

EXHIBIT BB 11

AFFIDAVIT & ANNEXURE

OF

**MAKANO MURIEL ANNA
MOSIDI**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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STATEMENT

I, the undersigned,

MAKANO MURIEL ANNA MOSIDI

do hereby state that:

1. I was permanently appointed in the position of Group Chief Information Officer ("**GCIO**") at Transnet SOC Limited ("**Transnet**"). I occupied that position from 1 June 2016 to 30 September 2018, when I resigned from Transnet.
2. The facts contained in this statement are, within my personal knowledge and belief, both true and correct. The facts are based on my best recollection of the events that I was engaged in and witnessed at the relevant time, supported by the documents that I have been provided with by the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, as well as information that I independently sourced.
3. In this statement I deal specifically with the Information Technology Data Services Tender that Transnet awarded to T-Systems South Africa (Pty) Ltd ("**T-Systems**") during February 2017 ("**the Tender**").
4. I also deal with the following:
 - 4.1. My qualifications and employment history;

- 4.2. The procurement process for High Value Tender ("**HVT**") transactions and the role of the Group Chief Information Officer;
- 4.3. The nature of the Tender;
- 4.4. The shortlisting of the two top bidders;
- 4.5. Concerns about the recommendation to award the Tender to T-Systems;
- 4.6. Risks identified in respect of the winning bidder, being Gijima Holdings (Pty) Ltd ("**Gijima**");
- 4.7. The two conflicting recommendations;
- 4.8. Decision by the Board Acquisition and Disposals Committee ("**ADC**") to award the Tender to the second place bidder, that is T-Systems;
- 4.9. Objections by Gijima and unsuccessful settlement negotiations with T-Systems;
- 4.10. Events under the new Transnet Board of Directors ("**the Board**"); and
- 4.11. My resignation.

MY QUALIFICATIONS AND EMPLOYMENT HISTORY

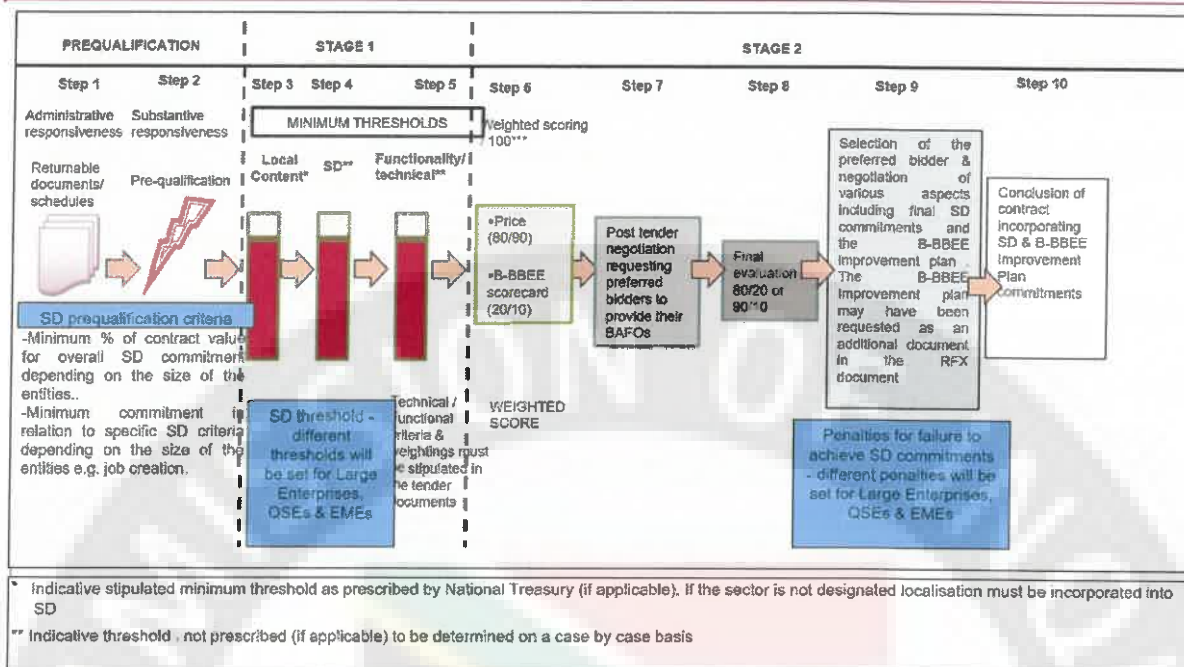
5. I am a qualified information and technology specialist with senior management and executive experience. I hold a B.Com Data Processing Degree as well as a University Education Diploma (U.E.D) which I obtained in 1987 from the University of Limpopo, formerly known as the University of the North. I started my IT career at International Business Machines, then Information Services Management in 1989, after spending a year as a Mathematics, Accounting and Economics teacher in 1988.

6. My appointment as GCIO to Transnet was my first employment with Transnet. However, during the time that I was employed by Dimension Data from 2010 to May 2016, I engaged on behalf of Dimension Data with Transnet as a potential service provider. My roles at Dimension Data were Executive for Public Sector and Chief Information Officer for Middle Eastern Africa.
7. I am currently employed as the GCIO for Corporate and Investment Banking at Standard Bank of South Africa, based in Rosebank. I started in this role on 1 October 2018.

THE PROCUREMENT PROCESS FOR HIGH VALUE TENDER TRANSACTIONS AND THE ROLE OF THE GROUP CHIEF INFORMATION OFFICER

8. The process to go out on tender is initiated by the business requiring the service, and in this case, it was initiated by the Group IT unit by the GCIO of the time. The GCIO at the time was Dr. Mantsika Matooane. This implies that the business case of the tender, the service requirement specifications, the evaluation criteria and the evaluation team that is referred to as Cross Functional Evaluation Team ("CFET") are all compiled and approved by the requesting business unit. In this instance, it was compiled by the Group CIO at the time.

TRANSNET'S EVALUATION METHODOLOGY 2015



Strictly private and confidential

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9. My first interaction with the Procurement Process relating to this Tender was in Step 9 as depicted in the graphical representation above. All bidders who successfully reach Step 9 in the Tender Process would have already satisfied the mandatory requirements and the set threshold of the Tender.
10. The requirements that would have been satisfied by this Step 9 would include mandatory, technical, risk and financial requirements. Therefore, at this stage, the final determining criteria for the award of the Tender would be the Best and Final Offer ("BAFO") submitted by the bidders.
11. My main concerns and objections regarding the procurement process were summarily as follows:
 - 11.1. The risks which would have been an integral part of the evaluation process up to Step 8 were re-introduced post the BAFO stage;

- 11.2. The risks which were highlighted were in my view either irrelevant, misleading or immaterial.
- 11.3. The recommendation in Step 9 did not have the signed HVT report from compliance, which should have, according to practice, accompanied a final recommendation to me as the business owner of this Tender including the Board.
- 11.4. Despite Gijima having satisfied material risk concerns which were raised by the Transnet Procurement Team, the final recommendation by the same Procurement team to the Group Chief Financial Officer (“GCFO”), who was Mr Garry Pita (“Mr Pita”) at the time, included those same risks against Gijima to support the award of the Tender to T-Systems.

THE NATURE OF THE TENDER

12. Transnet issued and approved a request for proposal (RFP) under tender number GSM/15/08/13/10 for the provision of IT DATA SERVICES to Transnet in November 2015.
13. The Tender related to the outsourcing of data services for the whole of Transnet. This meant that all operating divisions of Transnet, where possible and applicable, would use the services awarded under the Tender to execute their day to day IT operations. Effectively, the services outsourced concerned the build and upkeep of its IT estate which included:
- 13.1. **Data Center and hosting services** - which included servers, databases, storage, mainframe and the disaster recovery of these services (IT infrastructure). To provide and support centralized production, quality

assurance, and development computing environments, and associated data storage backup services and supporting systems software.

- 13.2. **Help and services desk** - to coordinate and respond to Incident and Service Requests made by the End-Users and Transnet technical staff.
- 13.3. **Collaboration** - to define, design, build, deploy, operate, maintain, and optimise the collaboration services and applications used by or to be developed for use by Transnet.
- 13.4. **End User Computing (Desktop support)** - which included procurement of laptops, their support and maintenance, their tracking and their refresh. This tower of services is the one which was then given over to Zestilor (Pty) Ltd as the BEE partner before I joined Transnet.

14. Some of the salient points of this Tender are:

- 14.1. It is estimated to cost R1.85 billion over five (5) years;
- 14.2. It is a consumption based contract and therefore not fixed and the values can fluctuate; and
- 14.3. It had an un-costed portion driven by new projects Transnet would construct as and when required.

15. The Transnet Procurement Procedures Manual classified the Tender as a HVT because its value exceeded the threshold of R50 million.

16. The evaluation process resulted in seven bidders being identified as having met the technical standards of the tender, i.e.

- 16.1. T-Systems;
- 16.2. Gijima;

- 16.3. Ubuntu Technologies (Pty) Ltd ("**Ubuntu**");
- 16.4. Wipro Technologies South Africa (Pty) Ltd;
- 16.5. Business Connexion (Pty) Ltd;
- 16.6. EOH Mthombolo (Pty) Ltd; and
- 16.7. Mobile Telekom Networks (Pty) Ltd.

THE SHORTLISTING OF TWO TOP BIDDERS

- 17. I first became involved with this Tender on or about June 2016, shortly after I joined Transnet as a GCIO;
- 17.1. On 30 June 2016, I received an email from Mr Pita which recommended a shortlist of only two (2) top bidders, namely T-Systems and Ubuntu for the final round of adjudication. I attach annexure **MMAM01** in support.
- 17.2. I proposed and counter recommended to Mr Pita and Mr Gama that four (4) instead of two (2) bidders be shortlisted. My experience with such complex and commercially huge tenders is that bidders fall off unexpectedly when the scrutiny of tenders approaches conclusion for various reasons. This then has the disadvantage of extending the evaluation process unnecessarily. A shortlist of two bidders was cutting it too fine in my experience.
- 17.3. Seven (7) bidders had successfully satisfied the technical requirements of the tendering and increasing the shortlist from two to four was not a big request in my view.
- 17.4. Mr Gama declined this proposal. He cited that given the size of Transnet and the many tenders it goes through in enabling its operations and the size

of those tenders, this Tender was relatively small at R1.85 billion and did not warrant such a long shortlist of bidders.

18. On 20 July 2016, one of the two short listed bidders, Ubuntu, formally notified Transnet of its withdrawal from the post Tender negotiation process. Mr Gama sent a communication to me to say *"you will probably say I told you so"*. I responded to him that I knew that he was doing it all in the interest of Transnet and had only good intentions.
19. On the instructions of Mr Gama, the third highest ranking bidder, namely Gijima was added to the shortlist of bidders.

