers and the guidelines for printer deployment
- The estimated printer requirement of 140 (total leasing cost of R285 000 pm) was exceeded in July 2011. The consumption estimate was R115 000/m and the consumption pattern exceeded the estimate as shown in the graph below. The target consumption was therefore R400 000 per month
- There was a requirement for more printers in order to address business requirements in other areas of PRASA business. The withdrawal of Transnet leased printers from Shosholozza Meyl offices around the country necessitated the ordering of more printers from Datacentrix to replace the withdrawn printers. The contract was terminated at the end of each device lease, therefore requiring PRASA to replace the device
- There were 283 printers deployed company-wide with the monthly leasing cost of R527 000.00. The average monthly usage cost is R700 000.00. The resultant average monthly cost on the contract is R1.27m per month
- The projections in February 2012 indicated that with the increased consumption rate, the contract value would be reached in August 2012
- The original estimate was clearly not adequate for the organisation and hence a need to review the value of the contract. A complicating factor was the three year fixed contract for each printer that would affect the overall timeline for the contract, otherwise the cost would have been much higher given ever shortening lease periods
- In February 2012, discussions with SCM were initiated to request that the contract value be adjusted to cater for the higher than anticipated demand. The request coincided with the EXCO decision to capitalise all leases, where it made economic sense and was informed by the need to conserve operational expenditure and exploit the capital funds that were available. The advice was to purchase the printers and seek an increase in value for the consumption, to cater for the increased demand particularly from PRASA Rail Operations. The settlement amounts were obtained from Datacentrix as at 31 March 2012, and the Capex request was forwarded to EPMO for the funding for the capitalisation
- This was rejected in May 2012, citing the financial analysis as not favouring the capitalisation. This delayed the capitalisation proposal because there were no funds to execute

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- This was communicated to SCM who again advised on capitalisation and in consultation Finance regarding the principle, the latter advised capitalisation as the Cost of Capital for PRASA is practically 'zero". Resubmission was again rejected by EPMO. This delayed the capitalisation request
 - A variation request was submitted to SCM in August 2012. When the contract value was reached, there was pressure from the business to continue with services. The advice again was to capitalise and this time the capital funding request was approved in October 2012
 - The variation request was submitted in December 2012 for the usage charges, maintenance and consumables, to cater for usage from August 2012 till October 2013. This was based on the printers' cost being capitalised
 - The revised settlement figures were received in February 2013 and the combined variation order for settlement and usage expenses was submitted to SCM
 - The relevant tender committee recommended the settlement and the usage until October 2013. The total value was R22million, made up of R14million for capitalisation and R8m for usage. This was subject to approval by the GCEO.

15.13 The document states the following as the recommended course of action.

1. Settle the Datacentrix outstanding debt of R14 730 430 and approve funds for the remaining period July 2013-October 2013, made up of R2 108 897 for leases and R2 800 000 estimate for usage, totalling R4 908 892. Leases beyond October will amount to R4m. This is for printers with varying lease periods beyond the 36 months. Please see attached Schedule.
2. Alternatively terminate the contract with immediate effect and settle the R14 731m debt.
3. Approve the condonation of the over expenditure in the interest of critical requirement for business continuity.
4. Initiate a tender process for new services from October 2013 (there is now a clear view of the usage and the necessary expenditure control points to limit printing expenditure).
5. Set tight controls on printer deployment and usage.

15.14 On 25 July 2013, Mr Montana approved the recommendation subject to:

1. Appropriate disciplinary action to be instituted against Managers/Employees responsible for the irregular expenditure.
2. Recovery of the irregular and wasted expenditure from the employees concerned in terms of the PFMA.

15.15 Mr Mbatha advised us that no action was taken against anybody in this regard.

15.16 We note that PRASA retendered for the printing services during 2013 and PRASA appointed Motswako Office Solutions. Mr Teddy Phoma advised that Nexus Forensic Services are reviewing this appointment process on behalf of National Treasury.

Conclusion

15.17 We found no concerns related to the appointment process. It is evident that poor needs assessment resulted in an overpayment of approximately R14 Million that may be viewed as irregular expenditure. PRASA has taken no action against responsible individuals.

16. Findings relating to the appointment of PricewaterhouseCoopers and the payments to this supplier

Background

- 16.1 The Auditor General of South Africa has raised a number of audit findings on PRASA's asset management. In particular, the verification of the assets and the identification and accounting treatment of WIP transactions with respect to PRASA's Rolling Stock and Facilities.
- 16.2 From the contract entered into between PRASA and PricewaterhouseCoopers (PWC), received from PRASA (as discussed below), it appears that in order to avoid a repeat of these findings in respect of the assets and the WIP transactions for the 2014/2015 financial year, PRASA appointed PWC to provide services relating to *inter alia* asset verification.

Method of procuring services of PWC

- 16.3 Mr Mbatha indicated that PRASA appointed PWC on a confinement to perform the services. Mr Mbatha indicated that PWC did asset verification and asset registers for PRASA in about 2010/2011. Mr Mbatha indicated that Mr Montana decided to approach PWC on a confinement, because of their previous experience and knowledge of PRASA's assets.
- 16.4 On 20 October 2016, we received a memorandum relating to PWC's appointment from Mr Phoma. Mr Fentan Gastin, Acting Group Chief Financial Officer ostensibly compiled the memorandum and signed as compiler on 03 December 2014. Dr Phungula recommended PWC's appointment on a confinement basis on the same date and Mr Montana also approved the appointment on the same date (**Annexure M1**).
- 16.5 Paragraph 2 of the memorandum states "In 2012/13 and 2013/14 financial year audits, the Office of the Auditor-General raised a number of audit findings on asset management including controls over moveable assets movement, workshop equipment, timely recognition or capitalization of assets, capitalization of subsequent costs, maintenance of asset registers, tagging of assets, asset verification, validity of work-in-progress and other asset related matters

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- 16.6 Paragraph 3 inter alia states "The Auditor-General raised findings on the asset register in particular on how the network assets are accounted for in the register and how they could be physically verified. There were also other findings over other asset groupings. The Audit report was concluded on 25 September 2014. While management has embarked on internal capacity building exercise to carry out the asset register reviews and verifications, at the Audit Committee of November 2014 it became clear that the internal capacity building processes may not yield expected results within the current financial year. The Audit Committee therefore recommended that PRASA immediately engage an outside company to carry out the asset register review and verification urgently in preparation for 2014/15 year end audit. The network assets are highly technical type of assets and require expert skills to establish the appropriate accounting and recording basis in the asset register. PRASA currently does not have adequate internal skill capacity to review all these assets to ensure that the asset register meet the requirements of the accounting standards".
- 16.7 It further states: "The SCM processes would normally require a tender process to be followed which usually takes between six to ten weeks to complete. In consideration of time left to yearend and the urgency of the matter in pursuance of PRASA's objective of clearing the findings raised by the Auditor-General, it is recommended that the work be confined to a supplier who has the expert experience and knowledge of the organisation's assets.
- 16.8 The reasons for recommending to appoint PWC on confinements per the memorandum are:
- PWC assisted PRASA over years with asset management issues and PRASA's asset register
 - PWC has the required experience and knowledge of PRASA's assets
 - PWC will only be assisting in closing of the gaps noted instead of appointing a new firm with no prior experience of PRASA assets which may result in delays
 - To ensure skill transfer it was recommended that PWC partner with a BEE accounting firm for this exercise
 - The reputational damage to PRASA for failure to adequately manage its assets and risk of a qualified audit opinion outweigh the costs thereof, which PRASA estimated at R12 800 000 (including VAT).

