EXHIBIT BB8(a)

THE PROCUREMENT OF 95, 100 AND 1064 LOCOMOTIVES BY TRANSNET

MNS-TS-01

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MNCEDISI NDLOVU & SEDUMEDI
ATTORNEYS

THE PROCUREMENT OF 95, 100 AND 1064 LOCOMOTIVES BY TRANSNET

28 May 2019

Legal Expertise In Your Corner

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    3.4 Procurement of the 1064 Transaction Advisors and the services they rendered; and

    3.5 Relocation of CNR and Bombardier to Durban.

MNS APPOINTMENT

- MNS was appointed by the previous Transnet Board in March 2018;

- Our appointment came after Transnet was in receipt of the Werksman's report on its investigation of the 1064 Locomotive Transaction;

- Upon receipt of our Preliminary Report on 5 June 2018, the current Transnet Board mandated us to:
  - proceed with the outstanding investigations on the 1064 Locomotive Transaction; and
  - assist Transnet to implement the recommendations emanating from our investigations.

MNS MANDATE

- Establish ***whether the transaction's estimated total costs were inflated after hedging*** and determine whether contingencies and escalations were added;

- Establish ***whether the governance processes were employed***, if so, then established if such governance processes were effective;

- Investigate ***whether a relationship exists between Tequesta***, a company allegedly owned by Salim Essa, ***and CSR Hong Kong***;

- Provide ***recommendations to Transnet on the findings*** that arise from the investigations and ***possible action to be taken against anyone***; and

- Provide ***recommendations to Transnet on how to prevent further occurrences of the adverse findings*** and on compliance with the applicable laws, rules, regulations, policies and procedures.

METHODOLOGY AND PROCESSES FOLLOWED IN CONDUCTING THE INVESTIGATIONS

- Collation and analysis of documents provided by the Transnet officials that were involved in these Transactions;

- Imaging of the Transnet IT servers to obtain data that was relevant to the Transactions under investigations;

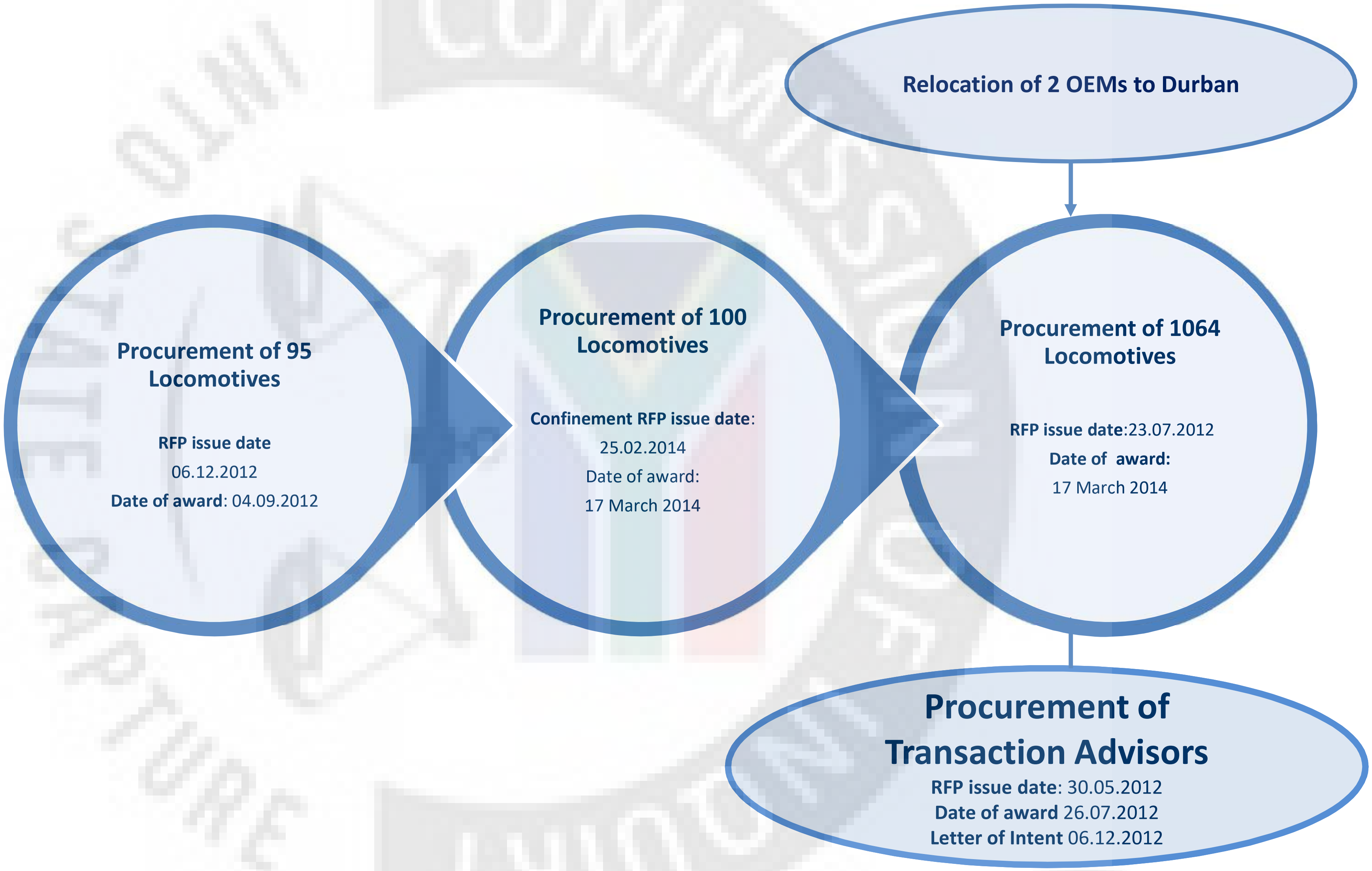
- Interviews with Transnet officials that were either involved in the Transactions or could shed light on the Transactions; and

- Where necessary, inspections in loco of the relevant Transnet facilities i.e. Durban facilities.

REPORTS COMPILED BY MNS

Reference	Title
Volume 1	Report On the Investigation Of Allegations Into Irregularities In The Procurement And Award Of The 1064 Locomotives Tender By Transnet Ltd
Volume 2A	Report into the alleged irregularities of the Transaction advisors in respect of the acquisition of the 1064 Locomotives Tender
Volume 2B	Report into the alleged irregularities of the Transaction advisors in respect of the acquisition of the 1064 Locomotives Tender and the financial Transactions pursuant thereto
Volume 3A	The Procurement of Transnet's 95 Locomotives
Volume 3B	The Procurement of Transnet's 100 Locomotives
	Relocation of Two OEMs to Durban

INVESTIGATED TRANSACTIONS



BACKGROUND TO THE ACQUISITION OF LOCOMOTIVES

- During April 2011,the Transnet Board approved Transnet Freight Rail's ("TFR") Locomotive and Modernization Fleet Plan (the Fleet Plan") for the acquisition of the 1202 Locomotives for General Freight Business.

- On 21 August 2011 a Business Case was developed and approved by Transnet Freight Rail Investment Committee (TFRIC) and Capital Investment Committee (CAPIC) **(Vol.11 p8342)** for the acquisition of 95 Electric Locomotives and 43 Diesel Locomotives.

- On 31 August 2011 the Transnet Board **(Vol.11 p8357)** approved the acquisition of:
  - 43 Diesel Locomotives on a confinement basis from General Electric; and
  - 95 Electric Locomotives through a competitive tender process.

- This left a fleet balance of 1064 Locomotives that must still be procured.

MNS-TS-09

THE PROCUREMENT OF THE 95 LOCOMOTIVES

INVESTIGATED TRANSACTIONS

Relocation of 2 OEMs to Durban

Procurement of 95 Locomotives

RFP issue date 06.12.2012

Date of award: 04.09.2012

Procurement of 100 Locomotives

Confinement RFP issue date: 25.02.2014

Date of award: 17 March 2014

Procurement of 1064 Locomotives

RFP issue date:23.07.2012

Date of award: 17 March 2014

Procurement of Transaction Advisors

RFP issue date: 30.05.2012

Date of award 26.07.2012

Letter of Intent 06.12.2012

CONTENT

1. Background to the acquisition of the 95 Locomotives
2. Key findings on the procurement process
3. Evaluation criteria
4. Differences between the MNS and Fundudzi's findings

BACKGROUND

- The Board approved a combined Estimated Total Cost ("ETC") of R3.6billion for both the 95 Electric and 43 Diesel Locomotives

- The ETC for the acquisition of the 95 Electric Locomotives was R2.659 billion.

- On 24 October 2011 the Board applied for section 54(2)(d) of the Public Finance Management Act ("PFMA") approval from the Minister of Public Enterprises **(Vol.11 p8364).**

- A section 54(2)(d) PFMA was granted by the Minister of Public Enterprise on 21 December 2011**(Vol. 11 8368).**

- The public tender notice was issued on 6 December 2012 and China South Rail was the successful bidder (**Vol.11 8370**).

KEY FINDINGS ON THE 95 ELECTRIC DIESEL PROCUREMENT PROCESS

IMPROPER ENGAGEMENTS BETWEEN CSR AND TRANSENT EXECUTIVES

- CSR at all material times appears to have enjoyed a special relationship with Transnet.

- Prior to and after the issuance of the RFP documents for the 95 Electric Locomotives, there were engagements and communication exchanged between Transnet officials and CSR.