CONCERNS ABOUT THE RECOMMENDATION TO AWARD THE TENDER TO T- SYSTEMS

20. On 22 September 2016, I was presented with the complete file of the evaluation process by Mr Edward Thomas ("**Mr Thomas**"), the then Group Chief Supply Chain Officer ("**GCSCO**"), requesting my signature on the recommendation to award the Tender to T-Systems. I attach the memorandum as annexure **MMAM02**.
21. Having gone through the file, I could not reconcile some evaluation aspects to the final recommendation.
22. The procurement process had been evidently adhered to in accordance with the procurement policy of Transnet. Due process and the required due diligence of

the bidders was also evidently done through physical visits. However, the recommendation was not in line with the evaluation outcome of the process complied with to date:

- 22.1. On 17 August 2016, the bidders for the Tender were requested to submit their BAFO. This stage of the process meant that all technical evaluations and risks would have been assessed and finalised. In the result, the only consideration left for bid assessment was pricing. Gijima provided the lowest priced bid in the BAFO stage, scoring a final score of 99%. T-Systems scored a final score of 85.07%. The recommendation which required my signature was, however, inconsistent with the outcome of the BAFO evaluation process in that T-Systems was recommended.
- 22.2. It was at this point that I was made aware of Gartner Ireland Limited ("**Gartner**") and the list of risk items compiled by them. I attach the report compiled by Gartner as annexure **MMAM03**.
23. During September 2016 I was called to a special meeting in boardroom 4619, the boardroom dedicated to the GCIO, at the Transnet Building situated in Carlton Center to conclude the adjudication process and for me to append my signature as the business owner. I can only recall the following persons present at the meeting: the Procurement Officers, Ms Pheladi Xaba and Mr Macdonald Maluleke ("**Mr Maluleke**") as well Mr Thulani Mtshwene ("**Mr Mtshwene**") and Mr Martin Sehlapelo. The CFET presented the memorandum to me which recommended the award of the Tender to T-Systems. This is the same memorandum attached as annexure **MMAM02**.

24. By this stage, the Memorandum was not signed by Mr Gama and did not advance to the Board.

25. I was, at most, three months in the employ of Transnet at that stage, and I was still learning the people, the culture, the processes and the ways of work. I relied heavily on the procurement officers in the room and asked several questions about the process, my role as the principal user of the Tender to be awarded, and the risks that were raised against Gijima. Mr Maluleke explained that the CFET represented me as the GCIO and business owner of the Tender, and because it was their recommendation, it was tantamount to it being my recommendation as well. It did not make sense to me. I then appended my signature to the recommendation letter but I made the following comments at the bottom of the letter:

"CIO Comments: Mosidi

1) The risk as captured, can be easily mitigated by GICT.

2) Bidder 2 is cheaper, can deliver against the requirements & has the right country profile".

26. The discomfort I had about the fact that I signed the recommendation to T-Systems even though I had made my points clear led me to writing a detailed response to each and every risk raised, explaining why the risks highlighted were not risks in my view. I gave this response to Mr Mboniso Sigonyela, who at the time was the Executive Manager in Mr Gama's office. Whilst he acknowledged receipt, he also advised that perhaps I should keep the detailed response for "the right time".

27. It was however around this time that I was made aware of an anonymous letter, dated 5 October 2016 that was sent to my then colleague, Ms Disebo Moephuli (**"Ms Moephuli"**), the then Chief Risk Officer, pertaining to this Tender. The letter informed that the *"bosses want the current incumbent to succeed"*, the current incumbent being T-Systems, to win this Tender. Ms Moephuli shared the knowledge of this letter with me because this Tender related to my business unit. I have never known how the anonymous letter was dealt with but I noted the issues it raised. A copy of the letter is attached as **MMAM04**.
28. Around this same time, Mr Gama asked to meet me regarding the Tender at the Tintswalo Hotel in Waterfall Estate, Johannesburg. During this meeting, Mr Gama tested a few things with me like the dangers of procurement, my level of conviction given my view about the risks and where the Tender process was. I gave him my assurance that based on the Transnet procurement processes followed, the irrelevance of some of the risks raised, the decision to award the Tender to Gijima was the right one.
29. The HVT report that was brought to me was unsigned by Governance. It was never brought back to me once finalised – which ought to have taken place according to the Tender process.

RISKS IDENTIFIED IN RESPECT OF THE WINNING BIDDER, BEING GIJIMA

30. The next time that I interacted with this process, during or about late December 2016, was in Mr Gama's office where he called both the GCSCO, Mr Thomas, and me to his office. Mr Gama recommended that in my capacity

as GCIO and the business owner of the Tender, I should be allowed to go and test the identified risks with Gijima. He also directed that Procurement should facilitate this engagement and send questions to Gijima for them to answer and secure time with Gijima, which will also form part of the adjudication process.

31. On 23 January 2017, the GCSCO called a meeting with Gijima in Transnet Engineering offices in Kilner Park to clarify the risks identified by the Procurement process. A copy of the letter dated 19 January 2017 seeking clarity from Gijima and confirmation of the 23 January 2017 meeting arrangements is attached as annexure **MMAM05**.

31.1. Transnet was represented by myself as the GCIO, Mr Mtshwene representing Governance and Risk, Mr Thomas as the GCSCO and Mr Maluleke as the Category Manager, Group Strategic Sourcing.

31.2. The Gijima delegation was led by Mr Robert Gumede ("**Mr Gumede**"), the Chairperson of Gijima, his then Chief Executive Officer ("**CEO**"), Ms E. Wilson, his Chief Operating Officer, Mr Maphum Nxumalo ("**Mr Nxumalo**") with an entourage of executives from Gijima.

31.3. The Chairperson of Gijima requested that he be allowed to record the meeting himself and immediately put the recording device on the table.

31.4. Gijima took the Transnet team through their answers to the questions that were raised by Transnet.

32. At this point, Gijima was excused and a formal resolution was then taken at the end of the meeting by the Transnet team that all risks had been mitigated and that the Tender can be awarded to Gijima.

THE TWO CONFLICTING RECOMMENDATIONS

33. On or around February 2017, just before the sitting of the Group Leadership Team (GLT) in Esselen Park, in The Junction Room, there were two separate memoranda drawn up with different recommendations for Mr Gama's signature. The one memorandum was from Mr Pita into whom the Procurement function reported, and another memorandum was from me.
- 33.1. The one memorandum addressed to Mr Gama from Mr Pita, Mr Thomas and myself recommended that the Tender be awarded to T-Systems. A copy of Mr Pita's unsigned memorandum is attached as annexure **MMAM06**.
- 33.2. The other memorandum that I prepared recommended that the Tender be awarded to Gijima. An unsigned copy of my memorandum is attached as annexure **MMAM07**.
- 33.3. Mr Gama made an emphatic point that he wants to sign only one memorandum to the ADC and not two memoranda. He requested that Mr Pita and I should "iron out" our differences and submit one memorandum to him for approval.
34. Mr Pita and I finally signed the memorandum dated 8 February 2017 recommending that the Tender be awarded to Gijima. A copy of this memorandum is attached as annexure **MMAM08**.

DECISION BY THE ADC TO AWARD THE TENDER TO THE SECOND PLACE BIDDER, THAT IS T-SYSTEMS

35. On 13 February 2017, the Tender was presented to the ADC and I attended this meeting with ADC board members. Present at the meeting were:

Transnet Board Members:

- 35.1. Mr Stanley Shane ("**Mr Shane**"), Chairperson and Transnet Board Member;
- 35.2. Mr Gama, GCE and Transnet Board Member;
- 35.3. Ms Linda Mabaso, Member and Transnet Board Member;
- 35.4. Mr Zainul Nagdee, Member and Transnet Board Member;
- 35.5. Mr Pita, CFO and Transnet Board Member;
- 35.6. Mr Ravi Nair, Chief Executive: Transnet Freight Rail ("**TFR**") and Transnet Board Member (*partial attendance*);

In attendance:

- 35.7. Mr Mboniso Sigonyela, General Manager: Office of the GCE;
- 35.8. Mr Ndiphiwe Silinga ("**Mr Silinga**"), Chief Legal Counsel;
- 35.9. Mr Thomas, Chief Supply Chain Officer and Black Empowerment Team Chairperson;
- 35.10. Ms Lorraine Beaumont, Company Secretary;
- 35.11. Ms Buhlebenkosi Ndlovu, Deputy Group Company Secretary;

Partial attendance:

- 35.12. Ms Shantell Mackay, Chief Procurement Officer: TFR;
- 35.13. Ms Makano Mosidi, GCIO;
- 35.14. Ms Lungiswa Sangqu, CIO: TFR;

- 35.15. Mr Krishna Reddy, Chief Capital Officer; and
- 35.16. Mr Makhosini Shongwe, General Manager, Capacity Development Services: Group Capital.
36. "Partial attendance" means that individuals attend the meeting only for specific parts of the meeting Agenda to which their role relates.
37. A copy of the meeting Minute is attached as annexure **MMAM09**.
38. The Tender was discussed in detail during this meeting and both Mr Thomas and I were granted the opportunity to make verbal submissions to the ADC and to answer questions posed by the members of the Committee. During this meeting, Mr Gama sent me an SMS or WhatsApp to tell me to *"stop fighting because it was clear what the board wanted."* I only saw this SMS or WhatsApp message long after we had left the meeting after our Agenda item was concluded.
39. The transcript of the recording is attached as annexure **MMAM10**. Despite my earnest attempts to convey to the ADC that due process was followed and that the risks identified after the evaluation process had been addressed and that the Tender should be awarded to Gijima, as the winner, the ADC decided otherwise. A copy of the ADC's recommendation to the Board is dated 15 February 2017 and attached as annexure **MMAM11**.
40. When the ADC recommended to the Board to grant the final award to T-Systems, although I attended, I had very little to say because it was now the ADC recommending to the Board and not management. I have since noted that the

ADC's recommendation to the Board was signed by Mr Gama and Mr Pita, both of whom were Executive Board members. Mr Shane, as the Chairperson of ADC, did not sign the recommendation.

41. The process went into "a dark hole" for about two to three months. I kept on enquiring from Procurement about the status of the process and when could we, as IT, start negotiating the technical and operational terms and conditions of the contract with T-Systems. There was never clarity given about the next steps.
42. My next expectation was to at least be copied on the award letter to T-Systems or be provided with a status update. None of this took place.
43. I had further expected to be given the go ahead by Procurement to then commence with contract negotiations, an engagement that would normally last a month or more for thoroughness, but no communication came forth from Procurement.