Contract entered into between PRASA and PWC

- 16.9 PRASA provided us with a Service Level Agreement entered into between PWC and PRASA regarding certain asset verification services that PRASA required from PWC. Mr Montana ostensibly signed the agreement on behalf of PRASA on 20 February 2015 and an unknown director of PWC signed on behalf of PWC on 25 February 2015 (**Annexure M2**). The amount payable by PRASA to PWC for work done in terms of this contract is stipulated at R12 864 284 including VAT and disbursements. In terms of the agreement, the contract duration period was three months.

16.10 The cover page of the contract reflects the nature of the work as follows:

- Verification of network Assets and Workshop Equipment
- Assisting in verifying and capturing completed WIP in SAP.

16.11 Clause 1 of the agreement contains the definition of certain terms specific to this contract. "Workshop equipment means the equipment and tools used in PRASA's workshops and depots." The contract further states "WIP in respect of Facilities and Rolling Stock means those Facilities and Rolling Stock not yet handed over to PRASA by the manufacturers thereof and/or the constructors thereof..."

16.12 Clause 7.2.5 of the agreement states "On completion of the project, the Consultant shall prepare and submit a consolidated report to PRASA on all work performed by it under this Agreement"

16.13 We compiled a letter to PWC and sent it to PRASA to request PWC for assistance, with no response from PWC. On 20 September 2016, we requested Mr Phoma to provide us with the contact details of the individual at PWC who is currently conducting reviews for NT of PRASA contracts on behalf of PWC. We obtained the contact details of Mr Mulder Jansen Van Vuuren (Mr Jansen Van Vuuren) at PWC from Mr Phoma on 20 September 2016 via email. We contacted Mr Jansen Van Vuuren on 21 September 2016 and he indicated to us that he is managing the reviews of PRASA contracts on behalf of National Treasury and that he cannot assist us, because of a possible conflict of interests.

16.14 However, Mr Jansen Van Vuuren indicated that Mr Claude Jarrard (Mr Jarrard), whose name is stipulated in the contract, as PWC's contact person is not employed at PWC anymore and that we should contact Mr Neels Nel (Mr Nel). We contacted Mr Nel on 07 October 2016 and provided him with a copy of the contracts and information relating to payments PRASA made to PWC. We ascertained from Mr Nel that he is employed at PWC in the business unit that does this type of work, but that he was not involved in this particular assignment for PRASA. We followed up via email on 12 October 2016 and Mr Nel replied via email on the same date and indicated that PWC did receive payments totalling R12 715 694.80 from PRASA in respect of this assignment. Mr Nel did not provide us with copies of PWC's invoices. We discuss the payments in more detail below.

16.15 In addition, Mr Nel indicated that PWC has copies of all the deliverables at its disposal and would address a letter to the relevant contact person at PRASA and request the contact person at PRASA to provide us with PWC's deliverables. We requested Mr Nel to copy us in this request to PRASA.

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- 16.16 We requested Mr Nel via email on 13 October 2016 to also provide us with the name of the individual who dealt with this contract on behalf of PRASA. Mr Nel provided the name of Mr Mlungisi Tenza (Mr Tenza) in the Asset Management Division, who is apparently not aware of the review of the contract. We contacted Mr Tenza on 17 October 2017 telephonically and discussed the outstanding documents with him. Mr Tenza informed us that he is not in the Asset Management Division anymore and indicated that we should send him an email to assist with our request. We did forward email correspondence to Messrs Tenza, Phoma and Gingcana on the same date and requested these individuals to assist to obtain the documents from the correct individual.
- 16.17 We collected the close out report compiled by PWC (**Annexure M3**) from Mr Tenza on 18 October 2016. The report is dated 15 July 2015. Mr Jarrard ostensibly signed the report on 13 July 2015. It appears from the cover letter of the report that PWC performed an asset verification for PRASA and seconded staff to PRASA for this assignment. From the report itself, it appears that PWC provided nine staff members to PRASA. In addition, it appears from the report that PWC physically verified several PRASA assets.
- 16.18 Paragraph 1 of the report is the introductory paragraph and states, "*Passenger Rail Agency of South Africa (PRASA) appointed PricewaterhouseCoopers (PwC) on 25 August 2015 to assist them with the verification of their Network Assets. This was in response to the Auditor General of South Africa's report for the 2013/2014 financial year which raised a number of audit findings in this regard. This related to the identification and verification of assets and the identification and accounting treatment of work in progress (WIP) transactions with respect to PRASA's Rolling Stock and Facilities".z]*
- 16.19 Mr Tenza and other PRASA officials signed off on the report 13 July 2015. Mr Tenza informed us via telephone that PWC did render the services.

Payments made by PRASA to PWC

- 16.20 Similarly, as with documents relating to the method used by PRASA to appoint PWC, we also requested documents from PRASA relating to payments made to PWC (and proof of deliverables, if possible).
- 16.21 Mr Tenza provided us with the following 4 (four) invoices issued by PWC to PRASA as follows:
- Invoice 11959448 dated 8 April 2015 for R1 154 667.68
 - Invoice 11965043 dated 30 April 2015 for R5 092 440.69
 - Invoice 11969537 dated 27 May 2015 for R5 095 318.26
 - Invoice 11977235 dated 24 June 2015 for R1 373 268.12.
- 16.22 We obtained information relating to payments to PWC that is available on PRASA's system in an electronic format from Ms Ramabi. The electronic information relating to payments correspond with the invoices and further reflects that PRASA paid all the invoices totalling R12 715 694.80 from 10 June 2015 to 25 August 2015.

- 16.23 Mr Tenza signed off on all these invoices. Mr Tenza indicated via email on 18 October 2016 that he signed the invoices and the purpose of the signatures was to indicate that the work has been done.
- 16.24 We do not attach these invoices as annexures to the report, but can make these available upon request.
- 16.25 From the information made available to us, it appears that PRASA paid PWC slightly less than the amount as stipulated in the contract. As indicated, Mr Nel at PWC confirmed that PWC received the mentioned payments. In Mr Nel's email on 12 October 2016, Mr Nel explained that the variance between the contract value and the payment amount could have been because of variables in expenses or the assets were less than originally anticipated. We reiterate that Mr Nel did not represent PWC during the performance of the services and would therefore not have first-hand knowledge in this respect.

Conclusion regarding PWC's appointment and payments to PWC

- 16.26 The decision to approach PWC and not any other services providers appears to be justifiable in the circumstances. PRASA was not precluded from following an open tender process or to approach other service providers. In the circumstances, this decision appears to be plausible. From all the interviews conducted, it appears that PRASA approached PWC mainly because PWC did similar work for PRASA in the past and was familiar with PRASA's system. In addition, it appears that PRASA endeavoured to avoid a qualified audit opinion and time was of the essence. The decision was practical. In light of the information referred to in this report, we conclude that the appointment of PWC was justifiable in the circumstances.
- 16.27 From the memorandum (refer Annexure M1) it is evident that PRASA experienced problems with asset management and related aspects, such as an asset register. Although, the memorandum does not specify this, the fact that PRASA lacked appropriate internal skills in this respect appears to be an aspect, which was ongoing for a while.
- 16.28 It appears from the available documents that PWC did provide various resources and expertise to PRASA. The payments made were in line with the contract value. Furthermore, it appears that PRASA did receive value for money from the services rendered by PWC. However, we are not in a position to comment on the exact rand value for money that PRASA received. appointment and subsequent expenditure is irregular.