  - ❖ 16 December 2011**(Vol.11 .8527),** Mr Garry Pita, the former Group Supply Chain Officer emailed CSR confirming that Mr B Molefe advised him that:

    - ✓ He (Mr B Molefe) held a meeting with CSR early December; and

    - ✓ CSR expressed interest in the upcoming 95 Electric Locomotive Tender.

  – Mr Pita further informed CSR that the 95 Locomotives Tender has already been advertised.

  ❖ On 19 December 2011 **(Vol.11 8527)** CSR responded to Mr Pita's email confirming that indeed CSR met Mr B Molefe in early December. He further confirmed that they are aware that the tender has been advertised and thanked Mr Pita for facilitating the support on the tender document.

IMPROPER ENGAGEMENTS BETWEEN CSR AND TRANSENT EXECUTIVES(cont.)

- On 19 January 2012 **(Vol.11 8530)**,CSR sent an email to Mr B Molefe inter alia:
  - thanking him for giving CSR an opportunity to tender on 95 Locomotives Tender;
  - advising him of the CSR delegation that will attend the tender briefing session; and
  - seeking Mr B Molefe's support to arrange CSR's:
    - ✓ meeting with him to discuss further cooperation;
    - ✓ meeting with Transnet's technical group to optimize technical specifications;
    - ✓ site visit of some of locomotive depots and engineering factories; and
    - ✓ discussions with potential/preferred companies for localization work.
- Mr B Molefe responded on the same date **(Vol.11 p8533)**thanking CSR for the letter and advised CSR that he has forwarded his request to Mr S Gama to process and respond to CSR's request.

– Mr S Gama was indeed copied in the response by Mr B Molefe.

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IMPROPER ENGAGEMENTS BETWEEN CSR AND TRANSENT EXECUTIVES(cont.)

- In view of all the above interactions between CSR and Transnet, the following can be deduced:
  - Mr B Molefe met and discussed the tender for the acquisition of 95 Electric locomotives with CSR, prior to the issuance of the RFP;
  - Mr G Pita played an active role in ensuring that CSR was aware of the tender and the availability of the RFP documents; and
  - Mr S Gama was aware of the engagements between CSR and Transnet during the procurement process.
- The special relationship that CSR enjoyed with Transnet during the procurement process, as evidenced by the meetings held and email correspondence between the parties, was unfair in that it created a reasonable apprehension and perception that Transnet have been biased in favour of CSR.

EVALUATION CRITERIA PER RFP

STAGE 1	STAGE 2	STAGE 3
BBBEE & Supplier Development = 60%	Technical = 80%	Price/BBBEE & SD

Minimum threshold of 60% for stage 1 to be met or exceeded for a bidder to progress to stage 2

(Vol.11 p8399)

RESULTS OF APPLYING THE RFP CRITERIA (per TS1)

CFET EVALUATION – SUPPLIER DEVELOPMENT (SD)

	WHAT IS BEING MEASURED	WEIGHT	EFFECTIVE WEIGHT	SIEMENS	BOMBARDIER	SATURN RAILWAY	CRCC-CNR GLOBAL	CSR ZHUZHOU	NELESCO 85	ALSTOM S&E AFRICA	SSMM CONSORTIUM	SURTEES
	SD/ED/CSDP	60%										
1	BBBEE SCORECARD	10%	6.00%	4.20%	4.80%	4.20%	0.00%	0.00%	0.00%	4.20%	3.00%	1.20%
2	FURTHER RECOGNITION	10%	6.00%	0.30%	0.27%	0.27%	0.06%	0.78%	1.11%	0.54%	1.02%	0.27%
3	SD SPECIFICS - 3.1 TO 3.9	80%	48.00%	33.50%	36.76%	26.17%	23.89%	33.11%	33.66%	27.07%	33,15%	2.40%
	TOTAL SD SCORE	**100.00%**	**60.00%**	**38.00%**	**41.83%**	**30.64%**	**23.95%**	**33.98%**	**34.77%**	**31.81%**	**37.17%**	**3.87%**
				63%	70%	51%	40%	56%	58%	53%	62%	6%

AMENDMENT OF THE EVALUATION CRITERIA

- An application of the Stage 1 evaluation criteria, resulted in CSR being disqualified from proceeding to the next stages of evaluation as it scored zero for BBBEE.

- However, the Cross Functional Evaluation Team ("CFET") in its undated Report **(TS1)** annexed to Mr Jiyane' memorandum decided to create an alternative evaluation criteria termed Option 2 **(TS1)** whereat the BBBEE requirement for Stage 1 was waived.

RESULTS OF APPLYING THE AMENDED CRITERIA(TS1)

CFET EVALUATION – SUPPLIER DEVELOPMENT (SD)												
WHAT IS BEING MEASURED		WEIGHT	EFFECTIVE WEIGHT	SIEMENS	BOMBARDIER	SATURN RAILWAY	CRCC-CNR GLOBAL	CSR ZHUZHOU	NELESCO 85	ALSTOM S&E AFRICA	SSMM CONSORTIUM	SURTEES
SD SPECIFICS		**WEIGHT ALLOCATION**	**EFFECTIVE WEIGHT**	**RATING**								
3.1	Localisation	25%	12.00%	8.64%	10.56%	7.20%	6.72%	10.56%	9.12%	7.20%	6.24%	0.00%
3.2	Industrialisation	20%	9.60%	4.32%	6.72%	0.96%	1.44%	2.40%	7.68%	3.84%	4.80%	0.00%
3.3	Sustainability	10%	4.80%	4.80%	4.80%	4.80%	2.88%	4.32%	1.92%	1.92%	2,40%	0.00%
3.4	Skills Development	10%	4.80%	4.16%	4.48%	4.05%	3.73%	3.84%	3.31%	4.05%	4.27%	0.00%
3.5	Jobs Created	10%	4.80%	3.74%	3.36%	2.40%	3.07%	4.03%	3.55%	3.46%	4.61%	0.00%
3.6	Jobs Maintenance/Preserved	5%	2.40%	1.68%	0.12%	1.68%	0.60%	1.56%	1.68%	1.80%	2.40%	0.00%
3.7	Rural/Regional Development	5%	2.40%	1.20%	1.44%	0.12%	1.44%	1.44%	1.44%	0.48%	2.04%	0.00%
3.8	Small Business Promotion	10%	4.80%	2.56%	2.88%	2.56%	1.60%	2.56%	2.56%	1.92%	4.00%	0.00%
3.9	Green Economy	5%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%	2.40%
	SD/ED/CSDP SPECIFICS TOTAL	**100.00%**	**48.00%**	**33.50%**	**36.76%**	**26.17%**	**23.89%**	**33.11%**	**33.66%**	**27.07%**	33.15%	**2.40%**
				70%	77%	55%	50%	69%	70%	56%	69%	5%

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EVALUATION CRITERIA(cont.)

- The justification by the CFET for deviating from the evaluation criteria were, *inter alia*, that:
  - a local supplier that did not have an accredited BBBEE certificate would be prejudiced by the BBBEE evaluation criteria;
  - a foreign supplier who did not have a local office was disadvantaged and it would be unfair if the evaluation continued to include B-BBEE;
  - the Codes of Good Practice in terms of the B-BBEE Act allowed for foreign companies, if registered locally as a start-up enterprise, to be deemed to have a B-BBEE status of Level 4 in the first year of operation; and
  - it was unfair to both the local and foreign suppliers to evaluate the BBBEE as per stage 1 requirements

EVALUATION CRITERIA(cont.)

- 6 June 2012 **(Vol.1 p8535)** Messrs. Thami Jiyane (Chief Procurement Officer at TFR) and Siyabonga Gama(then TFR Chief Executive) recommended to the then GCE, Mr B Molefe to inter alia approve the short listed tenderers based on the Scenario 2 evaluation criteria developed by the CFET;
- The memorandum further sought to justify the reasons advanced by the CFET in amending the RFP evaluation criteria;
- Mr B Molefe approved the recommendations of Messrs. Jiyane and Gama with the result that the following bidders were shortlisted:
  - Siemens;
  - Bombardier;
  - CSR;
  - SSMM Consortium; and
  - Nelesco 85

EVALUATION CRITERIA(cont.)

- It was irregular for Transnet to change in the evaluation criteria during the evaluation process.

- The change compromised the fairness, transparency and competitiveness of the procurement process as there might have been other potential bidders who did not participate in the bidding process on the assumption that they were not going to comply with the stage 1 threshold as publicly advertised.

- Reliance on the Codes of Good Practice was also legally flawed:
  - The Codes of Good Practice define start up enterprise as "***a recently formed or incorporated for less than 1 year…***";
  - Such start up enterprises automatically qualify as Level 4 BBBEE contributors;
  - CSR was not incorporated as an entity in SA; and
  - Therefore CSR would not have automatically qualified as a Level 4 BBBEE contributor.