OBJECTIONS BY GIJIMA AND UNSUCCESSFUL SETTLEMENT NEGOTIATIONS WITH T-SYSTEMS

44. I was not personally involved in the subsequent events described below. I was however made aware of the events by Mr Silinga of Transnet Legal and Mr Gama who were the recipient of updates in respect thereof:
 - 44.1. Gijima's objection to not being awarded the Tender;
 - 44.2. The matter was escalated to the Transnet Ombudsman and to National Treasury;

- 44.3. National Treasury informed Transnet that it will not be allowed to extend the agreement with T-Systems any further than May 2018; and
- 44.4. The National Treasury informed the Transnet Board of Directors that its decision to award the Tender to T-Systems was wrong and directed Transnet to rescind the decision and award to the Tender to Gijima.
45. The Board then took a decision on 27 September 2017 to rescind the award to T-Systems and to award the Tender to Gijima. A copy of the Special Board Meeting Minute is attached as annexure "**MMAM12**".
46. Given the events that transpired, my management team and I decided to evaluate the different options available to Transnet in view of the National Treasury ultimatum of not extending the agreement with T-Systems beyond May 2018.
47. The process became muddy, complex and protracted, and in my capacity as GCIO, I did not see an end to it in the nearest future. The National Treasury deadline of May 2018 added to the complexity.
48. During April 2018, Mr Gama requested me to negotiate a without prejudice out of court settlement with T-Systems. A copy of the internal email communication is attached as annexure **MMAM13**.
49. I had negotiations with both T-Systems and Gijima. I offered T-Systems an out of court without prejudice settlement of R20 million, mandated by Mr Gama, provided that they transition swiftly and effectively to Gijima. Mr Gama suggested

that the settlement amount would be a performance bonus to T-Systems for transitioning the environment to Gijima smoothly and in time.

50. T-Systems, in my view, considered this offer but wanted it to be increased to about R75 million which on a quick and rough calculation equated to the net present value of the contract after five years. We reached a deadlock.

51. I met several times with both Gijima and T-Systems during this period. On 5 April 2018, Gijima called me to a meeting at a venue that I presumed to be the offices of Gijima. Following my GPS for route travel, I ended up at Mr Gumede's homestead. Present at the meeting were Mr Gumede, Mr Sylvester Samuel, the then Chief Executive Officer of Gijima, and Mr Nxumalo, the then Chief Operating Officer of Gijima. At this meeting, Gijima discussed their capability, their readiness and preparedness. I understood the meeting to be an indication that they remained interested and invested in the Tender. On the next day, being 6 April 2018, at about 06:30am, I sent a WhatsApp message to Mr Nxumalo which informed him that "*Maphum abuti waka – I really prefer office meetings – any office, than home meetings – even for next time hle*". He acknowledged my message and it never happened again.

52. The offer of R20 million was finally formally removed from the settlement negotiations table in an email to T-Systems Country Managing Director, Ms Dineo Molefe ("**Ms Molefe**").

53. We continued to look for options until we "landed" the option of transitioning from T-Systems to Transnet itself.

54. The process of transitioning to Transnet commenced and proved to be bumpy, onerous and risky. Transnet never had the intention to insource these services and so there were just too many gaps from people, to technology, to processes. The first hurdle was with the transitioning of the people and it was clear that the risks will escalate and compound, much to the interruption of Transnet operations.

EVENTS UNDER THE NEW TRANSNET BOARD OF DIRECTORS

55. The new Board of Directors came on board during May 2018. Several meetings were held with the new Board and Minister Pravin Gordhan where management presented status reports on various contracts including this Tender. Questions were posed and answers provided by management as extensively as possible to bring the newly appointed directors up to speed. Their understanding and guidance was critical to Transnet and the IT community within Transnet.
56. With the “two elephants” fighting in the courts, that is T-Systems and Gijima, the operations of Transnet were consequently put at risk. My team continued to re-evaluate options in favour of Transnet. The option with the least risk to Transnet still turned out to be Gijima after all the trials that Transnet experienced when transitioning from T-Systems to itself.
57. I had meetings with the then CEO of T-Systems, Ms Molefe, to assess if they could withdraw their opposition now that they knew that they never won the Tender in the first place. This suggestion was rejected.

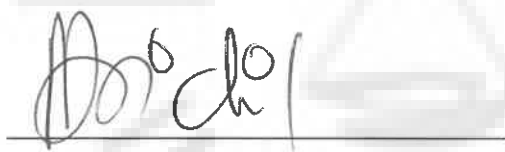
58. The new Board decided to obtain an independent review of the options available to Transnet to conclude the Tender, as outlined by management to the Board of Directors. This triggered another procurement process.

59. It was during this process that I tendered my resignation.

60. I have since learnt about the High Court judgement delivered on 12 December 2018 which reviewed and set aside the decision to award the Tender to T-Systems. A copy of the judgment is attached as annexure "MMAM14".

I know and understand the contents of this **statement**.

Signed at ROSEBANK on this 10TH day of MAY 2019.



MAKANO MOSIDI

List of annexures

Annexure	Description
MMAM01	E-mail from Mr Garry Pita, dated 30 June 2016, which recommended a shortlist of two bidders namely T-Systems and Ubuntu
MMAM02	Memorandum signed on 21 September 2016 to 5 October 2016 by various signatories, recommending T-Systems
MMAM03	Risk Report compiled by Gartner dated 19 August 2016
MMAM04	Anonymous letter pertaining to the Tender, dated 5 October 2016
MMAM05	Transnet's letter dated 19 January 2017 seeking clarity from Gijima and confirmation of the meeting to be held on 23 January 2017
MMAM06	Unsigned memorandum prepared by Mr Garry Pita, addressed to Mr Siyabonga Gama from Mr Garry Pita, Ms Makano Mosidi and Mr Edward Thomas recommending that the Tender be awarded to T-Systems
MMAM07	Unsigned memorandum prepared by Ms Makano Mosidi, addressed to Mr Siyabonga Gama from Mr Garry Pita recommending that the Tender be awarded to Gijima
MMAM08	Memorandum dated 8 February 2017 addressed to Mr Siyabonga Gama from Mr Garry Pita recommending that the Tender be awarded to Gijima
MMAM09	Minutes to the ADC meeting held on 13 February 2017
MMAM10	Transcript of the recording of the ADC meeting held on 13 February 2017

MMAM11	Memorandum dated 15 February 2017 addressed to the Transnet Board of Directors from Mr Siyabonga Gama recommending that the Tender be awarded to T-Systems
MMAM12	Transnet Board of Directors meeting held on 27 September 2017
MMAM13	Copies of internal email communication dated April 2018 in respect of the out of court settlement negotiations with T-Systems
MMAM14	High Court judgement delivered on 12 December 2018 which reviewed and set aside the decision to award the Tender to T-Systems

Annexure MMAM01



From: Makano Mosidi Transnet Corporate Johannesburg
<Makano.Mosidi@transnet.net>
Sent: Wednesday, 06 July 2016 09:16
To: Siyabonga Gama Transnet Corporate JHB
Cc: Garry Pita Transnet Corporate JHB
Subject: RE: Data services tender

Thank you Siya.

Its only because it's not negotiation but due diligence (dd), unless if I am not understanding how its conducted. I have overseen dd exercises, and most of the time they have revealed what the paper proposals could not reveal, and one would be forced to go to the next bidder, and then the next bidder etc. So if we limit ourselves to two, one may find that we lose the time that we thought we were saving after all, especially with new service providers to the environment. I get nervous.

That's my input and advise, but will go with the decision like I mentioned earlier, thanks Siya.

Regards,

Makano

From: Siyabonga Gama Transnet Corporate JHB
Sent: 06 July 2016 08:52 AM
To: Makano Mosidi Transnet Corporate Johannesburg <Makano.Mosidi@transnet.net>
Cc: Garry Pita Transnet Corporate JHB <Garry.Pita@transnet.net>
Subject: Re: Data services tender

Hi Makano , Garry

It is adialectic to think negotiating with more will save more time or money. Transnet is a big corporate, we need to have our own template of what we want and all we negotiate is the gaps . I cannot understand why you would think negotiating with five is the same as two or even three!

As I understand it, we ought to have a new contractor by 1 December and allow for a transition period. The DD should be finalized yesterday as long as we have already asked for the 'Best and Final Price'.

Regards

Siyabonga Gama
GCE: Transnet
+27113082313
Sent from my iPhone
'If you can't explain it simply, you don't understand it well enough'- Albert Einstein

On 06 Jul 2016, at 7:20 AM, Makano Mosidi Transnet Corporate Johannesburg
<Makano.Mosidi@transnet.net> wrote:

Thanks Siya ☺

Whether we do two or four bidders for DD, we have run out of time, we may as well do a proper exercise and mitigate our risks in full.

I will however oblige, and go with your directive.

Garry, please don't cancel our meeting for tomorrow, I won't be long:

- a. The fund management module which duplicates the functionality that TC & EIMS enabled in the FI module for early warning. My proposal is to cancel one of them. I think Fanie is the sponsor??
- b. Telecoms – decisions made to date?

Regards,

Makano Mosidi

"Always improve it or leave it"

From: Siyabonga Gama Transnet Corporate JHB

Sent: 05 July 2016 07:50 PM

To: Garry Pita Transnet Corporate JHB <Garry.Pita@transnet.net>

Cc: Makano Mosidi Transnet Corporate Johannesburg <Makano.Mosidi@transnet.net>

Subject: Re: Data services tender

Hi Makano and Garry,

Let's go with two shortlisted bidders. It's not necessary to waste any more time and go for 4 bidders when there are two that we can do the DD on and finalize before the contract runs out. We are already in injury time.

Let's move fast.

Siyabonga Gama

GCE: Transnet

+27113082313

Sent from my iPhone

'If you can't explain it simply, you don't understand it well enough'- Albert Einstein

On 30 Jun 2016, at 8:12 AM, Garry Pita Transnet Corporate JHB <Garry.Pita@transnet.net> wrote:

Hi Siya / Makano

The reasons why the IT Data Services CFST is recommending shortlisting, conducting due diligence and negotiating with the top two (2) ranked bidders is based on the following:

- Both two (2) top ranked bidders provided the first and second lowest priced bidders on the IT Data Services RFP in terms of the PPPFA 90/10 principle, i.e. 99.00% and 86.20% respectively.