17. Findings relating to the appointment of ETS Emergency Training and the payments to this supplier

- 17.1 To date of this report, we have not received any documents relating to ETS Emergency Training (ETS Training) that deals with this suppliers' appointment and the method used to appoint it. We requested this information on various occasions from Messrs Phoma and Gingcana and Ms Ramabi. We understand from Mr Phoma and Ms Ramabi that they requested documents from the user departments in PRASA, but that the user departments ignored their request and/or instructions from Mr Gingcana in this regard. This is indicative of poor internal discipline and management.
- 17.2 According to a spreadsheet received from National Treasury, the contract value is R15 155 048.52, but PRASA could not provide any contract or any payment information as per PRASA's electronic system.
- 17.3 In the absence of any document to support the processes to appoint this service provider, we conclude that the appointment and any possible subsequent expenditure incurred by PRASA is irregular.
- 17.4 We find that documents do not exist and/or that these documents are not at PRASA's disposal.
- 17.5 Similarly, we requested hard copy documents, such as purchase requisitions, purchase orders and invoices from PRASA, but to date of this report, PRASA did not provide us with any of these documents. In addition, we did not receive any information in electronic format relating to payments made to ETS Emergency.
- 17.6 It should, however, be noted that we are not in a position to comment whether or not PRASA might have received value for money from the services rendered by this service provider, because we received no documents in this respect. It should be noted that we also did not interview the service provider.

Conclusion

- 17.7 In the absence of any documents, we cannot conclude whether this service providers was ever appointed. The fact that PRASA cannot provide electronic payment information as per its system to this service provider is disconcerting.

- 17.8 Due to the absence of any documents, we cannot conclude whether the service provider was appointed and whether such appointment was in line with legislation and PRASA SCM policy. PRASA is obliged to retain these documents and it appears that these documents are not at PRASA's disposal and/or that PRASA does not want to provide these documents. In the circumstances, the appointment may well be irregular.
- 17.9 Similarly, PRASA cannot or will not provide any documents relating to payments made to this supplier. In light of the absence of any supporting documents to payments, all payments to this supplier may be irregular expenditure.
- 17.10 In our view, PRASA's board contravened sections 50 (1) (a), 51(1) (a) and 55(1) of the PFMA in that they failed to keep proper procurement and payment records in this respect.
- 17.11 In addition, it is questionable if any contract between PRASA and ETS Training exist. We recommend that National Treasury should consider verifying payments to this entity through forensic analysis of PRASA's payment data. If payment is confirmed to have been made, then it may be irregular and/or fraudulent, because there is no evidence to support otherwise.

18. Findings relating to the appointment of Fantique Trade 664 CC and the payments to this supplier

- 18.1 According to the information from National Treasury, PRASA entered into two contracts with Fantique Trade 664 CC (Fantique). The contract value of contract 4600003172 is R18 696 783.09 and the contract value of contract 4600002943 is R23 502 691.21.
- 18.2 To date of this report, we have not received any documents relating to Fantique that deals with this suppliers' appointments and the method used to appoint it. We requested this information on various occasions from Messrs Phoma, Gingcana, Ncube and Ms Ramabi. Mr Ncube is a SCM Manager at PRASA Metrorail.
- 18.3 On 14 June 2016, Mr Phoma indicated that we must contact Mr Ncube in relation to this supplier. He replied on the same date that SCM Corporate had collected all files in respect of Fantique on 21 April 2015. Mr Ncube also provided us with a document that reflects that an official from PRASA Corporate collected these documents on 21 April 2015 (**Annexure N1**).
- 18.4 We met with Mr Ncube on 13 September 2016. Mr Ncube informed us that according to his knowledge, Fantique was appointed in early 2012, before he was the SCM manager. He reiterated that the documents should be at PRASA Corporate. He further indicated that he was not involved in the appointment of Fantique and has no knowledge thereof. Mr Ncube reiterated that one Mr Thulisiwa Nkosi from PRASA Group Security collected all procurement documents relating to Fantique. We escalated this aspect to Mr Phoma who was not aware thereof. We understand from Mr Phoma that he endeavoured to obtain the documents at PRASA Corporate, but had no success in this respect. We understand from Mr Ncube that Mr Nkosi is still employed at PRASA Group Security Services.
- 18.5 Mr Ncube further indicated to us that he was a sourcing manager at PRASA Metrorail, but that he acted as SCM manager since November 2013. Mr Ncube indicated that his current position has not been formalised to date, but he has been in this position ever since.

- 18.6 Mr Ncube further indicated that according to PRASA's system, Fantique did drainage upgrade works for PRASA on both contracts. He was not involved in the appointments, nor did he form part of the team that evaluated these processes. Mr Ncube can thus not comment on the method used to procure the services. We also requested Mr Ncube to provide us with contact details of an individual at Fantique and Mr Ncube indicated that he was not involved in any contract management or client relations at any stage and could not provide these contact details.
- 18.7 Our finding is that these documents relating to the appointment of Fantique on both contracts do not exist and/or PRASA does not want to provide these documents and/or that these documents may have been destroyed.
- 18.8 As confirmed by Mr Mbatha, it is SCM division's responsibility to keep records of these documents, in line with PRASA's SCM policy and directives. It is alarming that these documents are not readily available.
- 18.9 In light of the above circumstances, we conclude that both appointments of Fantique may have been irregular and that all expenses incurred by PRASA for services ostensibly rendered by Fantique may be irregular expenditure. The total irregular expenditure is R29 568 073.12.

Contracts between PRASA and Fantique

- 18.10 In addition to the documents relating to the appointment of Fantique on both contracts, we also requested PRASA for both contracts entered into between PRASA and Fantique. To date of this report, we have not received any of the requested documents from PRASA.

Payments from PRASA to Fantique

- 18.11 Similarly, we requested hard copy documents, such as purchase requisitions, purchase orders and invoices from PRASA in respect of Fantique. Mr Ncube referred us to Mr Cele from the finance division of PRASA Metrorail.
- 18.12 On 26 September 2016, we again requested Mr Ncube via email to provide us with the contact details of the individual at Fantique who liaised with PRASA on both these contracts. We believe this information should be readily available on PRASA's system. Mr Ncube again indicated that he does not have the contact details of an individual at Fantique and/or Fantique's contact details.
- 18.13 However, we did receive information in electronic format relating to payments made to Fantique from Mr Ncube via email on 14 September 2016 (**Annexure N2**). We provided this information to Mr Cele and requested him to confirm what exactly PRASA paid to Fantique. In addition, from the information provided via email by Mr Ncube (specifically SAP downloads), it appears from these documents that Fantique rendered services to PRASA relating to 'Drainage upgrades', mostly at Kliptown, Johannesburg and Leralla in Tembisa. We are not in a position to comment any further on these aspects.