DIFFERENCES BETWEEN MNS AND FUNDUDZI'S FINDINGS

ISSUE	FUNDUDZI	MNS
Providing CSR with Bid Documents	It was irregular for Ms Mdletshe to provide CSR with the Bid Documents at the time when CSR had not paid the required R20 000 deposit.	• The outward remittance advice provided by CSR (**Vol.11 p.8440**)was sufficient proof that CSR has paid the required R20 000 deposit. • Ms Mdletshe's conduct was thus not irregular in this regard
CSR's non-submission of a valid Tax Clearance Certificate	CSR should have been disqualified for not submitting a valid Tax Clearance certificate	• Legal authority for Tax Clearance certificate is PPPFA and Tax Administration Act. • SARS issues tax clearance certificates to tax payers liable to SARS as contemplated in Tax Administration Act. • Foreign entity with no tax obligations to SARS per Tax Administration Act of Income Tax Act not capable & cannot get a SARS issued TCC

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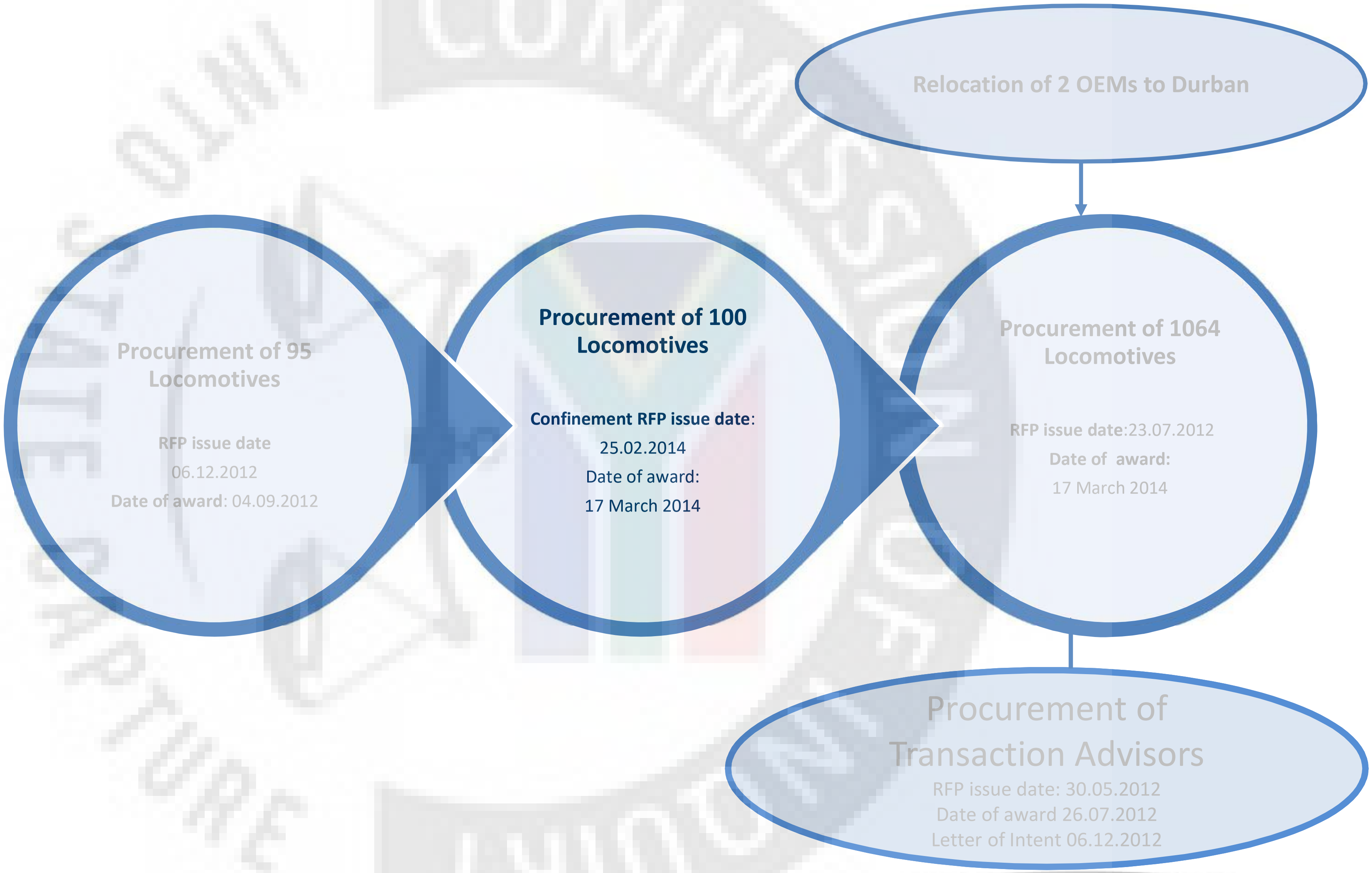
THE PROCUREMENT OF TRANSNET'S 100 LOCOMOTIVES

INVESTIGATED TRANSACTIONS



KEY FINDINGS
PROCUREMENT PROCESS

BACKGROUND

- A memorandum to confine 100 Locomotives to MARS was scheduled to be presented to the BADC meeting of 21 October 2013;
- Management however withdrew **(Vol.11 p8618) t**he memorandum from the Agenda on the basis that:
  - in 2010 there were negative press reports on a R1.4bn locomotive confinement that Transnet awarded; and
  - there is a potential governance risk relating to the confinement.
- On the basis of the explanation provided by Management, the Board agreed to withdraw this memorandum from the Agenda.
- However 3 months later, on 21 January 2015, the BADC and Board approved the confinement of the 100 Locomotives to CSR **(Vol.11 p8621).**

CONFINEMENT RFP

- On 26 February 2014 **(Vol.11 p8663)** Mr B Molefe issued an RFP to CSR.
- The key features of the RFP were inter alia as follows:
  - delivery of the 100 Locomotives to commence September 2014 with completion by March 2015;
  - payment of 10 % deposit on completion of the negotiations, signing of the Agreement and compliance with suspensive conditions;
  - non negotiable adherence to 70% SD requirements;

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CONFINEMENT RFP NON-COMPLIANT WITH LOCAL PRODUCTION & CONTENT REQUIREMENTS

- Treasury issued Practice Note on 16 July 2012 **(Vol.3 p5137)** prescribing minimum threshold % for local content production: Rail Rolling Stock as follows:

Classes of Rail Rolling Stock	Stipulated minimum threshold
Diesel locomotive	55%
Electric locomotive	60%
Electric Multiple Units (EMU)	65%
Wagons	80%

- Must be a Bid condition that only bids that comply with the minimum threshold will be considered;
- Only bids that comply with the minimum local production and content may be evaluated further requirements should be evaluated on a 80/20 or 90/10 basis;

CONFINEMENT RFP NON-COMPLIANT WITH LOCAL PRODUCTION & CONTENT REQUIREMENTS

- The Confinement RFP failed to make it a Bid condition that CSR must comply with the stipulated minimum threshold on local production and content;

- Effect thereof is that the accepted proposal from CSR dated 14 March 2014 **(Vol.11 p8657)** did not comply with the Instruction note requirements in that:
  - 40 of the 100 Locomotives were completely manufactured in China; and
  - CSR's commitment for Local Production and Content was 15% **(Vol.11 p8666).**

CSR'S PROPOSAL NON-COMPLIANT WITH THE RFP REQUIREMENTS

- The CSR's proposal dated 14 March 2014, did not comply with some of the requirements stipulated in Transnet's RFP dated 25 February 2014.

- After the Board approved the confinement process to CSR, Transnet requested CSR to submit a proposal in line with the requirements prescribed by Transnet. The column below juxtaposes the deviations by the CSR proposal from the requirements stipulated

ITEM	RFP REQUIREMENTS	CSR PROPOSAL
DELIVERY	Expeditious delivery for acceptance testing is a priority commencing latest September 2014 with completion by March 2015. Any proposals on earlier delivery are invited."	Deliver the first locomotive in February 2015 and the last batch in September 2015
SUPPLIER DEVELOPMENT	This is a non-negotiable suspensive condition and shall meet or exceed 70% as measured in the SD Value Summary	63% of the total price'

ADVANCE PAYMENT TO CSR WITHOUT AN ADVANCE PAYMENT GUARANTEE

- Clause 1.2.2 (b) of Schedule 1 to the Locomotive Supply Agreement **(Vol.11 p8672)** concluded between Transnet and CSR on 17 March 2014, provides as follows:

  "No milestone payment shall become due:

  (a) …

  (b) except in respect of the final milestone payment), until the contractor has provided evidence satisfactory to the Company that the Advance Payment Bond extends to the amount due in respect of the applicable milestone payment."

- The practical effect of this clause is that Transnet could not and should not have paid CSR any milestone payment (except the final payment) without CSR first providing Transnet with an Advance Payment Bond as a form of security for milestone payments made by Transnet.

SCHEDULE OF THE ADVANCE PAYMENTS

Total Contract Price ("TCP") of R43 800 000.00 (per locomotive) Is payable by way of four milestone payments as follows:

Date/Stage	Payment%	Payment Computation
First Milestone Payment payable on The Effective Date	30% of the Contract Price of such Locomotive	Advance Payment Guarantee issued on 24 March 2014 and advance payment was made on 28 March 2014
Second Milestone Payment payable on the date of design review finalisation	30% of the Contract Price of such Locomotive	R 1 3 20 000 000 (payment made on 1 October 2014) prior to APG being issued. On computation, 10% of the TCP is R1 31 400 000
Third Milestone Payment payable on the date of issuance of an Acceptance Certificate for a Locomotive	37% of the Contract Price for such Locomotive	
Fourth Milestone Payment payable on the Mission Reliability Retention Release Date	1. 5% of the Contact Price for such Locomotive	

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ADVANCE PAYMENT TO CSR WITHOUT AN ADVANCE PAYMENT GUARANTEE (cont.)