- All seven (7) bidders that passed the technical evaluation including the two recommended bidders were given access to a Transnet Data Room which provided them with additional technical clarity about Transnet's technical requirements and were also invited to the closing the gap sessions (clarifications) before they were given an opportunity to submit their final revised pricing.

- It was indicated after the Data Room and clarifications that the submitted pricing will be their last opportunity and the two recommended bidders provided the lowest priced offers.

- the bidders have met the technical requirements as well as the required service levels and the only matter that remains is to have a final price negotiation and a due diligence.

There is a pricing difference of 18.03% (R342m) which is highly unlikely to be closed even if due diligence and negotiations were to be conducted with the third ranked bidder.

- The CFST can recommend to shortlist and negotiate with the top ranked bidders only after the Data Room and "closing the gap sessions" but to create competition and to have a reserve bidder in case negotiations with the top ranked bidder failing, the recommendation is to shortlist the top two ranked bidders and to do due diligence and negotiations on both of them as a risk mitigating mechanism.

- The CFST is also recommending that in an unlikely event of negotiations with the top two ranked bidders failing, the CFST will conduct due diligence and negotiations with the third and fourth ranked bidders. The reason why negotiations are unlikely to fail with the top two ranked bidders is due to the fact that the MSA gaps have already been closed and the pricing has been confirmed by all bidders that passed the technical evaluation criteria.

- The recommendation for award of IT Data Services has to be tabled at the Transnet Leadership Team, ADC and in July 2016 and has to be approved by the board and there is a transition period of six (6) months which is required after issuing the LOI. This transition period is already shorter than 6 months and the negotiations with the shortlisted bidders will have to include negotiating a shorter handover period. Due to the time constraints it is also impractical to shortlist and

negotiate with more than two bidders. The Board has time and time again advised management that no extensions will be considered. This is further supported due to the National Treasury instruction note where we would need NT approval for any extension which may take some time.

I propose we continue as suggested above.

Regards
Garry

Sent from my iPad

On 28 Jun 2016, at 7:01 PM, Makano Mosidi Transnet Corporate Johannesburg <Makano.Mosidi@transnet.net> wrote:

Hi,

Well done again on your sterling performance with the annual results!!

I just had a call from Martin asking me whether he could go ahead and sign the recommendation to shortlist two service providers to go ahead to the due diligence state.

I advised against it. I would rather have us shortlist four or five service providers for due diligence. It's complex, it's involved, SLAs need to be tightened up and made fit for purpose, expected benefits to be well articulated etc. It is not everyone who can see this through to the end, the more the better. We are late already, we may as well do it right. Shortlisting only two now in the interest of time is likely to burn even more time instead.

Like I mentioned in the GLT, this is critical and core to our operations, I recommend that we shortlist four or five bidders to ensure near perfect fit.

I am landing back home on Thursday.

Thank you & regards,

Makano

Sent from my iPad

Annexure MMAM02



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Registration
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1990/000900/30

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2001

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TRANSNET



MEMORANDUM

www.transnet.net

To: Siyabonga Gama, Group Chief Executive (GCE)

From: Garry Pita, Group Chief Financial Officer (GCFO)
Makano Mosidi, Group Chief Information Officer (GCIO)
Edward Thomas, Group Chief Supply Chain Officer (GCSCO)

Subject: **RFP No. GSM/15/08/1310 for Provision of IT Data Services – Request for approval of contract award of IT Data Services to T-Systems South Africa (Pty) Ltd**

PURPOSE OF SUBMISSION:

1. To request the Group Chief Executive (GCE) to:
 - a) Approve the award of business to T-Systems SA (Pty) Ltd;
 - b) Grant approval to issue a Letter of Intent (LOI) to T-Systems SA (Pty) Ltd as the preferred bidder on this RFP;
 - c) Sign the Letter of Intent (LOI) for the preferred bidder (See Annexure A); and
 - d) Sign letters of regret for the eight (8) unsuccessful bidders (See Annexure B).

BACKGROUND:

2. The current five (5) year T-Systems contract for IT (Information Technology) Outsourcing was established through a sale agreement of Arivia.com to T-Systems in 2009. The contract was extended for two (2) years and it expires on 31 December 2016.
3. All Transnet Operating Divisions (ODs) make use of this contract for their IT Data Services requirements and the contract is managed at Group level by Enterprise Information Management Services (EIMS), previously known as Group Information and Communications Technology (ICT).
4. The IT Data Services sourcing strategy and RFP were prepared by the Cross Functional Sourcing Team (CFST) that consisted of technical representatives from all Operating Divisions (ODs). This sourcing strategy was approved by the Board on 27 August 2015.

DISCUSSION

5. The Board sub-delegated its authority to the Group Chief Executive (GCE) to approve the RFP, and the issuing of the RFP to the market as well as conducting due diligence and post tender negotiations (See Annexure C).

PK

6. The GCE approved the Issuing of the RFP on 18 November 2015 (See Annexure D) the RFP was advertised on the National Treasury e-tender portal, as per the National Treasury Instruction Note 1 of 2015/2016 (Advertisement of bids and the Publication of awards on the e-tender publication portal). Transnet issued the IT Data Services RFP to the market from the 23rd of November 2015 and the tender closed on 26 January 2016.
7. The tender was advertised on the National Treasury's e-tender portal website at no cost to bidders. A compulsory briefing session was held on 09 December 2015 and fifty (50) bidders attended the briefing session. Nine (9) bidders responded to the invitation to submit responses.
8. The IT Data Services Cross Functional Evaluation Team (CFET) started with the evaluations on 28 January 2016 and completed the evaluations on 09 March 2016.
9. The received bids were evaluated against specific and predetermined criteria as set out on the RFP. Initially five (5) bidders passed stages 1 to 4, but after Transnet Internal Audit's (TIA) High Value Tender team (HVT) conducted a High Value Tender Gateway 3 review, it was discovered that two bidders, Bidder 2 (WIPRO Technologies South Africa) and Bidder 3 (Mobile Telecommunication Networks (MTN) were erroneously disqualified at stage 2 (Substantive responsiveness) on the technical prequalification criteria. The HVT team recommended that these two bidders advance to the stage 3. The technical evaluation stages supported the recommendation for the two bidders to progress to stage 3 (technical evaluation stage).
10. Subsequent to the technical evaluations for bidders 2 and 3, all seven (7) bidders passed stages 1 to 3 and reached stage 4 (commercial and preference evaluation stage) and they were:
 - Bidder 1: Ubuntu Technologies
 - Bidder 2: Wipro Technologies South Africa
 - Bidder 3: MTN
 - Bidder 4: EOH Mthombo
 - Bidder 5: T-Systems South Africa
 - Bidder 6: Business Connexion (BCX)
 - Bidder 7: Gijima Holdings
11. The table below indicates the number of bidders that reached and passed each of the evaluation stages.

Evaluations										
Stage 1		Stage 2		Stage 3		Stage 4		Stage 5		Stage 6
Administrative Responsiveness		Substantive Responsiveness		Technical Evaluation		Commercial Evaluation		Due Dilligence Incl. Post Tender Negotiations		Contract award
Bidders at this stage	Bidders that passed this stage	Bidders at this stage	Bidders that passed this stage	Bidders at this stage	Bidders that passed this stage	Bidders at this stage	Bidders that passed this stage	Bidders at this stage	Bidders that passed this stage	
9	8	8	7	7	7	7	2	2	1	TBA

Table 1: Evaluation Stages

12. The Administrative responsiveness stage (Stage 1), evaluated the bids in terms of:
- Submission within the stipulated date and time; and
 - Submission of complete and valid returnable documents.
13. The Substantive responsiveness stage (Stage 2), evaluated whether bidders complied with the technical and Supplier Development (SD) prequalification criteria. At this stage bidders were also evaluated on the presence of a priced offer and their commitment to a successful transition from the current service provider to the successful service provider. The mandatory transition period was a maximum period of six (6) months.
14. The technical evaluation (Stage 3) prescribed a threshold of 70%, as per the criteria in table 2 below. All seven (7) bidders passed the technical threshold.

Technical Criteria	% Weightings
Service Provider Assessment	20%
Technical Service Towers	70%
Service Credits	10%
Total Weighting:	100%
Minimum qualifying score required:	70%

Table 2: Technical Evaluation

15. As mentioned above on paragraph 10 and 11, seven (7) bidders progressed to the Commercial evaluation stage (Stage 4), where they were evaluated on price and preference (B-BBEE). A number of bidders had made numerous assumptions on their initial bids of Transnet's requirements. This resulted in bidders not correctly pricing on their submissions. Furthermore, The 90/10 weighting was applied, 90% was allocated for price and 10% was allocated for preference, the assumptions on the bidders' pricing workbook made it difficult for the Cross Functional Evaluation Team (CFET) to evaluate bids on a comparative basis. The bidders were then invited to the IT Data Room, where they had a view of Transnet's IT landscape, to get a better understanding of Transnet's

environment. Subsequent to the visit to the Data Room, all bidders were invited to a "closing the gap session", which was a session to clear all assumptions, in order to enable bidders to provide Transnet with a revised pricing workbook. The bidders submitted their revised price on 06 June 2016, after which the second commercial evaluations were conducted.

16. Subsequent to the commercial evaluation, on 15 July 2016 the GCE approved that negotiations and due diligence exercises be conducted with the top two ranked bidders (T-Systems (bidder 5) and Ubuntu Technologies (bidder 7)), (See Annexure E). These two bidders scored the highest overall points from their counterparts on the price and preference calculator (See Annexure F).
 - The first (1st) ranked bidder (T-Systems) achieved a total score of 99% and the second (2nd) ranked bidder (Ubuntu Technologies) achieved a total score of 86.2%.
 - There was a price variance of 12.8% between the first and second ranked bidder. Whilst, the price variance between the first and third ranked bidder was 19.79%.
17. Due to the fact that the RFP validity period was close to expiry, Transnet requested all nine (9) of the IT Data Services bidders of its intention to extend the validity period by a further 120 business days. The tender validity period was extended with an additional 120 business days after approval was sought and granted from the GCE on 15 July 2016 (See Annexure G). This means that the tender offers are still valid until 11 January 2017.
18. The bidders were also requested to confirm that their prices will remain valid for the duration of the extended validity period.
19. On 19 July 2016, Transnet communicated with T-Systems and Ubuntu Technologies that post tender negotiations and due-diligence exercises need to be undertaken on July/August 2016. Subsequent to the receipt of the above notification from Transnet, the second (2nd) ranked bidder (Ubuntu Technologies) sent to Transnet their formal letter withdrawing from the bidding process, citing the reason that their strategic partner (Hitachi Data Systems) had indicated that it is not able to keep its prices firm during the extended validity period of 120 business days (See Annexure H). Ubuntu Technologies could have opted to amend their prices, as per paragraph 6.2 of the General Bid Conditions, which allows bidders to amend their prices in line with changes in the market. Ubuntu Technologies instead opted to withdraw from the bidding process without exercising the option to amend their tendered prices. The General Bid Conditions were issued together with the RFP document (Appendix I of the RFP) and Ubuntu Technologies had signed at the bottom of each and every page of the RFP document, to indicate their acquaintance with the contents of the General Bid Conditions.
20. The due diligence and post tender negotiations continued as scheduled with T-Systems on 25 and 27 July 2016. The third (3rd) ranked bidder (Gijima) was added on the shortlist, to replace the second ranked bidder (Ubuntu Technologies) in order to maintain competitiveness in the bidding process.