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- 18.14 Mr Cele sent us an email on 28 September 2016 containing a list of payments made to Fantique and based on this, an amount of R15 109 826.25 was paid under contract 4600003172 and R14 459 110.87 was paid under contract 4600002943 (**Annexure N3**). The cumulative value of the payments under both contracts are R29 568 937.12 (39 payments in total).
- 18.15 Mr Cele instructed one Mr Samuel Olifant (Mr Olifant), a financial administrator at PRASA Metrorail to provide us with supporting documents relating to payments. Mr Olifant provided supporting invoices, remittance advices, creditor statements and reconciliations in support of all payments made to Fantique by PRASA. We received the information from Mr Olifant via emails on 30 September 2016 and 5 October 2016 respectively. Mr Olifant confirmed via email that he provided us with all documents that he could obtain.
- 18.16 We were unable to establish whether the payments made to Fantique, were in line with the respective contracts concluded between Fantique and PRASA. From our review of the payments and supporting invoices, we did however note that the services that Fantique invoiced for were consistent throughout the invoices. The services rendered include Draining, Landscaping and Planting Plants, Track work, Mass Earthworks, etc.
- 18.17 Most payments (detail below of documentation not received) were supported by a remittance advice, a statement from Fantique, an invoice, a reconciliation and what appears to be a SCM checklist which PRASA ostensibly compiled and indicated that the documents were matched to the Goods Received Voucher. It appears that unknown PRASA officials signed these checklists prior to payment. During our review of the payments and the supporting documentation, we noted the following:
- For five payments, amounting to R1 762 243.29, we received no supporting documentation whatsoever
 - For one payment, amounting to R2 775 230.10, we received a statement from Fantique, which includes the amount, but we were not provided with an invoice detailing the services charged for
 - For three payments, amounting to R8 243 086, there was no proof that PRASA confirmed the services by way of signature/a checklist indicating that a Goods Received Voucher was reviewed prior to payment.
- 18.18 We attached in an excel format a copy of our working papers relating to the payment documents we received from PRASA (**Annexure N4**).
- 18.19 We found that there were instances where only one invoice was issued by Fantique but the payment by PRASA, was split into a few smaller payments. It appears all payments were made to Fantique. The risk associated with this is possible splitting of orders to bypass the procurement/approval processes.
- 18.20 We escalated this aspect to Mr Cele via email on 12 October 2016. Mr Cele replied on 13 October 2016 and inter alia stated "There was one payment made of R752 653.14. There were two GRVs though on the system for one invoice and NOT that there were two separate payments. This can happen in many instances where one invoice is for two different items thus GRVd either all at once or on different dates".

18.21 Our understanding of Mr Cele's response is that in instances where there was one invoice with multiple payments related to that invoice, the services invoiced were delivered to PRASA in tranches and after Fantique had delivered the services, PRASA made the relevant payments. Therefore, PRASA did not necessarily pay one invoice with one payment.

Conclusions relating to Fantique's appointment and payments

18.22 In light of the fact that we could not obtain any hard copy documents of the procurement process, we conclude that in the absence of documents indicating the method of procurement followed to appoint Fantique, that both appointments of Fantique may have been irregular.

18.23 Similarly, the total amount paid by PRASA to Fantique on both contracts may be regarded as irregular expenditure totalling R29 568 073.12.

18.24 With the limited information at our disposal, we are not in a position to comment any further on this aspect. However, we are of the view that PRASA should take cognisance of possible splitting of invoices to bypass approval processes. This aspect may pose significant financial and reputational risks to PRASA and negate proper segregation of duties in the payment process.

18.25 In our view, PRASA's Board at the time contravened section 50(1)(a) of the PFMA in that it failed to exercise reasonable care to ensure the proper safekeeping of procurement related documents. In terms of section 83(2) of the PFMA, all the board members are individually and severally liable for financial misconduct.

18.26 In terms of section 34 of PRECCA, any person who holds a position of authority and who knows or ought to have known or suspected that another has committed an offence of corruption, or fraud or theft involving R100 000.00 or more, is obliged to report such knowledge or suspicion or cause it to be reported to the South African Police Services (SAPS). The absence of any appointment related documents is disconcerting.

19. Findings relating to the appointment of Softfinity Consulting and the payments to this supplier

Background

- 19.1 Our Mandate from National Treasury reflects 2 (two) contracts between PRASA and Softfinity Consulting (Pty) Ltd (Softfinity). The one contract with contract number 4600005493 is for an amount of R14 400 000.00 with a validity period from November 2014 to July 2016. The other contract with number 46000004500 is for an amount of R20 393 040.00 with a validity period January 2013 to July 2016. The cumulative value of these contracts is R34 793 040. It is not clear from our mandate if the amounts include or exclude VAT.
- 19.2 We ascertained that Werksmans Attorneys (Werksmans) conducted a procurement review for PRASA in respect of the contracts that form part of our mandate in 2015. We obtained procurement related documents in respect of Softfinity's appointment from Werksmans, which included a contract between PRASA and Softfinity (discussed in more detail below) with reference HO/ICT/134/12/2012 with a contract value of R35 039.040 (including VAT). The validity period reflected on the contract is 01 August 2013 to 31 July 2016. It appears from the value and validity period (which are not exactly similar) that National Treasury's mandate refers to the mentioned contract. The reference number on the contract is the same reference number as the reference number of a contract which Werksmans investigated in 2015. We discuss this aspect in more detail below.
- 19.3 As per the contract between PRASA and Softfinity, it appears that PRASA ICT identified the need to institutionalise an Enterprise Architectural competency in order to increase its business value and effectiveness as well as reducing ICT complexity and total cost of ownership. Further, as per the contract, there are several key initiatives aligned to the Rolling Stock renewal programme that needs to be expedited to ensure that the organisation's strategic imperatives are met. Resources with the relevant knowledge and expertise are required to provide the services that will address the need and assist the General Manager - Enterprise Architecture capability and Roadmap with associated artefacts.

Delay in obtaining information

- 19.4 We requested documents relating to Softfinity from Mr Phoma. Mr Phoma subsequently informed us that contracts awarded to Softfinity (that forms part of our mandate) were investigated by Werksmans. We requested a contact number of the investigator at Werksmans from Mr Phoma to confirm with Werksmans if they investigated these contracts.
- 19.5 We met with Mr Phoma and the Chief Procurement Officer, Mr Mbulelo Gingcana on 4 July 2016 to discuss the progress of matters in general. During this meeting, Mr Phoma again confirmed that all documents relating to Softfinity were collected by Werksmans. Mr Phoma further indicated that Werksmans uplifted all original documents and that PRASA could therefore not even provide us with copies of the requested documents.
- 19.6 On 20 September 2016, we again requested the contact details from Mr Phoma, which he then provided to us via email on the same date. We contacted the director at Werksmans, Mr Jeremy Gobetz (Mr Gobetz) and sent him (Mr Gobetz) an email in which we enquired if Werksmans is in possession of documents relating to Softfinity and if Werksmans conducted any work relevant to our scope.
- 19.7 Mr Gobetz replied to our email and indicated that we should direct a request to Mr Vukani Ndaba (Mr Ndaba), the Chief Director: SCM at National Treasury on 23 September 2016, but indicated that Werksmans is in possession of 'some' documents relating to Softfinity. We requested Mr Ndaba to provide the required letter to Werksmans. Mr Ndaba replied on 26 September 2016 and indicated he would send the required letter to Werksmans to make the documents available to us.
- 19.8 On 7 October 2016, we forwarded email correspondence to Mr Ndaba and enquired on the matter relating to Softfinity. Mr Ndaba replied on the same date and indicated that the letter had been sent to Werksmans. Mr Gobetz informed us that we could collect the documents from Werksmans, which we did on 10 October 2016.
- 19.9 We ascertained from our meeting with Werksmans on 10 October 2016 that Werksmans did work for PRASA in respect of Softfinity and that the work primarily entailed a procurement review. We addressed email correspondence to Mr Gobetz on the same day in this respect. Mr Gobetz replied on the same date and *inter alia* indicated the following:
- "In fact, way before Treasury had appointed its various subcontractors to conduct their respective investigations, we had already, in our second preliminary report, which was delivered to the board of PRASA on 30 September 2015, provided a prima facie review of Softfinity so as to primarily ascertain if the processes followed were in line with legislation, Treasury Regulations and PRASA's SCM policy and directives".*
- 19.10 We escalated this aspect and our concern relating to a possible duplication of work to PRASA and National Treasury.