- The wrongfulness of paying the milestone payment without the requisite Advance Payment Bond was acknowledged by Mr T Jiyane in his email correspondence dated 10 October 2014,**(Vol.11p8686)** addressed to Mr A Singh and Ms N Galeni, wherein he stated that:

  "I am aware that the Issue of the payment to CSR without an APG exposes Transnet"

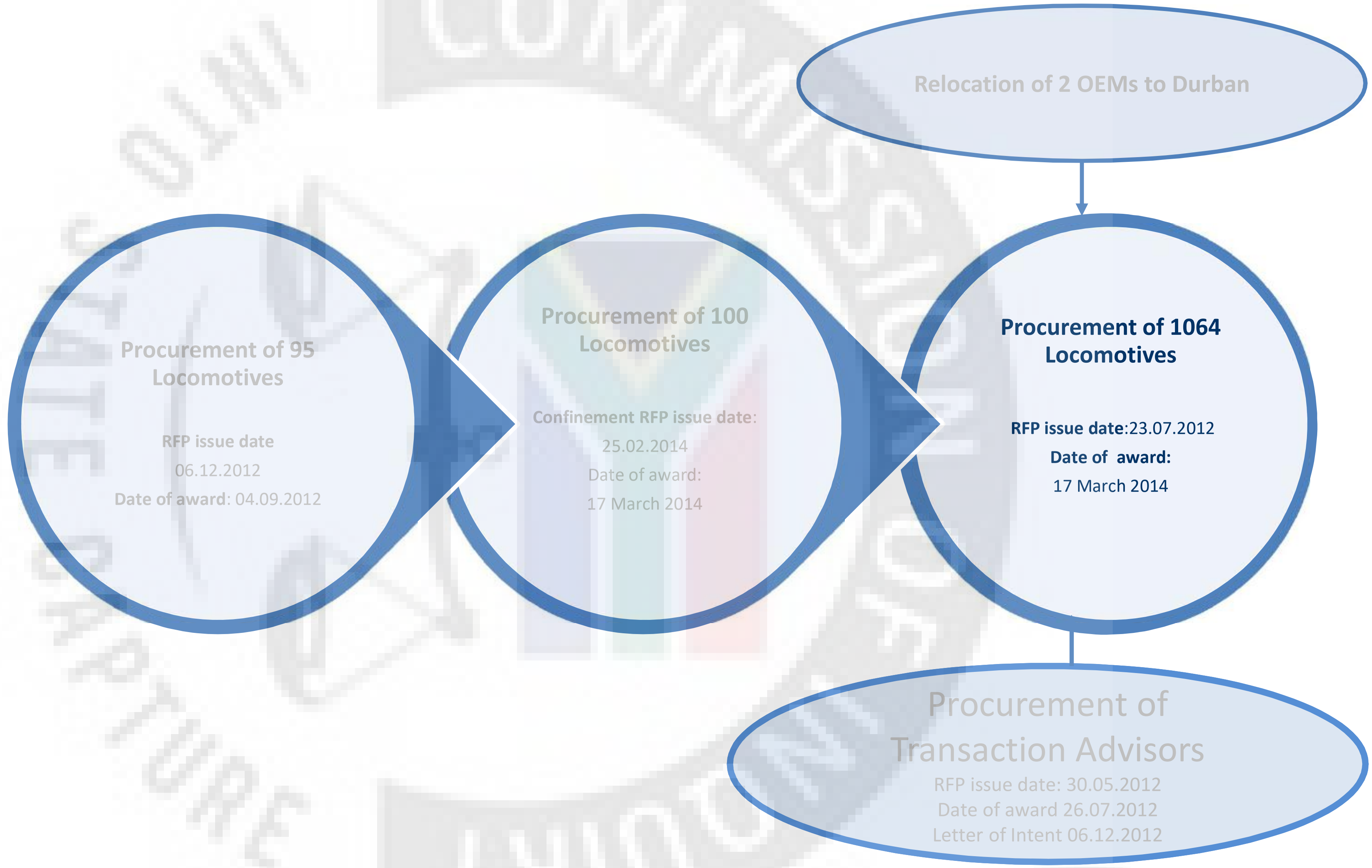
  "I take full responsibility to the payment being effected without the APG being Issued and Finance paid on instructions from my office."

- By his own admission, Mr T Jiyane acknowledged that he exposed Transnet to a grave risk by issuing the instruction to effect payment to CSR prior to an APG being issued.

- It is clear from the above that this conduct was in clear breach of the prescripts of Schedule 1 of the LSA.

THE PROCUREMENT OF THE 1064 LOCOMOTIVES

INVESTIGATED TRANSACTIONS



MNS-TS-37

CONTENT

- Business case
- Unlawfulness of the RFP
- Evaluations process Bo Bo and Co Co
- Total cost of ownership
- Local production criteria
- Batch pricing
- Messrs. Sharma and Essa Relationship
- Tequesta
- Increase of the ETC to R54bn

BUSINESS CASE

- 1064 Locomotives are a balance from the 1202 Fleet Plan after the acquisition of the 43 Diesel and 95 Electric Locomotives.

- On 23 July 2012,Transnet issued the RFPs to procure the 465 Diesel and 599 Electric locomotives.

- The business case for the 1064 Locomotive was only approved by the Board on 25 April 2013 a week before the closing date of the RFP.

- The approved Business Case was for an ETC of R38.6bn.

RFP Process

- The Board approved the commencement of the RFP process in 25 April 2012 **(Vol.1 p4337)** subject to PFMA compliance.

- RFP for Diesel & Electric s were advertised on 15 July 2012 (**Vol.1 p4404/5)**

- Treasury issued Practice Note on 16 July 2012 prescribing minimum threshold % for local content production: Rail Rolling Stock as follows:

Classes of Rail Rolling Stock	Stipulated minimum threshold
Diesel locomotive	55%
Electric locomotive	60%
Electric Multiple Units (EMU)	65%
Wagons	80%

RFP Process(cont.)

- The Instruction Note further required that bids that comply with the minimum local content requirements should be evaluated on a 80/20 or 90/10 basis.

- Reference to the 80/20 & 90/10 evaluation in the Instruction Note was construed as affecting Transnet's ability to decide its own evaluation criteria as per the PPPFA exemption.

- This led to Transnet splitting the RFP documents into two parts and only issuing Part 1 RFP on 23 July 2012 focussing mainly on administrative issues and technical specifications.

- No evaluation criteria in Part 1 RFP as that was deferred to Part 2 to be issued at a later stage pending exemption negotiations between DPE & Treasury.

PPPFA Exemption Context

Exempted provision

Reg #	Provision
2(2)	Organ of State to apply PPPFA
3	Planning & Stipulation of Preference point system
4	Evaluation of tenders on Functionality
5 &6	80/20 and 90/10
7	Award of Contract to tenderers who are not highest scoring bidders
8	Cancellation & re-invitation of bidders
10	Requirement to submit BBBEE certificates
11 excl. 11(10)	Conditions i.e. discounts, tenderers that scored equal points, no subcontracting of more than 25% to entity not having same BBBEE status; tertiary institutions
12	Declarations
13	Remedies against defaulters

Non-Exempted Provisions

Reg #	Provision
9	designated sectors for local content production
11(10)	no subcontracting that will reduce local content threshold
14	Tax clearance certificates

- All Schedule 2 entities i.e Transet, Eskom etc
- Drive SD development imperatives
- Promote NGP/IPAP

TS1

UNLAWFULNESS OF THE RFP?

- Contrary to the requirements of the Instruction Note to use the 90/10 evaluation criteria, the RFP **(Vol.2 p 4527)**)used the following criteria:

Stage 1	Stage 2	Stage 3	Stage 4	Stage 5	Stage 6
Administrative Responsiveness (returnable documents & schedules)	**Substantive Responsiveness** • Bid has Price offer; • Financial Stability • Guarantees signed	**Local Content** • 55% Diesel • 60% Electric	**BBBEE & Supplier Development** 40%	**Functionality** 80%	**Price/SD/BBEE** • 60% Price; • 20% SD; • 20% BBBEE

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Slide 43

TS1 Tshiamo Sedumedi, 25 May 2019

UNLAWFULNESS OF THE RFP (cont.)

- Transnet was aware of the provisions of Instruction Note when the RFPs were issued.

- Minister of Public Enterprises, Hon. Malusi Gigaba in a letter dated 7 December 2012 **(Vol.1 p4316)** advised Transnet that:
  - He will engage Minister of Finance on the Instruction and Transnet's PPPFA exemption;
  - Transnet should continue with procurement as if the PPPFA exemption was still in place; and
  - Transnet must not be constrained by the Instruction Note regarding the evaluation of price on the basis of 90/10.

- Minister of Public Enterprises did not have the authority to override the law prescribed by the Instruction Note.

- Transnet did not have the authority to deviate from the provisions of the Instruction Note.

559 ELECTRIC BO-BO LOCOMOTIVES

- The bid specifications required the submission of Bo-Bo and/or Co-Co locomotives;

- Bidders that submitted bids for both Bo-Bo and Co-Co locomotives were evaluated and scored in accordance with the Functionality evaluation criteria in the RFP;

:

Ranking	Tenderer Number	Tenderer Name	Final Score
1	T2	CSR E-Loco Supply Proprietary Limited	96.5%
2	T1	BOMBARDIER Transportation	96.1%
	T7	MITSUI / TOSHIBA (MARS)	96.1%
3	T5	SIEMENS	91.9%
4	T3	ALSTOM Rail Consortium	89.7%
5	T6	CNR Import and Export Corporation LTD	86.1%
DSQ	T4	BONGIVELI	72.6%

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559 ELECTRIC CO-CO LOCOMOTIVES

- During evaluation decision taken to change criteria and exclude all the Bo-Bo submissions in favour of the Co-Co ones;
- CNR (which submitted only Bo-Bo) was excluded from further evaluation of its Electric Bo-Bo submission;.