21. The inclusion of the third ranked bidder was necessitated by the withdrawal of Ubuntu Technologies (second ranked bidder) from the bidding process. The GCE approved the addition of the third ranked bidder for due diligence and negotiations on 11 August 2016 (See Annexure I).
22. The due diligence and post tender negotiations on the third ranked bidder were conducted on 11 and 12 August 2016.
23. The due diligence on both bidders comprised of bidder reference checks and site visits. In the RFP document on paragraph 3 of section 3, bidders were requested to submit details of three (3) client references in their bid submission, where they offered similar service towers comparable in size and complexity to Transnet. The Cross Functional Sourcing Team (CFST) contacted two (2) of the three (3) references, for both bidders. The second part of the due diligence included site visits to the offices of the bidder and their Tier 3 Data Centres (DC). The CFST visited bidders' premises for an assessment of their Data and Operations Centres. The site visits also included "face to face" interviews with the bidders' Relationship and Senior Technical Managers which were conducted at the bidder's offices. Due diligence was conducted as a risk mitigating exercise.
24. After the conclusion of the due diligence and post tender negotiations with T-Systems and Gijima, the bidders were requested to submit their Best and Final Offers (BAFOs) on 17 August 2016. Gijima (bidder 7) provided the lowest priced bid in the BAFO stage, scoring a final score of 99%. T-Systems (bidder 5) scored a final score of 85.07%. (See Annexure J).
25. The bidders were also requested to submit their transition plans and Master Services Agreement (MSA) mark-ups together with their BAFOs. The MSA mark-ups were requested in preparation for the final contract negotiations with the preferred bidder and the transition plan was requested in order to get a better understanding of how the bidders will approach the transition periods.
26. A report was compiled by the CFST, which gives a comprehensive overview of the due diligence process. The due diligence report gives an overall score of both bidders and the second part of the report is a risk report (See Annexure K). The first ranked bidder (Gijima) achieved an overall score of 71.26% and the second ranked bidder (T-Systems) achieved an overall score of 71.59%, without factoring in any identified risks. The evaluation report was based on the site observation and the client reference checks only. The risk report, delved deeper into the business risks that were identified by the CFST on both bidders and their overall impact on Transnet.
27. The bidders were informed that a maximum of six (6) months for the transition period still applied and it was also emphasized during the commercial negotiations that after the six (6) months transition period, Transnet requires to be operating on Final Mode of Operation (FMO) in order for operations to be stable with no major ICT transformational activities for at least eighteen (18) months.

28. After the BAFO were submitted and reviewed, it was noted that Gijima indicated in their transition plan that after the six (6) months transition period, Transnet will still be in their Current Mode of Operations (CMO), which poses a major risk to Transnet due to the fact that it will require ICT landscape transformation projects to reach the FMO. The ICT transformation projects will require additional resources (time, people and money) to implement, after the first six (6) months. Moreover, Transnet will be paying for FMO services scope and service levels prior to the service provider achieving same.
29. On the initial submission Gijima had accepted the transition period condition, but on their high level transition plan that was submitted with their BAFO on 17 August 2016, it stated the following: *"Gijima understands the complexity of a transition project. It is therefore imperative that we transition the AS-IS (CMO) environment during the proposed 6 months. Enhancements and improvements (CMO+) will be done after the transition and stabilisation period"*. This means that Gijima will continue providing Transnet with their Current Mode of Operation (CMO) after the 6 months transition period. The requirement was for Transnet to operate at FMO after the six (6) months transition period has been finalised. The above statement by Gijima, poses significant business risks to Transnet.

PROJECT RISKS

30. The purpose of the due diligence report was to highlight all the business risks that were identified during the due diligence process in order to minimize Transnet's operational risks after contract award. The risks which were highlighted by the CFET on the due diligence report can be summarized as follows (See Annexure K):

Bidder 5 (T-Systems)

- The bidder intends to conduct a considerable infrastructure equipment refresh during the six (6) months transition period in order to keep the environment modernized. This poses a minimal risk as it will be undertaken as part of business as usual.
- Transnet and the bidder need to commit the required number of skilled resources in order to be able to manage the transition period within the stipulated timeframe. Failure to commit the required number of adequately skilled resources by both parties, will result in delays in finalizing the transition period.
- Apart from the above two risks, no major risks were identified on this bidder.

Bidder 7 (Gijima)

- There is a risk in that the Vodacom Data Centre (DC) that Gijima will be using to host Transnet still needs to be built i.e. cages, power racks, servers etc. There is still outstanding equipment which still needs to be procured from the overseas Original Equipment Manufacturer (OEM). The standard DC equipment shipping time is 12 weeks excluding the customs inspection and clearance timelines. Once delivered to the DC, the equipment needs approximately two months to be built before data transfer to

the new Data Centre can commence. This might result in Gijima not being able to complete transition within the maximum stipulated period of six (6) months.

- The CFST team identified a security risk in that Gijima does not have a dedicated Security Operations Centre (SOC) but this risk was considered marginal as they do have qualified security personnel who are operating from their Customer Contact Centre.
 - The CFST team identified a major risk with regards to the transition from the current service provider as Gijima only committed to CMO migration within the first six (6) months transition period, instead of the required CMO to FMO. Transnet's experience with this is that this requires focused projects during Business as Usual (BAU) that require resources from both parties and it is costly. Moreover, Transnet would be paying for FMO services scope and Service Level Agreements (SLAs) prior to reaching FMO. This change in transition commitment has resulted in a fundamental change in the RFP submission of Gijima.
 - Transnet and the bidder need to commit the required number of skilled resources in order to be able to execute the transition period within the stipulated timeframe. Failure to commit the required number of adequately skilled resources by both parties, will result in delays in finalizing the transition period.
31. Based on the risks that were identified on Bidder 7 (Gijima), Group Strategic Sourcing sent a request for clarification to Gijima on 5 September 2016, in order to give them an opportunity to advise Transnet on how they will address the identified risks. In the letter, clarity was requested on the Data Centre Facilities, Business Requirements-Transition Scope, Scope and Contract as well as Transition Project and Contract Delivery. The letter was very explicit on the points that needed clarity from the bidder (See Annexure L).
32. The bidder (Gijima) responded back to Transnet in writing on 7 September 2016 (See Annexure M). Gijima's response did not address the risks that were addressed and as a result, the CFST requested that Group Legal provide counsel on the way forward. Group Legal indicated that the correspondence that was sent to Gijima was very clear on the points that were identified as risks, further reiterating the requirement of six (6) months transition from CMO to FMO. Gijima was also given an opportunity to indicate how they will mitigate the identified risks and their response was still vague, as they did not explicitly indicate how they will transition to FMO after the six (6) months transition, as well as a plan on how they will mitigate the risk of procuring and installing equipment in their Data Centre, as well as migrating the data from the current incumbent's Data Centre to their Data Centre within the six months transition period.
33. Gijima did not provide a strategy on mitigating these risks and as a result the CFST had reservations in selecting Gijima as the preferred bidder for this tender, as the risks identified are material. By selecting Gijima with their current proposition, Transnet runs the risk of not being at CMO and FMO within six months. Furthermore, there is also a risk of the transition project over-running, which means that the current incumbent may

continue to service Transnet for some of the services that are not fully transitioned, this will be costly for Transnet.

34. ISCM Governance's counsel was also sought on the requirements of using objective criteria to recommend the second ranked bidder (T-Systems) as the preferred bidder, due to the major risks that were identified on the first ranked bidder (Gijima). The use of objective criteria was covered in the IT Data Services RFP as a standard clause, in Section 1, paragraph 10 (disclaimers) of the RFP. The recommendation from Governance was for Transnet to send a request for clarification to Gijima, in order for them to make representations on how it intends to manage the risks that were identified by the CFST. In the event, where Gijima fails to properly address the identified risks, the CFST may award the tender to the second ranked bidder, only where it is lawful, reasonable and procedurally fair to do so. Furthermore the risks that were identified must be material in order to justify the use of objective criteria (See Annexure N).
35. The conditions stated by Governance, satisfies the need to apply objective criteria in the award of the contract to T-Systems. This is further supported by Group Legal's counsel on the matter, that it is lawful and procedurally fair to award the contract to T-Systems.
36. Based on the identified business risks, the CFST decided that Gijima should not be recommended for award, due to the significant risks that have been identified to Transnet and that T-Systems be recommended for contract award.
37. The Tender Evaluation and Recommendation Report (TEAR) (See Annexure O), gives detailed information on the tender evaluation process from stages one (1) to five (5).
38. Transnet Internal Audit (TIA) issued a satisfactory audit reports for HVT Gateway 3 and the Addendum to the Gateway 3 report (for the revised pricing commercial evaluations) (See Annexure P). TIA is in the process of compiling the HVT Gateway 4 report and it will be made available once it is completed.
39. Table 4 below indicates project timelines for the remaining activities to complete this procurement event for the acquisition of IT Data Services RFP:

Item	Activity	Planned Completion Date
1	Stage 1 (Administrative Evaluations and Moderation)	Finalised
2	Stage 2 (Substantive Evaluations and Moderations)	Finalised
3	Stage 3 (Technical Evaluations and Moderations)	Finalised
4	Stage 4 (Commercial Evaluations and Moderations)	Finalised
	-Data Rooms	Finalised
	-Clarifying assumptions for revised pricing workbook	Finalised
5	Stage 5 (Due Diligence and Post Tender Negotiations)	Finalized
6	-Bidders submit Best and Final Offers (BAFO)	Finalized
7	Submit final contract award to the GCE as per the new DOA	26 September 2016

8	Stage 6 Issue LOI to the preferred bidder	Issue LOI upon GCE's approval
9	Discuss Implementation Plan with the preferred bidder	To be negotiated after issuing LOI
10	Negotiate and sign Master Services Agreement (MSA) during the transition period	To be negotiated after issuing LOI

Table 4: Project Timelines

SUPPLIER DEVELOPMENT:

40. The recommended bidder (T-Systems) has committed to spend 57.31% of the IT Data Services contract value on Supplier Development (SD) initiatives. The requested minimum SD commitment on the IT Data Services RFP was 40%.