- 19.11 We further endeavoured to obtain clarity from Mr Ndaba on 13 October 2016 and spoke to his colleague, Ms Bonolo Moloto (Ms Moloto), a SCM Manager at National Treasury on the same date. Ms Moloto reverted he had ascertained from Mr Ndaba that if Werksmans did a procurement review, we should not duplicate the work and only focus on aspects of our mandate that Werksmans did not cover in executing its work. We again forwarded email correspondence to all stakeholders on 14 October 2016 and requested that PRASA expedite its decision to provide us with Werksmans report relating to the procurement review conducted by Werksmans in 2015. Mr Ndaba confirmed this telephonically on 14 October 2016 to us.
- 19.12 We requested Messrs Gingcana and Phoma via email to assist us to expedite this request via email on 14 October 2016, 17 October 2016 and 18 October 2016. Werksmans provided an extract of its report to us via email 18 October 2016 (**Annexure O1**) and indicated that PRASA had provided permission to provide the extract to us. This extract deals with a procurement review that Werksmans did, focussing on a query raised by the Auditor General of South Africa (AGSA) in relation to the process followed that culminated in Softfinity's appointment. The contract reference that Werksmans reviewed is HO/ICT/134/12/2012. For purposes of this report, we only focus on the concern raised by AGSA as far as the procurement processes are concerned.

Documents received from Werksmans

- 19.13 As indicated, we collected documents from Werksmans on 10 October 2016. These documents relate to the procurement process followed to appoint Softfinity. PRASA issued an RFP and advertised the tender. After PRASA evaluated and adjudicated the tenders, PRASA appointed Softfinity.
- 19.14 The nature of the work required by PRASA entailed Enterprise Architectural Services.
- 19.15 In agreement with Mr Ndaba, we do not discuss the entire procurement process followed and for brevity highlight the key issues of Werksmans deliverable.
- 19.16 The main concern raised by AGSA, as per Werksmans report, is that PRASA changed the technical criteria of the evaluation during the evaluation process and the weighting criteria used differed from the weighting criteria as per the RFP. AGSA expressed the concern that this practise was not fair.
- 19.17 Werksmans ascertained through its investigation that the weighting criteria as per the RFP was changed. However, the revised weighting criteria was communicated to all prospective bidders at the compulsory briefing session and copies thereof were provided to all prospective bidders that attended the compulsory briefing session.
- 19.18 The reason for the change of the weighting criteria was that the criteria as per the RFP was evenly divided, which raised the risk that if the criteria as per the RFP was followed, PRASA might have appointed a service providers that does not have the required expertise for the work.

- 19.19 The amended criteria was provided to all bidders who attended the compulsory briefing session, prior to the bidders preparing it respective bids, thus providing adequate notice of the change of the weighting criteria to all prospective bidders.
- 19.20 The resultant effect is that the process was fair and transparent.
- 19.21 As indicated, we do not focus on other aspects of the procurement process, because AGSA raised only the mentioned concern.
- 19.22 The query by AGSA and the investigation by Werksmans could have been avoided had PRASA properly documented the processes followed. It appears from Werksmans report that the process was not properly documented and hence an investigation was necessary.
- 19.23 The lack of a proper audit trail relating to procurement processes followed is a frequent occurrence at PRASA and should be addressed with immediate effect.

Contract(s) between PRASA and Softfinitly

- 19.24 PRASA and Softfinitly entered into a contract, which an unknown representative of PRASA signed on 18 September 2013 and an unknown representative of Softfinitly signed on 17 September 2013 (**Annexure O2**). The contract value is R35 039 040.00 (including VAT) for a three year period.
- 19.25 In terms of the agreement, Softfinitly had to provide a properly resourced team to assist PRASA to institutionalise an Enterprise Architectural competency to increase its business value and effectiveness, as well as reducing ICT complexity and total cost of ownership.
- 19.26 We obtained another agreement between PRASA and Softfinitly dated 11 March 2013. Both PRASA and Softfinitly signed this contract. The value of the contract is R246 240.00 (including VAT) and the validity period is reflected as 12 February 2013 to 31 May 2013 (**Annexure O3**). The nature of the services is "*BUSINESS ANALYST SERVICES*". This contract does not form part of our mandate and we therefor do not comment thereon futher.

Payments by PRASA to Softfinitly

- 19.27 We received electronic information from PRASA's system relating to payments made to Softfinitly. We received this via email from Ms Ramabi. According to PRASA's system a total amount of R18 905 859.18 was paid to Softfinitly in fifteen payments from May 2013 to December 2014.
- 19.28 It is not clear from the electronic payment information that all the payments reflected below were made in respect of the contract with reference HO/ICT/134/12/2012. Although this contract refers to a payment schedule, the payment schedule is not amongst the documents we received from Werksmans.

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- 19.29 On 19 October 2016, we forwarded email correspondence to Mr Gingcana and requested if one Mr Imraan Khan (Mr Khan), General Manager: Enterprise Architecture is the person who could provide information relating to payments to Softfinity. Mr Khan is reflected as the person who managed the work by Softfinity as per the contract (refer Annexure O2).
- 19.30 Mr Gingcana responded on the same date and indicated that Mr Khan is the person whom we should contact and that Mr Khan is willing to assist.
- 19.31 Mr Khan responded to our email on 20 October 2016, and indicated that he had requested invoices in support of the payments and that he was willing to meet with us to discuss the matter in further detail. In addition to this, Mr Khan explained that it would take time to retrieve all supporting documents as the services were delivered to different Business Units. He further confirmed that the contracts under review, both relate to one contract number HO/ICT/134/12/2012 but that the amounts were split between Capex (capital expenditure) and Opex (operating expenditure) related projects. He indicated to us that contract number 4600005493 for R14 400 000.00 was classified as Opex and contract number 4600004500 for R20 393 040.00 as Capex.
- 19.32 Mr Khan informed us that he was PRASA's project manager in respect of both contracts and could assist us with supporting documents relating to payments.
- 19.33 On 25 October 2016 we met with Mr Imraan Khan (Mr Khan), General Manager: Enterprise Architecture at PRASA. Mr Khan informed us that three payments made to Softfinity (amounting to a total of R235 125.00), were in respect of another contract and not the contract with reference HO/ICT/134/12/2012.
- 19.34 All the other payments total R18 670 734.18. Mr Khan confirmed that PRASA effected these payments in respect of the contract with reference HO/ICT/134/12/2012. Mr Khan informed us that Softfinity prepared its invoices strictly in accordance with the rate card as per the contract. Mr Khan further informed us that he reviewed all the time sheets that Softfinity submitted, for work done on behalf of different PRASA Business Units. Mr Khan approved the time sheets and payments of the invoice, because not only were the time sheets in accordance with the rate card as per the contract, but also because Mr Khan was satisfied with the quality of services rendered by Softfinity.
- 19.35 We reviewed the supporting documents in respect of the fifteen payments amounting to R18 670 734.18. The supporting documents included supplier's statements and/or reconciliations, invoices and timesheets signed off by Mr Khan and remittance advices (indicating payment details). Further to this, Mr Khan indicated that he was satisfied with the quality of work delivered by Softfinity. He provided us with copies of the deliverables which Softfinity delivered and approved by himself and also by PRASA Exco.