Ranking	Tenderer Number	Tenderer Name	Final Score
1	T2	CSR E-Loco Supply Proprietary Limited	96.5%
2	T1	BOMBARDIER Transportation	96.0%
3	T7	MITSUI / TOSHIBA (MARS)	95.9%
4	T5	SIEMENS	92.1%
5	T3	ALSTOM Rail Consortium	89.8%
DSQ	T4	BONGIVELI	69.6%
N/A	T6	CNR Import and Export Corporation LTD	0.0%

UNLAWFUL CHANGE IN THE EVALUATION CRITERIA (BO-BO vs CO-CO Locomotives)

- It was irregular to deviate from the prescribed technical specifications and evaluation criteria to exclude CNR’s Bo-Bo submission for further evaluation.
- Transnet deprived of the benefit of properly assessing all the competitive bids that passed the Functionality stage.
- Tenderers prepare their tenders based on the specifications laid down in the bid documents.
- It is in the interest of fairness and transparency (and also competitiveness) for organs of state to abide by the tender specifications initially provided.

UNLAWFUL CHANGE IN THE EVALUATION CRITERIA (TOTAL COST OF OWNERSHIP)

- In terms of the CFET Report dated (**Exh.BB4(b) p644)** the Transnet Board had pre-approved the following evaluation criteria for the TCO (a sub element of Price evaluation):

WHAT IS BEING MEASURED		WEIGHT	EFFECTIVE WEIGHT
		100.00%	**60.00%**
1	Price	30.00%	18.00%
2	Total Cost of Ownership (TCO)	20.00%	12.00%
3	Delivery Schedule (DS)	25.00%	15.00%
4	Payment Terms (PT)	10.00%	6.00%
5	RFP and contractual Compliance (CC)	10.00%	6.00%
6	Financial Stability (FS)	5.00%	3.00%
TOTAL SCORE		**100.00%**	**60.00%**

- However due to the challenges that the CFET experienced during the evaluation process, it decided to amend the evaluation criteria by creating alternative scenarios that had different evaluation criteria.

- Just like in the case of the BoBo/CoCo, it was irregular for Transnet change the evaluation criteria during the evaluation process as it compromised the fairness of the evaluation process

TCO EVALUATION SCENARIOS

Scenario 1 – all elements of TCO included:

WHAT IS BEING MEASURED	WEIGHT	EFFECTIVE WEIGHT	BIDDER						
			1	2	3	4	5	6	7
Total Cost of Ownership (TCO)	20.00%	12.00%	3.00	4.00	4.00	N/A	0.00	N/A	14.00

Scenario 2 – (TCO) excluding unscheduled maintenance and excluding bonus point allocation

WHAT IS BEING MEASURED	WEIGHT	EFFECTIVE WEIGHT	BIDDER						
			1	2	3	4	5	6	7
Total Cost of Ownership (TCO) excluding unscheduled maintenance and excluding bonus point allocation	20.00%	12.00%	1.00	4.00	4.00	N/A	0.00	N/A	8.00

Scenario 3 – (TCO) excluding unscheduled and excluding scheduled maintenance and excluding bonus point allocation

WHAT IS BEING MEASURED	WEIGHT	EFFECTIVE WEIGHT	BIDDER						
			1	2	3	4	5	6	7
Total Cost of Ownership (TCO) excluding unscheduled and excluding scheduled maintenance and excluding bonus point allocation	20.00%	12.00%	1.00	4.00	4.00	N/A	0.00	N/A	0.00

LOCAL PRODUCTION & CONTENT

- Treasury Instruction Note prescribed minimum threshold % for local content production: Rail Rolling Stock as follows:

Classes of Rail Rolling Stock	*Stipulated minimum threshold*
Diesel locomotive	55%
Electric locomotive	60%
Electric Multiple Units (EMU)	65%
Wagons	80%

LOCAL PRODUCTION & CONTENT (cont.)

- Bombardier, CSR and CNR after the Post Tender Negotiations no longer complied with the minimum thresholds on local production and content;

CNR	GE	Bombardier	CSR
37.57%	56.26%	45.6%	49.58%
Minimum threshold 55%		Minimum threshold 60%	

- Their appointment was contrary to the PPPFA and Instruction Note was irregular.

Local Content & Production at the date of Award (Exh.BB4(b) p624)

	Exchange rates used by bidders @ negotiation stage				
		CNR	GE	BT	CSR
Rand/$		9	9.168		9.1508
Rand/Eur		12		11.9	
	Local content computation				
		CNR	GE	BT	CSR
Imported value ($)		918 789.46	1 159 773.79		1 591 828.00
Imported value (Eur)		774 064.03		1 328 080.00	
Total Imported value (Rand)	X	17 557 873.47	10 632 806.13	15 804 152.00	14 566 499.66
Locomotive price (Rand) - BAFO	Y	28 124 169.00	24 311 700.00	29 049 486.00	28 890 000.00
Local content (%)		37.6%	56.3%	45.6%	49.6%
Foreign content (%)		62.4%	43.7%	54.4%	50.4%

BATCH PRICING

- the RFP : ***Transnet does not expect to pay a price premium should it exercise an option of changing quantities (Vol.2 p4552).***

  Transnet reserved the right to split the award between more than one Supplier (Vol.2 p4548)

Negotiations Baseline Worksheet – Price		
Negotiation Point:	Batch Pricing	
Current Offer:	Price changes based upon quantity ordered	
Negotiation Issues	Price remains fixed as if order placed for full 599 electric or 465 diesel	
Comments:		
Most Desirable Outcome (MDO)	Least Acceptable Agreement (LAA)	Target Agreement
Remove batch pricing	Remove batch pricing	Remove batch pricing

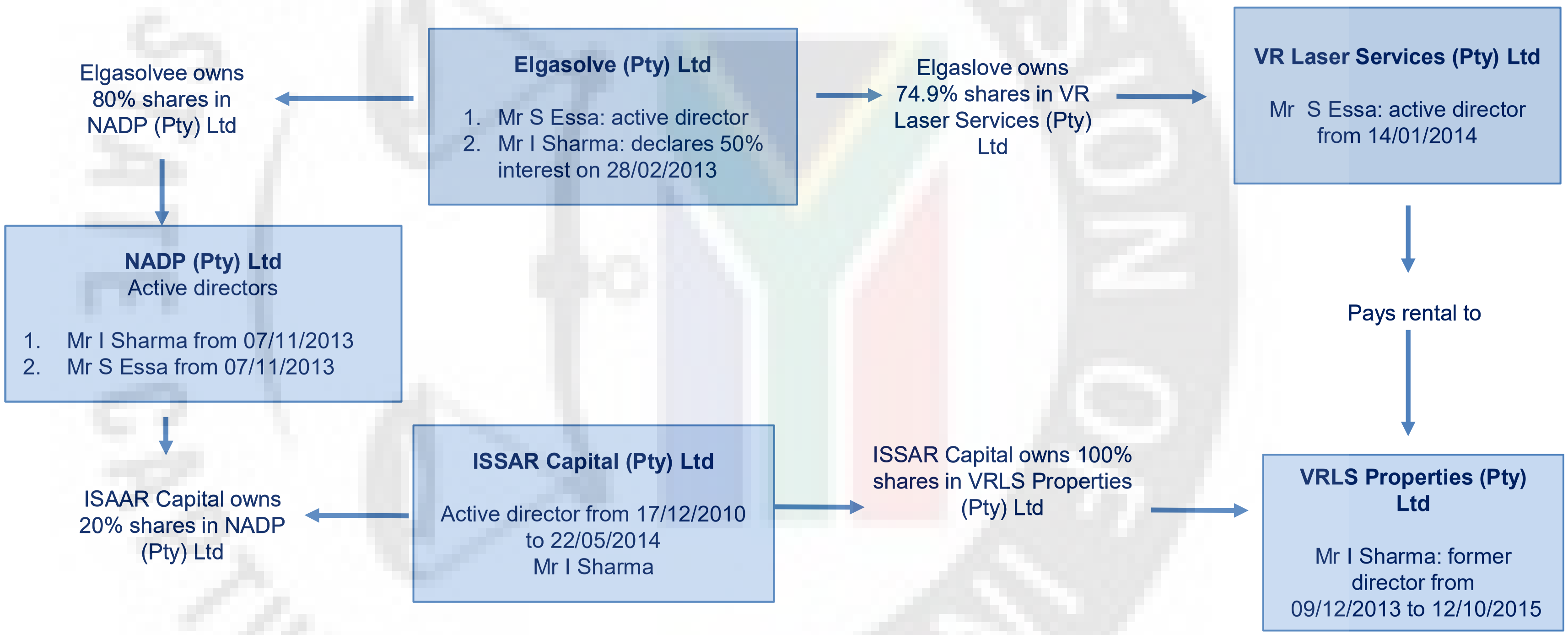
- *(Vol.3 p 5147 & 5148)*
- Notwithstanding the above, Transnet incurred R2.7 billion on Batch- Pricing.
- Inclusion of Batch Pricing in the contract price was contrary to the provisions of the RFP and irregular.