APPROVALS AND DELEGATION:

41. As per the Board resolution passed on 27 August 2015, the GCE was delegated with the authority to approve the RFP for issue, negotiate and sign-off all the relevant documentation in line with the approved sourcing strategy. As per the delegation of authority framework effective from 1 September 2016, the approval of this award falls within the mandate of the GCE. The GCE has already provided the following approvals:

- (a) Approval to issue the IT Data Services Request for Proposal (RFP) for a period of five (5) years with an option to extend for a further two (2) years to the open market.
- (b) Approval to conduct due diligence and negotiations with the top two ranked bidders (T-Systems and Ubuntu Technologies and subsequently between T-System and Gijima).
- (c) Approval to extend the RFP validity period by a further one hundred and twenty (120) business days.
- (d) Approval for addition of the third ranked bidder for due diligence and negotiations after withdrawal of the second ranked bidder from the bidding process.

42. Separate memoranda will be written to the Transnet Acquisitions and Disposals Committee and the Board of Directors for them to note the contract award, as soon this memorandum has been approved by the GCE.

FINANCIAL IMPLICATIONS:

43. The final tendered pricing for the recommended bidder over a period of five (5) years (T-Systems) is R1, 545,181,620.76.
44. The estimated savings over a period of five (5) years on this contract based on the current five-year contract spend of R2,5 billion is R954,818,379.24 which is equivalent to a monthly saving of R15,913,639,654.00
45. The CFST will negotiate further cost savings and SD obligations with the preferred bidder during contract negotiations, after issuing of the LOI.

BUDGET IMPLICATIONS:

46. All Transnet OD's have budgets available for their respective IT Data Services requirements.




RECOMMENDATION:


47. It is recommended that the Group Chief Executive (GCE):

- a) Approve the award of business to T-Systems SA (Pty) Ltd;
- b) Grant approval to issue a Letter of Intent (LOI) to T-Systems SA (Pty) Ltd as the preferred bidder on this RFP;
- c) Sign the Letter of Intent (LOI) for the preferred bidder (See Annexure A); and
- d) Sign letters of regret for the eight (8) unsuccessful bidders (See Annexure B).

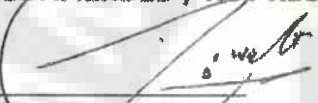
COMPILED BY


 Pheladi Xaba
 Commodity Manager: Group Strategic Sourcing
 Date: 21/09/2016

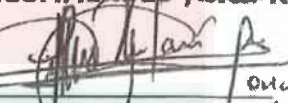
RECOMMENDED / NOT RECOMMENDED


 Macdonald Maluleke
 Category Manager: Group Strategic Sourcing
 Date: 21/09/2016


RECOMMENDED / NOT RECOMMENDED


 Fanie van der Walt
 Executive Manager: Group Strategic Sourcing
 Date: 21/09/2016

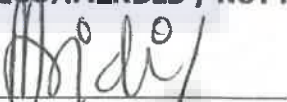
RECOMMENDED / NOT RECOMMENDED


 Thulani Mtshwene
 Acting Executive Manager: Governance
 Date: 21/09/2016
on condition that the HVT report is satisfactory and that objective criteria is applied to the advise.

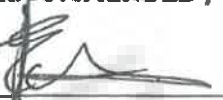
RECOMMENDED / NOT RECOMMENDED


 Loyiso Mngandi
 Executive Manager: Legal Services
 Date: 22-09-2016

RECOMMENDED / NOT RECOMMENDED


 Makano Mosidi
 Group Chief Information Officer
 Date: See my questions attached.

RECOMMENDED / NOT RECOMMENDED


 Edward Thomas
 Group Chief Supply Chain Officer
 Date: 5/10/16

RECOMMENDED / NOT RECOMMENDED


 Garry Pita
 Group Chief Financial Officer
 Date:

APPROVED / NOT APPROVED


 Siyabonga Gama
 Group Chief Executive
 Date:

CIO comments: Mosidi/
 1) The risk is captured, can be easily mitigated by user
 (2) Bidder 2 is cheaper, can deliver against requirements & has the right country profile.

Annexure MMAM03



A Report for Transnet



IT Data Services Due Diligence Report

19th August 2016

Engagement: 330030006

Document History


Version Number	Issue Date	Changes
1	19/08/2016	Initial Draft
2	22/08/2016	Final



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Executive Summary

Executive Summary

Overview and Understanding

The current outsourcing contract for selected IT infrastructure services with T-Systems is coming to an end in December 2016. Given this Transnet has decided to redefine the IT services and engage the market with the goal of selecting the most appropriate service provider(s) with whom to contract going forward.

Objectives

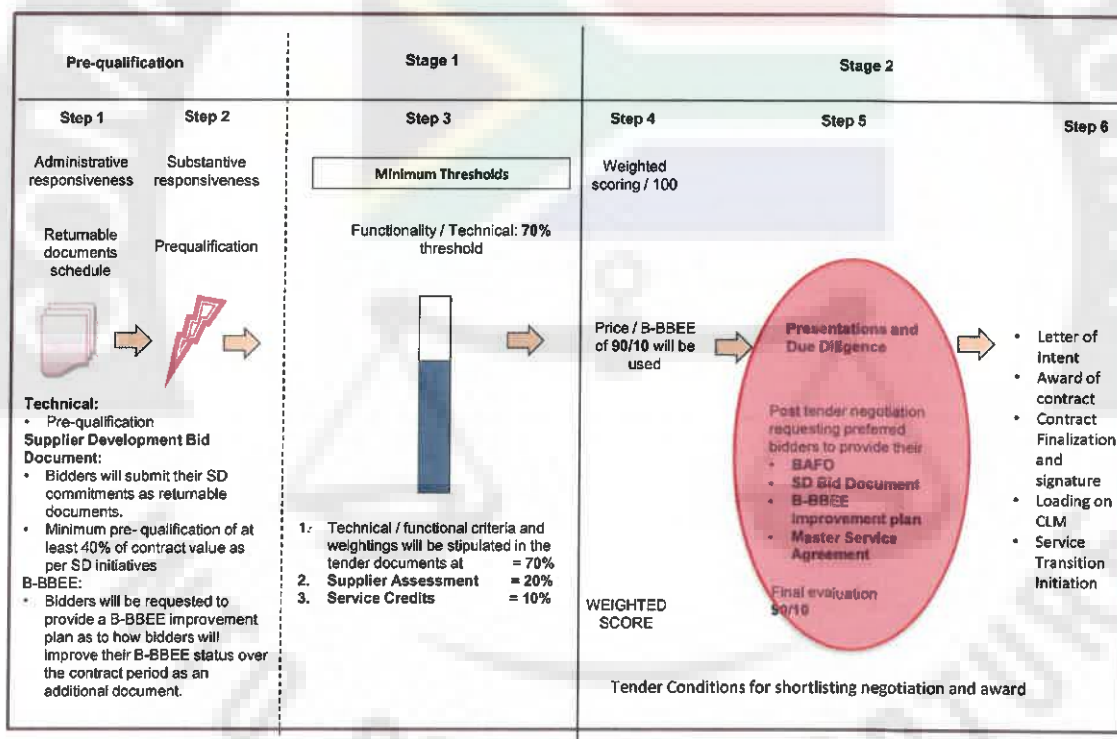
The evaluation will accomplish the following objectives:

- To select a preferred Service Provider that will best meets Transnet's requirements and taken through to final contract negotiations.

Transnet Supply Chain Evaluation Methodology

Once proposals have been received they will be evaluated according to the following evaluation criteria.

Figure 1. Evaluation Methodology



There were nine (9) responses to the IT Data Services RFP. Eight (8) made it past the Administrative Step 1, of these eight (8) only seven (7) respondents made it past the Substantive Step 2 to advance to the Technical Evaluation Step 3. These seven (7) were evaluated and were all deemed to have past the threshold. The iterations of the price workbook further reduced these to four (4). Listed in no particular order, T-Systems, Ubuntu, Gijima and BCX. The approved shortlisting strategy was for the cross functional sourcing team (CFST) to conduct due diligence on the top two ranked bidders (T-Systems and Ubuntu Technologies) after the revised pricing commercial evaluations. Should the due diligence and post tender negotiations process fail with the first and second ranked bidders, then the CFST would

conduct this process with the third and fourth (Gijima and BCX). Ubuntu subsequently retracted their RFP response bid, the CFST then recommended the addition of the third ranked bidder (Gijima) in the due diligence and post tender negotiations process. The due diligence was carried out on T-Systems and Gijima.

Due Diligence Team

The Due Diligence team for the Due Diligence stage of the process consisted of the following members:

Table 1. IT Data Services Due Diligence Team Members

Team Member	Operating Division	Evaluate/Observe/Oversee
Johan Veldman	TCC	Observe
Karen Ferreira	TFR	Evaluate
Riaan Oosthuizen	TFR	Evaluate
Liz McClymont	TCC	Observe
Zola Mdledle	TCC	Observe
Warren Pretorius	TE	Evaluate
Pheladi Xaba	GSS	Oversee
Macdonald Maluleke	GSS	Oversee
Thulani Moeng	TIA	Observe
Sandra Masemola	TNPA	Evaluate
Nonhlanhla Sefuba	TCC	Observe
Mandla Phakathi	TCC	Evaluate
Ike Maboe	TCC	Observe
Trevi Jooste	TCP	Observe
Eion Gibson	Gartner	Evaluate*
Jack Matthews	Gartner	Evaluate*