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- 19.36 Mr Khan further informed us that although the contract period was for three years that PRASA stopped payments, because of the query raised by AGSA in the 2014/2015 audit and the resultant view that the appointment was irregular. Mr Khan indicated that Softfinity issued four additional invoices for which the services were rendered, but payments were not made, pending a process condoning the appointment process and expenses incurred by PRASA. Mr Khan further indicated that Softfinity withdrew its resources, because PRASA did not pay the four invoices for which Softfinity satisfactorily rendered services to PRASA. The detail of the invoices are as follows (all amounts include Value Added Tax):
- a) IN100630, dated 22 July 2015 and amounting to R995 676.00
 - b) IN100634, dated 01 September 2015 and amounting R689 044.50
 - c) IN100635, dated 01 September 2015 and amounting to R1 153 794.00
 - d) IN100636, dated 01 September 2016 and amounting to R1 192 041.00.
- 19.37 Mr Khan compiled a condonation report and submitted it to SCM in November 2015. In March 2016, Mr Kahn learned that the submission was lost and he again submitted a condonation report to SCM to submit to the Audit Risk Management Committee for approval. Mr Khan indicated that the matter was tabled in July 2016, but that the committee did not consider it, because SCM did not specify the amount involved in the summary sheet that needed to be condoned. Mr Khan further indicated that to date, the matter has not served before the committee.
- 19.38 Mr Khan further informed us that Softfinity indicated to him that it is considering legal action against PRASA for services rendered and not being paid (referring to the four unpaid invoices). In our view, should Softfinity issue a summons against PRASA in this respect, PRASA would likely suffer financial and reputational prejudice. Moreover, this may result in fruitless and wasteful expenditure by PRASA for legal cost in this regard, for not only PRASA, but also legal cost incurred by Softfinity which PRASA may be liable for if the court makes an adverse cost order against PRASA.
- 19.39 Mr Khan provided us with the submission for condonation via email on 25 October 2016 (**Annexure O3**). This document is dated 23 May 2016 and is addressed to Mr Gingcana.
- 19.40 Paragraph 1 of this document deals with the "Motivation" for the condonation and inter alia states "The ICT Enterprise Architecture tender specification including evaluation criteria was issued to SCM for the procurement of EA services in October 2012. Note that a BSC (bid specification committee) was non-existent /operational at the time. SCM reviewed our submission and made changes as the proposed weights were initially evenly distributed across all categories. The processes were conducted in a 'free and fair" manner without disadvantaging any service provider... "
- 19.41 The document reiterates that the amended weighting criteria was circulated at the briefing session and the evaluation was done in accordance with the amended criteria circulated.

The document further reads "PRASA has not suffered a loss as a result of the irregular expenditure as value-for-money was obtained based on the numerous deliverables. In addition, EA resources were deployed on-site at PRASA during the period of engagement..."

Conclusions relating to Softfinity's appointment and payments made to Softfinity

- 19.42 We are of the view that the procurement process followed by PRASA was in line with the Constitution, PFMA and PRASA's SCM policy. The concern raised by AGSA could have been avoided had PRASA kept a proper audit trail of the processes and events as it transpired.
- 19.43 Our review of the supporting documentation for Softfinity did not reveal concerns about the payments made to them.
- 19.44 We reiterate that it is in PRASA's best interest to table the condonation of this matter and to pay Softfinity in respect of the invoice mentioned, subject to a verification by Mr Khan that the services had been rendered satisfactorily. We therefore recommend that PRASA attend to this as a matter of urgency.

20. Findings relating to the appointment of Sobela Engineering (Pty) Ltd and the payments to this supplier

Background

- 20.1 According to information in the public domain, Sobela Engineering (Pty) Ltd changed its name to Railway Cellular (Pty) Ltd t/a Rail Cell (Rail Cell) on 31 October 2014.
- 20.2 PRASA issued a notice of appointment to Rail Cell (Pty) Ltd (Rail Cell) dated 5 November 2013 (**Annexure P1**), which refers to an approval that had been granted to appoint Rail Cell for the rollout of broadband services on a limited pilot basis to underprivileged schools under the Gauteng Department of Education for a period of six to twelve months with reference number HO/INT/04/10/2013 at a contract amount of R1 170 050.40 (including VAT).
- 20.3 Rail Cell accepted the appointment on 8 November 2013 (**Annexure P2**).
- 20.4 PRASA issued another notice of appointment to Rail Cell dated 4 June 2014 (**Annexure P3**), which refers to an approval that had been granted to appoint Rail Cell to cover twenty additional schools with reference number HO/INT/04/10/2013 at a contract amount of R11 700 000.00, including VAT and disbursements.
- 20.5 Rail Cell accepted the appointment on 8 June 2014.

Method of procuring services of Rail Cell

- 20.6 Mr Isaac Kgokane (Mr Kgonane) provided us documents, such as an ostensible proposal submitted by Rail Cell, contracts etc. relating to Rail Cell's appointment on 19 July 2016 via email.
- 20.7 It appears from the documents we were provided, that Rail Cell approached PRASA with a proposed solution, which would allow a saving of over 30% of its telecommunication annual costs. The solution offered a unique way to allow for broadband connectivity to schools within a 5 kilometre radius of the railway line, utilising the available capacity of PRASA's telecommunications infrastructure network. The solution was presented to PRASA and it was approved. It is not clear from the documents provided who approved this solution proposed by Rail Cell.

- 20.8 We noted from the documents we were provided by PRASA, that Rail Cell submitted a proposal dated 11 December 2013, however, no reference number is stated on the proposal (**Annexure P4**).
- 20.9 Paragraph 12.3.5 of PRASA's SCM policy of 2014 (implemented on 29 May 2014) states as follows: "Unsolicited tenders are generally prohibited unless approved for consideration by the GCEO. In approving their consideration, the GCEO shall take the following into account:
- *That the unsolicited tender is a unique concept offering*
 - *That the offering of the tender cannot be provided efficiently through competitive tendering process; and*
 - *That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited tender*
 - *All unsolicited tenders must be tested in the market through Expression of Interest to ensure that indeed the concept is unique and is the only one available in the market".*
- 20.10 Similarly, the 2009 SCM policy states as follows in paragraph 11.3.3 "Unsolicited bids are generally prohibited unless approved for consideration by the GCEO. In approving their consideration, the GCEO shall take the following into account:
- *That the unsolicited bid is a unique concept or offering*
 - *That the offering of the bid cannot be provided efficiently through competitive bidding process*
 - *That there are no suppliers in the market that can provide a similar offering without copying from the unsolicited bid".*
- 20.11 PRASA did not provide us with any information to indicate that PRASA tested the market with Expressions of Interest. There is also no evidence to suggest that Rail Cell is the only entity in South Africa that could provide these specific services.
- 20.12 Subsequently, PRASA appointed Rail Cell for Schools Broadband Project with reference HO/INT/04/10/2013 (refer Annexure Q3). Furthermore, PRASA appointed Rail Cell to cover twenty additional schools (refer Annexure Q3).