INCREASE OF ETC UNLAWFUL

- Increase in ETC required Ministerial approval in terms section 54(2);
  - MOI prohibits conclusion of transaction that exceeds limits in the Shareholder Compact or Significance and Materiality Framework (limit is R3.9bn) without approval **(Vol. 3 p5023)**;
  - DOA : any increase in excess of 15% of the Shareholder approved transaction should be reported to the Shareholder Minister **(Vol.3 p4949).**
- No Ministerial approval and Treasury notification of the revised ETC per s 54(2) read with Treasury Regulation 28.3.1;
- Neither was the increase in ETC reported to the Minister nor was his approval sought;
- Board/GCE incapable of concluding Agreements that are contrary to applicable legal prescripts;
- *Ex post facto* ratification by the Board was invalid i.e. an illegal act is incapable of ratification;

TEQUESTA/CSR

IQBAL SHARMA/SALIM ESSA RELATIONSHIPS (Vol.1 p4267)



MNS-TS-57

Mr Iqbal Sharma's role within Transnet

Transnet SOC Ltd
Mr I Sharma (former director)

1. Board member (13/12/2010 to 10/12/2014
2. BADC (29/08/2012 to 2014)

- On 24 January 2014, the BADC meeting which was chaired by Mr I Sharma recommended to the Board that BT, CNR, CSR and GE be appointed as the four OEMs to manufacture the 1064 Locomotives. Included in the recommendation by the BADC was the split of the award of the locomotives as follows: BT (240 electric), CNR (232 diesel), CSR (359 electric); and GE (233 diesel).

TEQUESTA BUSINESS DEVELOPMENT SERVICES AGREEMENT (“ BDSA”)

- Tequesta, represented by Mr Salim Essa, concluded a BDSA **(Vol.3 p5149)** with CSR Hongkong on 18 May 2015;
- The salient features of the BDSA are as follows:
  - Agreement is in relation to the 359 Electric locomotives awarded to CSR;
  - Tequesta to be paid 21% (R 3 098 916 720. 00) of the contract value between Transnet and CSR;
  - CSR already paid 3,9% of contract value (R 706 770 480.00) to JJT Trading FZE, which amount is deductible to the fee Tequesta;
  - Tequesta would provide services during the procurement period; and
  - No need for Tequesta to prove the services rendered save an acknowledgement by CSR that it would not have secured the 359 locomotives award but for the active efforts of Tequesta.

TEQUESTA BDSA (cont.)

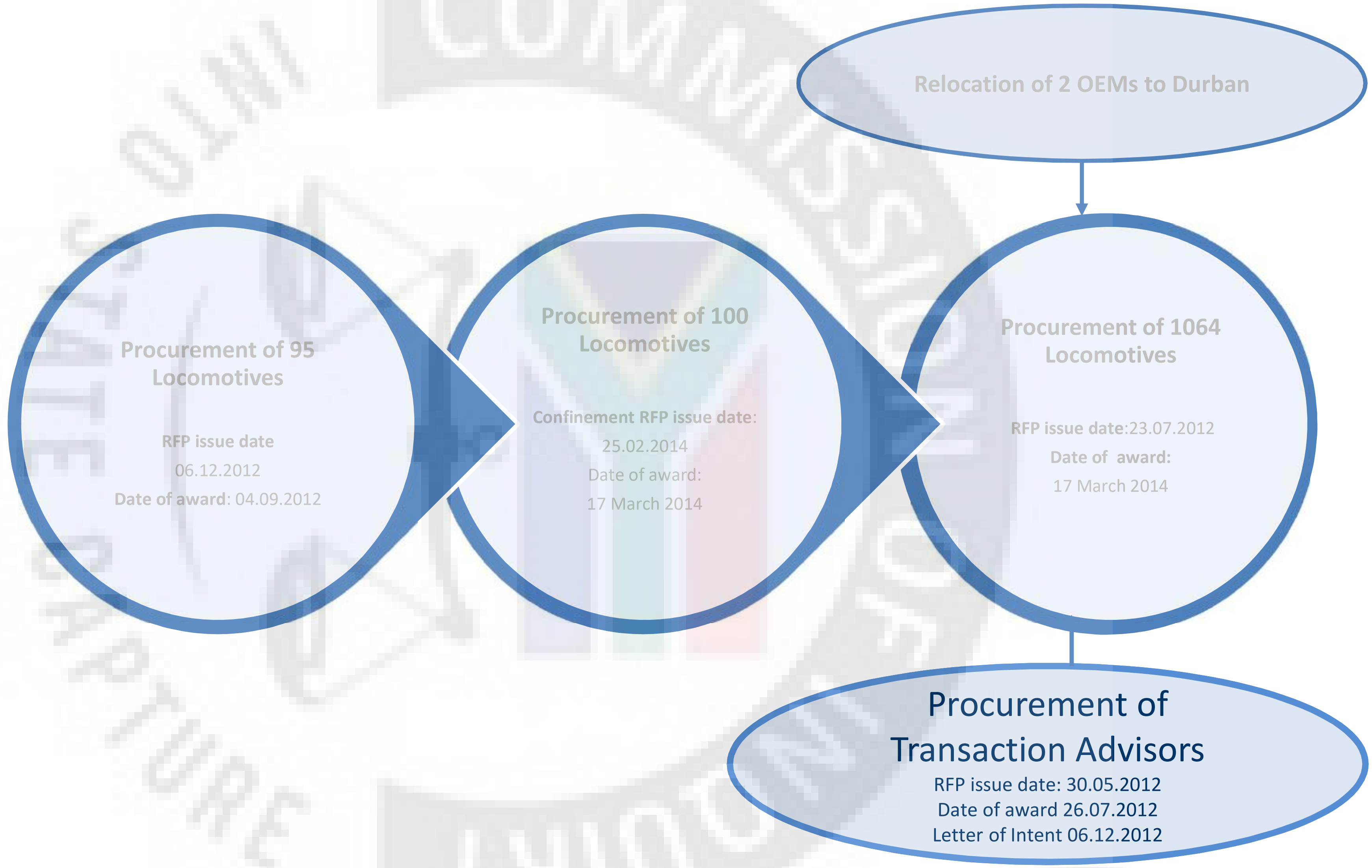
- Reasonable inference:
  - Procurement of the 1064 locomotives was required to comply with inter alia the Constitution, PFMA etc requirements for a competitive and fair tender process.
  - No lawfull and commercial reason for Mr Essa to interpose between Transnet and its potential bidders.
  - Sharma used his position as BADC chairperson ensure that CSR is awarded the 359 contract.
  - No rational basis for BDSA to be concluded in the context of an open and competitive tender process where bids are supposed to be evaluated on their strength. The Tequesta "active efforts", viewed against the relationship with Mr Essa, undermined the spirit of an open and competitive bidding process.

1064 LOCOMOTIVES TRANSACTION ADVISORS

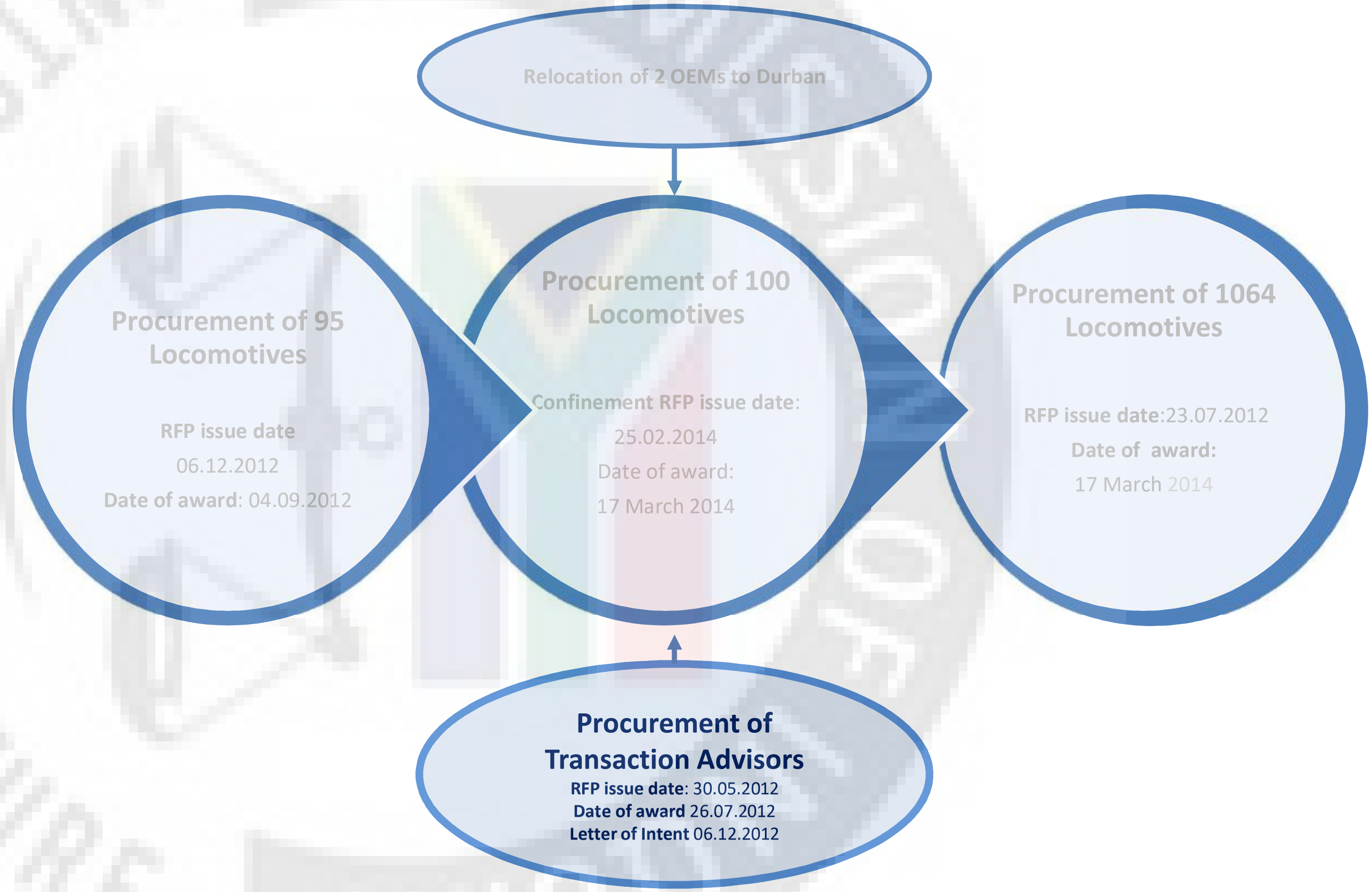
CONTENT

1. INTRODUCTION
2. MNS VOLUME 2 REPORT
3. BACKGROUND
4. EVALUATION CRITERIA STATED IN THE RFP
5. KEY FINDINGS ON THE PROCUREMENT PROCESS
6. IRREGULAR AND UNLAWFUL AGREEMENTS

INVESTIGATED TRANSACTIONS



INVESTIGATED TRANSACTIONS



INTRODUCTION

- Transaction Advisors were the external consultants appointed to provide Transnet with advisory services in relation to the 1064 Locomotives Procurement.