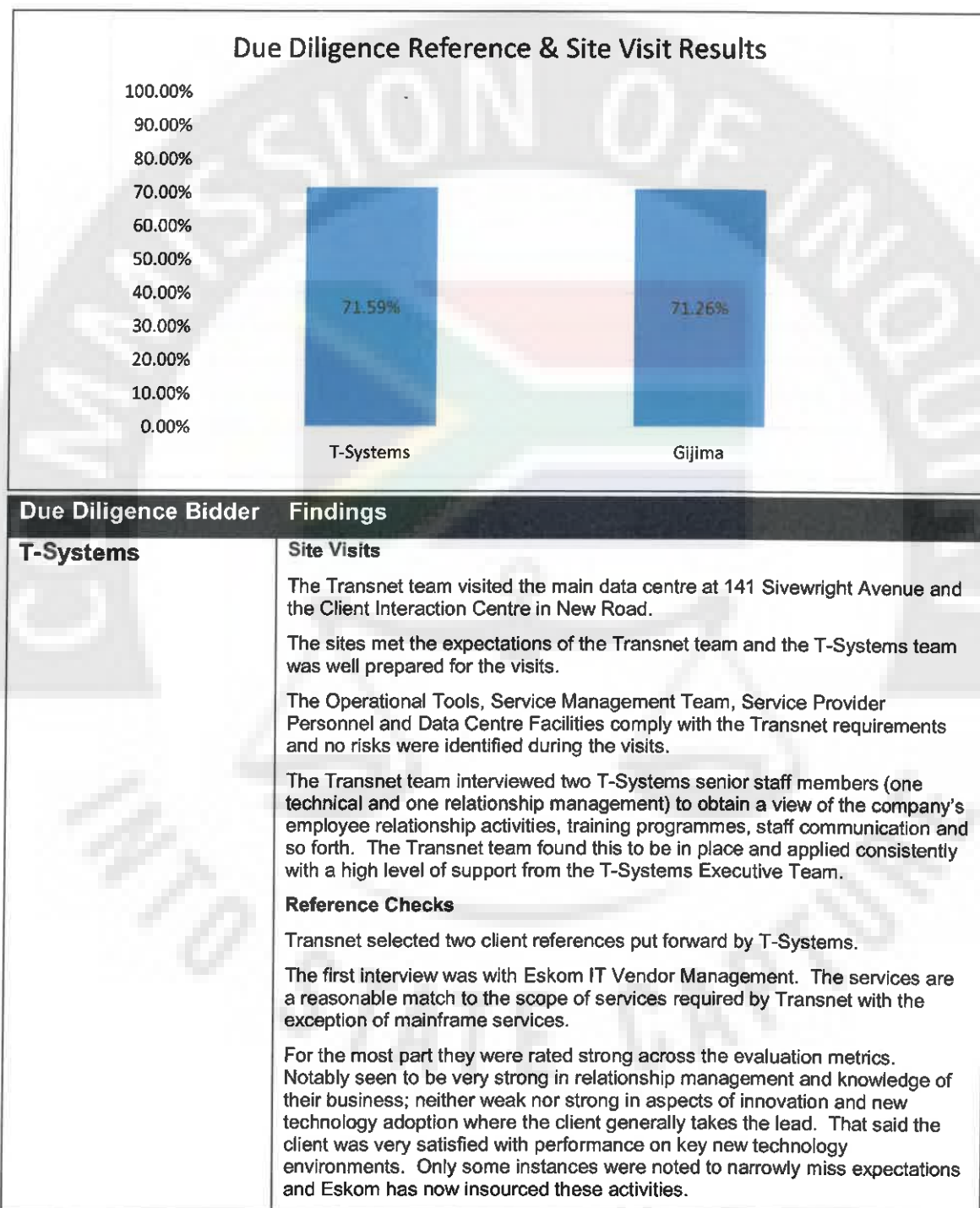
* Gartner Consultants performed the evaluation but their scores were not factored into the overall score. This was done to be able to effectively conduct the moderation sessions.

Due Diligence Overall Findings

Stage 2, Step 5: Due Diligence Evaluation Results Summary

Table 2 represents the overall findings of the IT Data Services Due Diligence Site Visits and Client Reference Checks Evaluation (Stage2 Step5).


Table 2. Stage 2 Step 5 : Overall Ratings 100/100



Due Diligence Bidder	Findings
	<p>No issues were highlighted as a cause for concern with regards to transition and account management activities.</p> <p>The second interview was conducted with IT staff from Old Mutual. Although T-Systems have to date been providing services that closely match the Transnet requirements, a change in sourcing strategy will see these services being consolidated into an internally managed group IT company.</p> <p>The relationship with T-Systems achieved their objectives of cost savings and service delivery and in general consistently meets or exceeds the customer expectations. No causes for concern were highlighted.</p>
Gijima	<p>Site Visits</p> <p>The Transnet team visited the Vodacom Data Centre in Midrand and the Customer Interaction Centre at the Gijima premises in Centurion.</p> <p>The sites met the expectations of the team and the Gijima team was well prepared for the visits.</p> <p>The Operational Tools, Service Management Team, Service Provider Personnel and Data Centre Facilities comply with the Transnet requirements. The data centre planned to be used for the services is not fully operational and this would need to be established during transition. In general security responses met the evaluator's expectations, but security is not a separate and focussed discipline e.g. there is no dedicated Security Operations Centre (SOC) in place.</p> <p>The Transnet team interviewed 2 Gijima senior staff members (one technical and one relationship management) to obtain a view of the company's employee relationship activities, training programmes, staff communication and so forth. The Transnet team found this to be largely in place with a high level of support from the Gijima Executive Team.</p> <p>Reference Checks</p> <p>Transnet selected two client references put forward by Gijima.</p> <p>The first interview was with ArcelorMittal's Information Management Group Manager.</p> <p>The services are a reasonable match to the scope of services required by Transnet albeit at a smaller scale.</p> <p>Gijima and ArcelorMittal have a longstanding relationship and have a sound knowledge of the customer's business. In general the service provider meets the customer expectations with the exception of Security Management. (The lack of specific focus on security activities was also noted during the site visit.)</p> <p>The customer also raised keeping to commitments as narrowly missing expectations.</p> <p>The second interview was with FNB Merchant Services' Account Management. Although no issues were raised with the services being delivered by Gijima, the scope and scale of services provided is limited to desktop maintenance services. In general Gijima meets or exceeds customer expectations for these services.</p>

Table 3. Stage 2 Step 5 : Bidders Overall Risk Ratings

Reference Check	Site Visit
<p>Bidders Reference Check Risk Profile Summary</p>	<p>Bidders Site Visit Risk Profile Summary</p>
Due Diligence Bidder	Findings
T-Systems	<p>Reference Check – T-Systems references were a better match to the Transnet requirement. Higher level of comfort in the as the incumbent Transnet knows their capabilities. Reference clients were generally happy with T-Systems service quality and performance.</p> <p>Site Visit – The Data Centre is well established and been upgraded to meet Tier 3 specifications. A key differentiator that minimised the risk for T-Systems is being the incumbent the level of transition effort, cost and potential service impact is minimised.</p>
Gijima	<p>Reference Check – Scope and scale of the services with the reference clients were not as well matched to Transnet's service requirements. Reference clients are satisfied with the level of service provided</p> <p>Site Visit – The main production Data Centre at Vodacom is new, has adopted the latest technologies and is Tier 3 compliant. It currently does not host any service delivery infrastructure currently.</p> <p>The extent of transition scope to be completed in 6 months as put forward in the submitted transition document falls short of the requirement which is a major risk to getting to Final Mode of Operation in an acceptable period such that Transnet gets the benefits of the services and associated service levels as defined in the technical Service Towers. Experience with this is that this requires focussed projects during Business as Usual (BAU) that require resources from both parties and is costly. Moreover, Transnet would be paying for FMO services scope and SLAs prior to reaching FMO.</p>



Due Diligence Findings

Due Diligence Findings

The evaluation was broken down into a number of stages as required by Transnet. This evaluation report documents the findings for Stage 2 step 5 of the evaluation process.

Stage 2, Step 5:

Due Diligence evaluation of the shortlisted bidders through formal Site Visits to Production Data Centres and Client Reference checks.

Due Diligence Evaluation Criteria

ITEMS	POINTS
Service Provider Data Centre and Operations Centre Site Visit. <ul style="list-style-type: none"> The overriding purpose is to assess and verify service provider capabilities through a tour of the Service Providers Data Centre facilities and operational management centre(s), and interviews with selected staff members. 	50
Client Reference Check <ul style="list-style-type: none"> The overriding purpose is to gauge and evaluate the experience other clients of the Service Provider have had with key aspects of service delivery, contract and relationship management. 	50
Stage 2, Step 5 Total	100

Service Provider Data Centre and Operations Centre Site Visit and Interviews

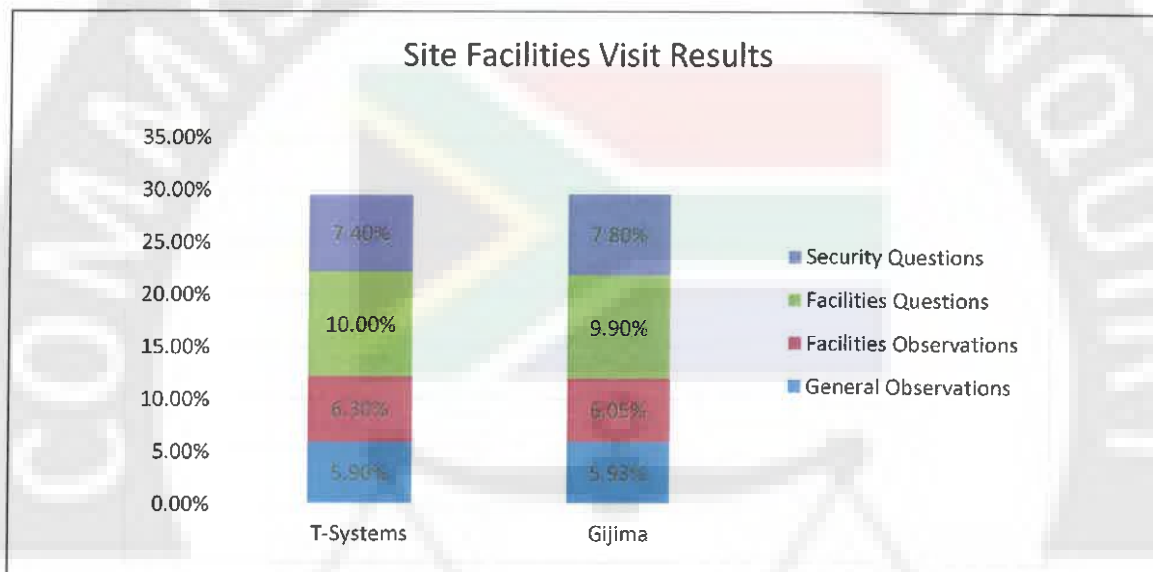
The overriding purpose is to assess and verify service provider capabilities through a tour of the Service Providers Data Centre facilities and operational management centre(s), and interviews with selected staff members.