Contract entered into between PRASA and Rail Cell

- 20.13 PRASA and Rail Cell entered into an agreement on 30 August 2014 (**Annexure P5**). The agreement is titled "*SCHOOLS BROADBAND AND FIBRE LEASING AGREEMENT*" and the value is stipulated as R11 700 000.00. The effective date of the agreement is recorded as 1 July 2014. The contract term was for twelve (12) months. Mr Montana signed the agreement on behalf of PRASA.
- 20.14 According to clause 3.1 of the agreement, the unsolicited procurement strategy was requested as approved for the implementation of the project.

- 20.15 Clause 3.2 states as follows: "On May 2013 the Consultant proposed a solution to PRASA which will allow saving over 30% of its telecommunication annual costs. The Solution as well offered a unique way to allow broadband connectivity to schools, within 5 km radius of the railway line, utilising the available capacity of PRASA'S telecommunications infrastructure network. The solution was presented to the different departments of PRASA and was approved".
- 20.16 Generally, the agreement entailed that Rail Cell will commercially utilise the available capacity of PRASA's telecommunications infrastructure ("Fibre"), by leasing it to third parties and some of the revenues generated will be utilised to connect and provide broadband connectivity to 291 schools, which are within 5 km radius of the railway line nationwide.
- 20.17 Rail Cell would lease PRASA's telecommunication infrastructure at a rate of R503.00 per kilometre. We could not ascertain if Rail Cell paid any money to PRASA. The installation of the broadband connectivity to the initial 20 schools as listed in the agreement would be financed by PRASA at a cost of R11.7 million.
- 20.18 The parties agreed to conclude a lease agreement in terms of which PRASA ("Lessor") leases to Rail Cell ("Lessee") the available telecommunication infrastructure, thus granting Rail Cell the rights to access and use the telecommunication infrastructure for the agreed commercial use as per the fibre optic lease agreement (**Annexure P6**). As part of the Schools Broadband CSI initiative, Rail Cell agreed to install and deliver broadband connectivity to the rest of 289 schools over the period of the lease agreement. We could not establish if this happened, as we did not interview any PRASA individual in the appropriate end user division.

Payments made by PRASA to Rail Cell

- 20.19 We requested hard copy documents such as purchase requisitions, purchase orders and invoices in respect of Rail Cell from PRASA, but to date of this report have not received any of these documents. However, we received electronic information from PRASA's system relating to payments made to Rail Cell from Ms Ramabi. According to PRASA's system a total amount of R11 699 573.33 was paid to Rail Cell. PRASA made three (3) payments to Rail Cell from 16 October 2014 to 27 December 2015.
- 20.20 We set out in the table below, the payments by PRASA to Rail Cell as per PRASA's system.

Table 39: Payments to Rail Cell

| Payment Number | Payment Date | Amount (ZAR) |
|-----------------------|---------------------|----------------------|
| 2000013312 | 16 October 2014 | 1 217 781.06 |
| 2000013838 | 12 December 2014 | 5 849 989.80 |
| 2000014262 | 27 February 2015 | 4 631 802.47 |
| Total | | 11 699 573.33 |

20.21 In addition to the information contained in the table above, we are not in a position to comment any further on payments made to Rail Cell, due to a lack of any documents from PRASA. We are not in a position to indicate that PRASA did receive value for money from any services by Rail Cell.

Conclusion relating to the appointment of and payments to Rail Cell

20.22 In light of the information at our disposal, it appears that the appointment of Rail Cell was not in line with the 2014 SCM policy and that Rail Cell's appointment was irregular. The resultant effect of the irregular appointment is that all costs incurred by PRASA in terms of the contract with Rail Cell is irregular expenditure as defined in the PFMA. The total irregular expenditure is R11 699 573.33.

20.23 There is no evidence to justify the appointment of an unsolicited bid. . Although, the proposal indicates a 30% saving for PRASA, there is no evidence that PRASA did in fact save cost, as there is no indication that PRASA tested the market with expressions of interest.

20.24 Mr Montana signed the agreements on behalf of PRASA without proper consideration of the applicable policies and guidelines Mr Montana was a high-ranking employee in PRASA. As a senior employee, Mr Montana was in a relationship of trust with PRASA and expected to act in the PRASA's best interest. This *inter alia* entails that he should be diligent in the execution of his duties and responsibilities.

20.25 The same principle apply to Dr Phungula, who recommended Rail Cell's appointment.

20.26 We are of the view that Mr Montana and Dr Phungula acted negligent in the circumstances and contravened section 57(1) of the PFMA in that they cause irregular expenditure in their respective areas of responsibility. Due to a lack of information, we are not in a position to comment whether PRASA received any value for money. National Treasury should consider investigating this aspect in more detail.

20.27 In the circumstances, we conclude that Rail Cell's appointment was irregular and consequently all-expenses paid by PRASA to Rail Cell should be classified as irregular expenditure (R11 699 573.33).

20.28 We recommend that PRASA's Board should ensure that proper controls have been put in place (if not already) to avoid a similar occurrence in future.

20.29 In terms of section 34 of PRECCA, any person who holds a position of authority and who knows or ought to have known or suspected that another has committed an offence of corruption, or fraud or theft involving R100 000.00 or more, is obliged to report such knowledge or suspicion or cause it to be reported to the South African Police Services (SAPS). In our view, Dr Phungula and Montana might have contravened section 57 (1) of the PFMA and the Board might have contravened sections 50 and 51 of the PFMA.

21. Findings relating to the appointment of Sizwe Africa IT Group and the payments to this supplier

Method of procuring services of Sizwe

21.1 It appears from our review of the available documents that PRASA issued a RFP in respect of "Cisco Network Support Management and Cabling". We obtained a copy of the Recommendation Report (**Annexure Q1**) detailing the process undertaken (including evaluation process) in this regard. The Scope of Work was as listed below:

- Cisco Equipment warranties that include
 - Hardware replacement
 - Cisco OS updates
 - Network break fix services.
- Network Consulting Support services ("as and when") Services including:
 - 10x36 hours for Principal Engineer
 - 40x 36 hours for Senior Engineer
 - 80 x 36 hours for a mid-level Engineer.
- Network Cabling and Network cabling repairs as and when required.

21.2 We established from the Recommendation Report (refer Annexure Q1) that the tender process was as per the below table:

Table 40: Process followed

| Item | Date |
|-----------------------|---|
| Date Advertised | 19-21 July 2013 |
| Method of Advertising | Open Tender- City Press, The Star, Mercury, Cape Times and 10 December 2012 |
| Briefing Session | 1 August 2013 |
| Closing date | 26 August 2013 at 14h00 |

Proposal Evaluation

21.3 According to a Tender Opening Register dated 10 September 2013, PRASA received Bids from the following bidders (**Annexure Q2**)

- Business Connection
- Dimension Data
- Bytes Systems Integration
- Datacentrix
- Sizwe Africa IT Group.

21.4 Per a Memorandum dated 23 September 2013, the following individuals were appointed as Members of the BEC (**Annexure Q3**):

- Daluxolo Qabaka – BEE Manager, Corporate SCM
- Thaodi Mapodile – GM: ICT, Corporate ITC
- Raymond Tshabalala – Assistant Manager Finance
- Fhatuwani Maadi – Senior Buyer: Corporate SCM.