- The advisory services were iro the:
  - business case validation;
  - technical evaluation and optimisation;
  - deal structuring and finance for large Capital Investment Projects; and
  - procurement and legal.

- The reports relevant to Transaction advisors are divided into two volumes viz Volume 2a and Volume 2b.

MNS VOLUME 2 REPORT

- Volume 2a focuses on the:
  - procurement of ;
  - contracts concluded with ; and
  - Payments

  to transaction advisors.

- Volume 2b focuses on the:
  - technical analysis of the irregular transactions concluded by Transnet on the advise of transaction advisors; and
  - execution of the contracts concluded by Transnet with third parties on the advice of the transaction advisors.

BACKGROUND

- Confinement RFP (page 5621 volume 4) issued to 9 entities by Transnet on 30 May 2012 for the appointment of Transaction Advisors.
- Four responses from 3 consortia (led by McKinsey, KPMG, PWC respectively) and Webber Wentzel Attorneys were received.
- The successful bidder, McKinsey Consortium, was led by McKinsey Incorporated and comprised of the following entities:
  - McKinsey Incorporated (Main bidder);
  - Letsema Consulting (Co-bidder);
  - Advance Rail Technologies;
  - Nedbank Capital;
  - Edward Nathan Sonnenbergs (ENS);
  - Koikanyang Inc.; and
  - Utho Capital.

sub-contractors

MNS-TS-68

KEY FINDINGS ON THE PROCUREMENT PROCESS

MCKINSEY'S NON-COMPLIANCE WITH ADMINISTRATIVE RESPONSIVENESS

- Test for Administrative Responsiveness **(Vol.4 p5637 read with page 5647-5648)** required, amongst others, that all returnable documents and/or schedules be returned incl. audited financial statements for the previous three years .

- This was stage 1 in the evaluation process

- Failure to comply with this stage renders the proposal non-responsive and amounts to disqualification.

- McKinsey failed to submit the their audited financial statement as required by Stage 1

NON COMPLIANCE WITH THE STAGE 1 OF THE EVALUATION CRITERIA

- McKinsey Incorporated justified their failure in the following terms **(Vol 4 p5336)**:

  "…In terms of the internal governance regarding the provision of Annual Financial Statements, McKinsey provides such statements only in terms of statutory or regulatory requirements, or when compelled to do so through any legal requirement. …"

- The letter makes reference to a Report of factual findings by PwC, purportedly indicating McKinsey's financial position – we have no record of the this report, as it was not enclosed in the Bid documents.

- In terms of the paragraph 13.2.6 of the PPM(Vol 5 pg 5919), the purpose of submitting audited financial statements is to assess the financial stability of bidders.

- Transnet could not achieve this purpose of the PPM nor could it satisfy itself of McKinsey's financial stability, due to the fact that McKinsey failed to submit its audited financials.

- The McKinsey Consortium proposal was non-responsive and should've been disqualified at stage 1.

REPLACEMENT OF LETSEMA

- 26 July 2012 the Transnet Acquisition Council (“TAC”) awarded Transaction Advisory contract to McKinsey Consortium.

- 22 August 2012, Mr A Singh addressed a memorandum **(Vol. 4 p5528)** to GCE raising a conflict of interest between Letsema (one of the McKinsey Consortium co-bidders) and Barloworld.

ROLES OF THE MCKINSEY CONSORTIUM MEMBERS AS PER THE THEIR BID

Evaluation Criteria	McKinsey	Letsema	ART	ENS/Koikanyang	Nedbank / Utho Capital
1. Updated and improved business case and relevant documentation for submission to the Transnet Board of Directors and Department of Public Enterprises	√	√	√		
2. The business case should include the end to end requirements of the overall General Freight programme (locomotives, wagons, infrastructure etc based on validated volume expectations)		√	√		
3. List of technical value optimisation levers and estimated value	√	√	√		
4. Design of an optimisation approach for joint value optimisation between Transnet and the selected supplier(s)	√	√	√		
5. Overall tendering process design for the locomotives		√		√	
6. Request for information/Quotation documentation		√		√	
7. Short list of potential suppliers	√	√			
8. Template contract for awarding of tender				√	
9. Documentation for the final selection of preferred supplier(s)	√	√			
10. Proven ability in project deal structuring, financing and funding				√	√
11. A sound methodology for developing robust business cases, including financial and non-financial elements (e.g. local procurement, job creation, etc)	√	√	√		

	McKinsey	Letsema	ART	ENS/Koikanyang	Nedbank / Ut ho Capital
12. A proven approach to technical optimisation of capital equipment, prior experience with locomotives will be favoured	✓		✓		
13. A proven approach for developing and providing support to large capital project tender process including assistance in developing RFIs, RFQs, shortlisting and final selection	✓	✓		✓	
14. The approach must demonstrate how the service provider would set up the project and work jointly with Transnet and potential suppliers to meet the required timeline, including key milestones and resources required	✓	✓			
15. Proven ability in project seal structuring, financing and funding				✓	✓
16. Experience with development of contracting strategies for large projects (e.g. programmatic procurement) and the ability to extract value and savings (contracting approach between state owned companies and suppliers would be preferred)	✓	✓			
17. A thorough understanding and experience with the socio-economic issues (SD, Broad based Black Economic Empowerment, industrialisation and localisation, environmental issues etc.)	✓	✓			
18. Thorough understanding of the PFMA, PPPFA, IPAPIL, NGP etc, requirements	✓	✓			
19. Capital project optimisation experience (rail and capital equipment preferable). This should include: Design to Value; Design to Cost; Minimum Technical Solution development	✓		✓		
20. Working with other railways – consultant should demonstrate that it understands the rail business model and has worked with other railways	✓	✓	✓	✓	

	McKinsey	Letsema	ART	ENS/Koikanyang	Nedbank / Ut ho Capital
21. Business case development and evaluation for mega project	✓		✓		
22. Contracting strategy development for large projects	✓	✓			
23. Contract development for large projects		✓		✓	
24. Deal structuring and financing for large capital investment projects					✓
25. Procurement and Supply Chain experience (rail experience preferable)	✓	✓	✓		
26. Experience with the socio-economic issues (SD, B-BBEE, industrialisation, environmental issues)	✓	✓		✓	
27. Extensive experience in South Africa	✓	✓	✓	✓	✓
28. The proposal should include a list of key personnel who will be involved in the project as well as experts who will be called upon to provide support. Short CVs of core team members and experts must be provided	✓	✓	✓	✓	✓
29. Additionally, working knowledge of Transnet systems and process would be beneficial, but is not required	✓	✓	✓	✓	
30. Approach The service provider must demonstrate a clear and practical approach to this project to cover the requirements and deliverables as well as the set up, governance model and resource model clearly indicating the resources required from Transnet	✓	✓			

IRREGULAR INCLUSION OF REGIMENTS

- 06 December 2012 **(Vol.7 p6570)** Transnet and McKinsey concluded the Letter of Intent ("LOI").

- The LOI described the parties as, inter alia, McKinsey, being the supplier, as well as

  "*the other members of the Consortium, namely, **Regiments Capital**, Advanced Rail Technologies, Nedbank Capital and Utho Capital*"

- Regiments did not tender for the contract and was not evaluated in terms of RFP requirements.

- The appointment of Regiments was unlawful for being inconsistent with the Constitution, and was further irregular for failure to comply with Transnet's own PPM.

IRREGULAR AND UNLAWFUL AGREEMENTS

SALIENT TERMS OF THE LOI

- Regulate the relationship between Transnet and the McKinsey Consortium pending conclusion of MSA;
- Valid for 90 days or when the MSA was finalised (whichever came first);
- The transaction advisory services were to be performed under the MSA for 9 months (viz. 15 January 2013 – 15 October 2013);
- Any deliverables not completed by 15 October 2013 would continue at no cost to Transnet;
- McKinsey agrees to contract with Regiments as their SD partner; and
- Total contract value per the LOI was R35.2m.

LOI FEE STRUCTURE

Evaluation Criteria	Consortium Member	Fixed fee
1. Contracting strategy	Nedbank/Utho Capital and Regiments	R 1,4 m R 6,1 m
2. Business case validation	McKinsey	R 6,6 m
3. Technical evaluation and execution	McKinsey and ART	R 13,5 m
4. Project Management Office, Integration and Shareholder management	Regiments and McKinsey	R 7,6 m
Total		**R 35,2 m**

FIRST AND SECOND ADDENDUM TO THE LOI

- On 4 March 2013 **(Vol. 7 6581)** parties extended the duration of the LOI from 06 March to 15 October 2013 (First Addendum).

- On 14 October **(Vol. 7 6584)** parties extended the duration of the LOI from 15 October 2013 to 30 November 2013 (Second Addendum).