21.5 The Tenderers were evaluated using the following criteria (90/10 weighted system):

Table 41: Evaluation criteria

| Evaluation Criteria | Weighting |
|----------------------------|------------------|
| Security Screening | Compliance |
| Bank Rating | Compliance |
| Technical | Threshold of 70% |
| BBBEE | 10 |
| Price | 90 |
| Total | 100 |

21.6 We set out in the table below the results of the Technical Evaluation:

Table 42: Result of Technical Evaluation

| Bidder | Weighted Score |
|---------------------------|-----------------------|
| Business Connection | 69.8 |
| Dimension Data | 73.5 |
| Bytes Systems Integration | 71.0 |
| Datacentrix | 64.5 |
| Sizwe IT Group | 75.5 |

21.7 Datacentrix and Business Connection were eliminated for failing to achieve the 70% threshold.

21.8 The remaining three bidders were then evaluated on BBBEE and Price as follows:

Table 43: BBBEE Weightings

| Bidder | Price | Pricing Score | BEE Score | Weighted Price Score |
|---------------------------|----------------|---------------|-----------|----------------------|
| Sizwe | 20 155 0048.52 | 90.0 | 9 | 94 |
| Bytes Systems Integration | 21 967 845.00 | 49.50 | 9 | 58.50 |
| Dimension Data | 37 183 175.35 | 40.80 | 8 | 32.80 |

21.9 Mr Montana approved the appointment on 4 March 2014 and provided Sizwe with an appointment letter dated 10 March 2014 (**Annexure Q4**).

Contract entered into between PRASA and Sizwe

21.10 PRASA and Sizwe entered into an agreement for the Supply, Delivery, Installation and Maintenance of Cisco Support Management and Cabling with an effective date of 14 September 2014 and a completion date of 31 August 2017 (**Annexure Q5**). We obtained a copy of the contract from Sizwe.

21.11 According to the contract (contract number HO/ICT/043/07/2013), the start date was 10 March 2014 and the end date, 31 August 2017. The total contract value is R20 155 048.52. The contract includes guidelines on pricing of services.

21.12 The services to be rendered are summarised in the table below:

Table 44: Services by Sizwe:

| Period | Service | Pricing Score |
|--------|---|-----------------|
| 36 | Consultancy | R 2 735 316.00 |
| 36 | Cisco Partner Support and Maintenance based on Roe R10 to USD | R 12419732.52 |
| 36 | Cabling based on Roe R 9.00 to USD | R 5 000 000.00 |
| Total | | R 20 115 048,52 |

Payments by PRASA to Sizwe

- 21.13 We requested hard copy documents, such as purchase requisitions, purchase orders and invoices relating to Sizwe from PRASA, but to date of this report have not received same. However, we received information relating to payments PRASA made to Sizwe according to PRASA's system from Ms Ramabi. According to this electronic information, PRASA made 37 payments to Sizwe from 15 March 2012 to 13 May 2016. The cumulative value of these payments is R48 716 585.73.
- 21.14 In the absence of supporting documentation received from PRASA, we requested documentation related to the contract under review, from the Sizwe Account Manager Ms Anita Du Plessis. We received a copy of the contract, a breakdown of the total invoices issued to and payments received from PRASA and further supporting documentation such as invoices.
- 21.15 With the assistance of Ms Doritha October, Debtors' Clerk at Sizwe, we established that Sizwe issued (and were paid by PRASA) for a total number of 385 invoices with a total value of R16 052 056.07. (**Annexure Q6**).
- 21.16 Based on the above, it is clear that PRASA provided us with a list of the total payments to Sizwe as opposed to the payments only related to the contract under review. Our review of payments was therefore focussed on the list of payments provided to us by Sizwe in respect of the contract under review.
- 21.17 We traced the list of R16 052 054.98 paid invoices (immaterial difference of R1.09 between total payments and total invoices), to the actual supporting invoices. We further compared some invoices to the services and pricing included in the contract. We did not find any significant variances or irregularities in terms of the services and amounts charged by Sizwe.

Conclusion

- 21.18 From the available documents, it appears that PRASA followed an appointment process in line with legislation and PRASA's SCM procedure.
- 21.19 Based on the documents relating to payments, it appears services were rendered.
- 21.20 Our review of the appointment of Sizwe did not reveal any concerns with regards to the appointment process and related payments.
- 21.21 We do not recommend any further action in respect of this contract.

22. General conclusions and recommendations

- 22.1 Based on the information in this report, we come to the following (general) conclusions.
- 22.2 It is a concern that PRASA appointed several service providers via deviations from the prescribed process (confinement / unsolicited bids). It is further concerning that we encountered difficulties in obtaining proper documents dealing with the reason(s) for the deviations from normal prescribed procedure. The method of procuring services through deviations should be discouraged, as it creates an environment susceptible for abuse. We agree with the concern expressed by the Public Protector in this respect.
- 22.3 As indicated throughout this report, the process of obtaining documents from PRASA was laborious frustrating and time consuming. This is as a direct result of PRASA not having the bulk of required information readily available. It is also concerning that despite various requests, various important documents are still outstanding.
- 22.4 Due to a lack of detailed information, we are not in position to conclude on several of the matters.
- 22.5 The retention of documents at PRASA seems problematic. The SCM division implemented a directive that addresses this aspect. We recommend that all division of PRASA implement similar directives and that these directives be communicated to all PRASA employees.
- 22.6 We ascertained from our review of documents and interviews conducted that Dr Phungula and Mr Montana were responsible for several of the appointments via deviations. As indicated in the detailed discussions of the contracts, Dr Phungula recommended several appointments and Mr Montana approved it.
- 22.7 Mr Montana and Dr Phungula in view of their respective positions were aware or ought to have been aware of the prescribed procurement procedures as per PRASA'S SCM policies and the PFMA, read with National Treasury Regulations. From the available evidence, it appears that Mr Montana and Dr Phungula disregarded the prescribed procedures. However, both Mr Montana and Dr Phungula resigned from PRASA. We have no information at our disposal as to their current whereabouts.

- 22.8 As indicated in the detailed discussion in section 3 of this report, the board is PRASA's accounting authority and sections 50 and 51 of the PFMA accordingly apply thereto. In view of the frequent deviations from an open procurement process we agree with the public protector that there was an abuse of the procurement process which is supposed to be fair, equitable, transparent, competitive and cost effective as enshrined in the Constitution, the PFMA and PRASA's SCM policy of 2009 and 2014 respectively.
- 22.9 There is no evidence to suggest that the PRASA board questioned any of the deviations. There is no evidence that the board intervened at any stage to question the procurement procedures followed. The board did not act with the necessary fidelity, honesty and integrity in the best interests of PRASA in managing its financial affairs as the PFMA requires of an accounting authority and in fact appears not to have played any role in relation to exercising care to protect the assets and records of PRASA. This warrants further investigation by the SAPS for possible contraventions of sections 50 and 51 of the PFMA read with sections 49, 83 and 86.
- 22.10 Dr Phungula and Mr Montana appears to have been involved in all the appointments we investigated via deviations from processes where invariably there would be no audit trail due to a dearth of supporting documentation that must and should have been retained. This raises the suspicion that Dr Phungula and Mr Montana might have benefitted unduly from these appointments.
- 22.11 In terms of section 34 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 any person who holds a position of authority and who knows or ought to have known or suspected that another has committed an offence of corruption, or fraud or theft involving R100 000.00 or more, is obliged to report such knowledge or suspicion or cause it to be reported to the South African Police Services (SAPS).
- 22.12 We recommend that National Treasury report these concerns to the SAPS for further investigation.
- 22.13 We further recommend that the reporting of the matter to the SAPS should cover possible contraventions of sections 50 and 51 of the PFMA by PRASA's Board and contraventions of sections 57 (1) of the PFMA by Dr Phungula and Mr Montana.



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