- No extension/addendum concluded as at 01 December 2013.

- By this date, the total amount paid to McKinsey Consortium was R11 003 389.01.

- This means there was no privity of contract between the parties as at 1 December 2013.

TRANSENT / REGIMENTS IRREGULAR AGREEMENT

- 23 January 2014 Mr A Singh signed an Agreement **(Vol 7 p 6587)** with Regiments:
  - for Regiments to provide some of transaction advisory services to Transnet, which services were part of the LOI;
  - Duration was for 12 months commencing 24 January 2014;
  - Cost of services will be R15m plus 10% proved expenses;

- Upon signature of the Agreement, Mr A Singh makes the following hand-written notes to the Agreement:
  - Transnet has contracted with McKinsey Consortium in respect of the services that form the subject matter of this Agreement;
  - Regiments is a sub-contracted to McKinsey Consortium ;
  - Regiments is not entitled to performance fee;
  - payments in terms of this Agreement will be made to McKinsey;
  - that the "costs and payment against the scope may not be made above R 9 million, without specific approval from Transnet."
- This Agreement is irregular in that;
  - No procurement event preceded the Agreement;
  - Singh had no authority to bind to appoint Transaction advisors on behalf of Transnet.

IRREGULAR AND UNLAWFUL EXTENSION OF REGIMENT'S SCOPE (Cont.)

- Mr A Singh made notes to this Agreement confirming that:
  - Regiments is a sub-contractor to McKinsey;
  - Regiments will not be paid a performance fee as the LOI makes provision for a fixed fee;
  - Payments will be made to McKinsey; and
  - the agreement is subject to the handwritten notes.
- By his own admission Mr Singh acknowledges that Regiments has no contractual relationship with Transnet.
- The extension of Regiments' scope is unlawful and irregular due to the fact that:
  - Regiments had no authority to contract with Transnet iro the 1064 transaction advisory agreement; and
  - No valid amendment or variation of scope of services iro LOI.

THIRD ADDENDUM TO LOI

- On 04 February 2014, Transnet and Regiments concluded an Agreement **(Vol.7 p6605)** purporting to extend and scope of the LOI concluded between Transnet and McKinsey.
  - This agreement was titled " *Third Addendum for GSM/12/04/0447- For advisory services related to acquisition of 1064 Locomotives Tender*"

- The Third addendum, *inter alia*,:
  - increased the scope of the LOI by incorporating the scope of work listed in the Agreement btw Regiments and Transnet dated 23 January 2013;
  - increased the LOI contract value from R35.2 million to R41.2 million, of which R15m was for the additional scope.

MASTER SERVICE AGREEMENT

- On 21 February 2014 McKinsey signed the Master Services Agreement (MSA) contemplated in the lapsed LOI dated 6 December 2012 **(Vol. 7 p6609).**
- Transnet countersigned on 11 August 2014.
- The terms of the MSA simply recorded the terms of the LOI, incl. the contract value of R35.2m.
- MSA records its expiry date as 31 March 2014.
- The MSA was silent on the Transnet/Regiments Agreement of 23 January 2014 and the purported Third Addendum to the LOI dated 4 February 2014.

CESSION BETWEEN MCKINSEY AND REGIMENTS

- On 16 April 2014 McKinsey addressed a letter to Transnet advising that it had ceded its transaction advisory rights and obligations to Regiments on 5 February 2014.

- On 24 April 2014 Transnet and Regiments conclude a First Addendum **(Vol. 7 p6644)** to the MSA to:
  - vary the MSA;
  - add additional scope;
  - amend the Price.

- The scope was varied by additional scope such as:
  - assist Transnet with on negotiating an accelerated delivery of the 1064 locomotives;
  - compute effects of hedging and escalation;
  - optimise/reduce foreign exchange hedge costs

- The increase of the contract price from R35.2m to R78.4m

SECOND ADDENDUM TO THE MSA

- On 16 July 2015 Transnet and Regiments concluded a Second Addendum to the MSA **(Vol.7 p6647)**
- The Second Addendum varied the MSA by changing:
  - scope of services;
  - the remuneration model per the MSA;
  - the duration of the MSA
- The scope was changed by inclusion of the following:
  - technical support including building cost escalation models and total cost of ownership models to inform and guide Transnet throughout the negotiation process;
  - develop a detailed funding plan for the acquisition of the 1064 locomotives Transnet from GE, Bombardier, CNR and CSR ;
- The contract value was increased to an amount not exceeding R265 500 000.00; and
- The MSA contract period was extended to 18 May 2016 or until Transnet notifies Regiments that the deliverables have been successfully concluded, which ever comes first.

ANALYSIS OF THE AGREEMENTS CONCLUDED BTW TRANSNET AND MCKINSEY/REGIMENTS

AGREEMENT	IRREGULARITIES
Purported Third Addendum to the LOI between Transnet and Regiments dated 4 February 2014	• The LOI had already lapsed on 30 November 2013 • Regiments was not even a party to the lapsed LOI. The lapsed LOI was between Transnet and McKinsey
Cession by McKinsey of its 1064 advisory services rights & obligations in favour of Regiments on 5 February 2014	• The McKinsey rights and obligations were derived in the LOI that lapsed on 30 November 2013; • Legally and practically impossible to cede rights and obligations that do not exist
MSA between Transnet and McKinsey on 21 February 2014	• MSA is derived from the LOI that lapsed on 30 November 2013 • McKinsey had already purportedly "ceded" its rights and obligations in terms of the LOI to Regiments on 5 February 2014
First Addendum to the MSA between Transnet and Regiments dated 24 April 2014	• The First Addendum to the MSA derives its existence from an invalid MSA • Regiments was not even a party to the MSA between Transnet and McKinsey • The purported cession between Regiments and McKinsey was invalid because the LOI had already lapsed on 30 November 2013
Second Addendum to the MSA between Transnet and Regiments dated 16 July 2015	• The First Addendum to the MSA derives its existence from an invalid MSA • Regiments was not even a party to the MSA between Transnet and McKinsey • The purported cession between Regiments and McKinsey was invalid because the LOI had already lapsed on 30 November 2013

ANALYSIS OF THE AGREEMENTS CONCLUDED BTW TRANSNET AND MCKINSEY/REGIMENTS

AGREEMENT	PAYMENTS
LOI, First Addendum and Second Addendum that lapsed on 30 November 2013	R11 003 389.01 Paid to McKinsey
• Purported Third Addendum to the LOI between Transnet and Regiments dated 4 February 2014 • MSA between Transnet and McKinsey on 21 February 2014	R36 765 000.00 Paid to Regiments (Between 18/2/2014 and 07/04/2014)
First Addendum to the MSA between Transnet and Regiments dated 24 April 2014	R 79 230 000,00 paid to Regiments on 30/04/14 (Invoice issued on 27/03/14 for services already rendered)
Second Addendum to the MSA between Transnet and Regiments dated 16 July 2015	R 189 240 000,00 Paid to Regiments on 11/6/15 (invoice issued on 06/03/15 for services already rendered)

ALLEGED COST SAVINGS

- LOI and the MSA allocated R 13.5 million for technical evaluation and execution services.
- On 16 April 2014 **(Vol. 4 p5537)** memorandum from Singh to GCE requesting approval of R78.4m excl. VAT as a success fee to Regiments on the basis of the savings achieved by Regiment as transaction advisors on the 1064 Locomotive transaction.
- On 17 April 2014, the GCE approves the request, culminating in the conclusion of the First Addendum to the MSA.
- The approval of the R78.4 excl. VAT was irregular because the alleged cost saving was part of the LOI/MSA deliverable and budgeted for at R13.5m.

ASSESSMENT OF THE SCOPE OF WORK IN LOI AND MSA

- Expert assessment of the scope of work in LOI addendums and the MSA addendums found that there was a duplication of work in respect of the following:
  - cost escalation risk management services;
  - development of funding plan; and
  - evaluation of all funding sources.
- No legal basis for Transnet to conclude an agreement to pay Regiments on a risk sharing basis in relation to the funding secured from the CDB.
- Further details on these aspects is addressed in Volume 2b.

REPLACEMENT OF JP MORGAN BY TRILLIAN

- Memorandum **(Vol.4 p5579)** by Mr S Gama (acting GCE) dated 28/04/15 requested BADC to approve:
  - confined appointment of JP Morgan, to hedge the financial risks (credit and currency risk);
  - Lead arrange and underwrite ZAR syndicated Club Loan; and
  - contract extension from R 99.5 million to R 265.5 million for the appointment of Regiments Capital.

- The minutes **(Vol. 4 p5515)** of BADC dated 29 April 2015 approved:
  - the appointment of JP Morgan - to hedge the financial risks; and
  - extension of contract - R99.5 million to R 265 million.

- BADC did not consider the lead arranger/underwriter appointment.

IRREGULAR APPOINTMENT OF TRILLIAN

- On 17 September 2014 (five months after the appointment of JP Morgan), Mr S Gama prepared another memorandum that purports to replace JP Morgan with Trillian for lead arranger role in the ZAR Club loan.
- 01 October 2014 BADC approved **(Vol.4 p 5518)** the replacement of JP Morgan by Trillian for the lead arranger role in the ZAR Club Loan.
- JP Morgan was never appointed for lead arranger role but for hedging the CDB loan. In actual fact JP Morgan continued with this function.
- Therefore Trillian could not have replaced JP Morgan as a lead arranger for the ZAR Club Loan.
- Trillian was paid an amount of R93m for the “lead arranger” role for ZAR Club Loan.

Thank you.