The elements assessed in this category were:

Service Provider presentation covering their Data Centre capabilities that provided input to the evaluators for completing the evaluation template

- Data Centre Facilities inspection
- Interviews with key selected staff members
 - Senior Technical Manager
 - Relationship/Contract Manager

Table 4. IT Data Services Data Centre Site Visit Assessment Ratings

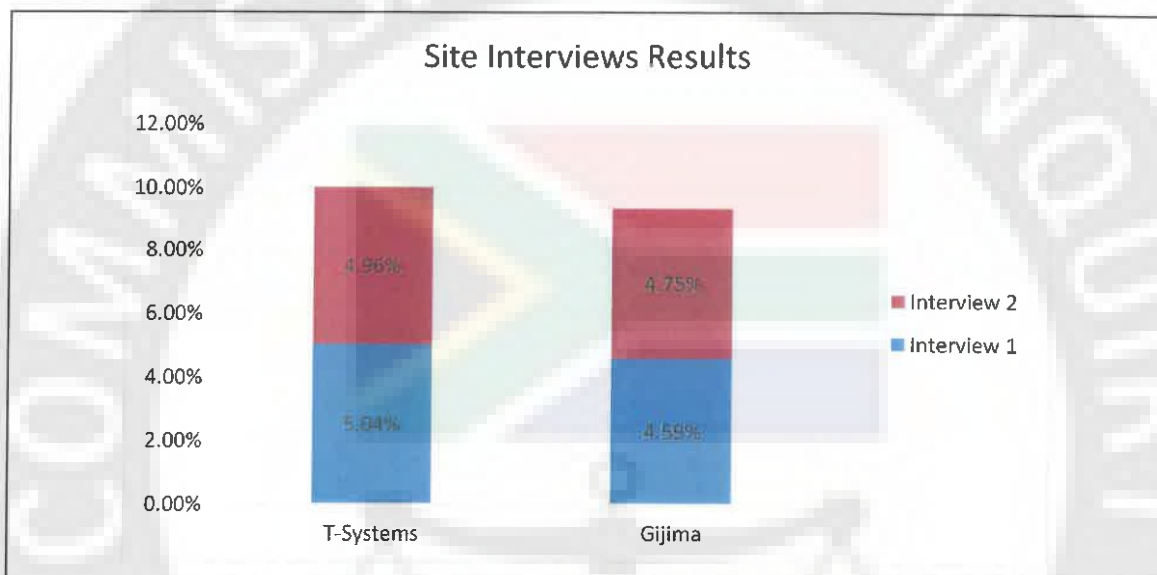


Due Diligence Bidder	Findings
T-Systems	<p>T-System Data Centre – 141 Sivewright Avenue Doornfontein</p> <p>General Observations</p> <p>Preparedness/Content Relevance – Met expectations were well prepared, covered all the areas with knowledgeable staff</p> <p>Operational Tools – Covered all the tools briefly, high level view of EAM framework, moving to HP to replace some IBM tools, CMDB. General acceptance of the operational tools, really does require more in depth look at the full process and tools portfolio</p> <p>Service Management Team – Team would need to expand to meet OD level reporting and service delivery management. Well established processes and skills, looking to improve on providing more senior management interactions.</p> <p>Service Provider Personnel – Had the correct personnel available for the visit. Big focus on localisation.</p> <p>Data Centre Facilities Observation</p> <p>Overall Quality – Well organised, clean and organised around modern equipment layout. Purpose built Data Centre building. DC Tier 3 upgrades have been completed, new power systems etc.</p>

Due Diligence Bidder	Findings
	<p>Physical Security – Met expectations, well controlled via access cards, security conscious, awaiting Tier 3 certification</p> <p>Technology Investment – Good investment in technology, network not fully positioned for Software Defined Networking (SDN).</p> <p>Staffing Levels & Quality – Very professional, strong localisation drive, international support. Staff have development plans.</p> <p>Physical Plant – Designed for Tier 3 capability, generators tested monthly and fully serviceable. Got contracts for fuel should there be extended outages.</p> <p>Operations Centre Disaster Recovery – Have a full continuity plan for the Customer Interaction Centre (CIC) at Eskom moving to Teraco</p> <p>Data Centre Facilities Questions</p> <p>All answers to Transnet questions met with expectations. Personnel are kept informed of company strategy and developments. Staff are trained and certified to perform their roles. Have personal development plans.</p> <p>Data Centre retains, small staff, large a dark centre all Ops procedures etc. are central for consistency.</p> <p>DR site could move to Teraco, in short term the status quo of having the DR site at Eskom Megawatt Park will be maintained.</p> <p>Security Questions</p> <p>Have privacy policy, all client data and processing is kept segregated and isolated using firewalls, Virtual Local Area Network (VLANs), virtual environments</p> <p>Use role based security – good</p> <p>Transnet has performed an audit and no audit findings or issues against the Data Centre.</p>
Gijima	<p>Vodacom Data Centre – Midrand</p> <p>General Observations</p> <p>Preparedness/Content Relevance – The session was well structured and put together</p> <p>Operational Tools – EUC very well skilled and good supporting toolset with expected levels of automation. Support 2.5 million mailboxes, rollout of SharePoint and SFB. Quickview for reporting. IBM providing Data Centre services. Claim H&SD resolve 90% of calls received. Qradar SIEM presented but not implemented, more marketing than reality</p> <p>Service Management Team – SP Management team visible and present, CEO and Exco. Established team have augmented with recent hires from the market that have previous experience with T-Systems and Ubuntu.</p> <p>Service Provider Personnel – Large company investment in skills to ensure they have the right people and skills for effective and efficient service delivery. 2200 employees</p> <p>Data Centre Facilities Observation</p> <p>Overall Quality – Very clean and high quality facility but not completely ready to host the Transnet environment, this would need to be established during transition.</p> <p>Physical Security – Satisfies the requirements for physical security with the appropriate technologies, processes and people</p> <p>Technology Investment – Large investment, partnering with IBM. Cloud services offering</p> <p>Staffing Levels & Quality – Do mentorships, focus on skills training and certifications. Claim 2200 employees trained in all service towers</p> <p>Physical Plant – It is a new Data Centre built to Tier 3 specifications using the latest in Data Centre Facilities/environmental technologies. However, this was nothing currently operational to verify the Data Centre capabilities</p> <p>Data Centre Facilities Questions</p>

Due Diligence Bidder	Findings
	<p>All answers to Transnet questions met with expectations. Personnel are tested annually, provide OEM specific training. Have an intern programme where interns are trained for a year. Staff rotation is encouraged.</p> <p>Security Questions</p> <p>Transnet infrastructure isolated within secure cages within the multitenant Data Centre complex.</p> <p>In general security question answers met the evaluator's expectations. However, security does not seem to be a separate and focussed discipline e.g. no dedicated Security Operations Centre (SOC)</p> <p>Made mention of remote management access via secure Virtual Private Network (VPN)</p>

Table 5. IT Data Services Key Staff Interviews Ratings



Due Diligence Bidder	Findings
T-Systems	<p>Senior Technical Manager – Sibusiso Shabangu</p> <p>There are regular sessions keeping staff informed and up to date, also have themes per week and international participation</p> <p>Extensive training received MDP in Germany, also provided with mentoring.</p> <p>Cited the HP implementation and ops processes, now moved from one FTE for 90 VMs to 180 VMs a very big improvement.</p> <p>Focus on user satisfaction areas that are lacking, no longer have repeat audit findings</p> <p>Good performance is rewarded in the company, high achievers get good opportunities, exchange programmes and personal development opportunities</p> <p>Staff are general very happy and well treated and morale is high, quoted that 90% of interns stay with the company.</p> <p>Transition from Arivia to TSSA was difficult project, many changes and cultural differences.</p> <p>Empowerment provided via the SD programme, big focus with Sechaba/Ngwete/Vumela</p> <p>Overall seen to be very competent and committed employee</p> <p>Relationship/Contract Manager – Ann Jacob</p>

Due Diligence Bidder	Findings
	<p>Behaviour is driven by SLAs, high priority incidents get priority. Dedicated teams for large clients</p> <p>Keep all informed and up to date via Infusion sessions Agenda 2017 plan, team sessions</p> <p>Staff get a lot of training example Gibbs management training. Have individual employee development programmes</p> <p>Improvement programmes are undertaken to increase maturity and certify processes these are measured by TSI</p> <p>All employees are measure on customer perceptions, this has an impact on the variable portion of an employee's remuneration.</p> <p>Use a pulse survey to gauge level of satisfaction currently 85% are satisfied</p> <p>Most difficult situations are Data Centre P1 incidents, also get support from TSI with these. Local and international work as a single team.</p> <p>Desire to take more of a partnership view of the relationship to include a stronger engagement across the Enterprise including the ODs</p>
Gijima	<p>Senior Delivery Manager – Bronwyn</p> <p>Bronwyn had a direct and forthright attitude, her answer were concise and to the point. She has been with Gijima for 5 years. Looks after multiple client portfolios.</p> <p>Bronwyn is a self-learner and Gijima recognises that. Training during the turn-around strategy was handled at a technical level. The turnaround team did not have much time to be trained during that period. She kept herself up to date. The company does have a training process with staff which is managed via one-on-ones with their management.</p> <p>Client satisfaction does not directly affect her salary.</p> <p>Strategic clients have dedicated delivery teams and priorities are set to meet incident remediation. Have written documentation regarding policies and processes that are stored in a SharePoint document repository.</p> <p>Company communications are also handled via regular Ops meetings. Regular contract reviews and speaking to teams at the sites.</p> <p>Busy with a quality improvement program at ArcelorMittal, however from the client reference it is clear that this was requested by the client as ArcelorMittal feels that Gijima has fallen short on this aspect of the contract.</p> <p>Gijima recognises people when they go beyond what is asked of them. There are various incentive/recognition processes, etc. to reward staff and/or teams for work excellence.</p> <p>Gijima staff have a sense of belonging to the team. Morale was not good but has improved since the completion of the turnaround strategy. Staff turnaround was small even during the turbulent turnaround strategy process.</p> <p>HR processes are followed in the case of clear non-performance.</p> <p>Executives support the team(s) when challenges occur.</p> <p>Relationship/Contract Manager – Hanlie</p> <p>Initially Gijima put forward an employee with less than a months experience in the company. The Due Diligence team felt that the person put forward could not effectively answer questions around how Gijima operates, how training, mentoring and re-enforcement of training is achieved due to the short timespan at Gijima.</p> <p>Hanlie was then put forward by Gijima as the person for the interview.</p> <p>Hanlie forms part of the Strategic Accounts team. Been with Gijima for 7 years, started before the turnaround strategy was commenced and implemented. Used lots of words around "passion", "family", "fortunate enough to have...", "I am humbled", which gave one a sense someone giving a speech.</p>

Due Diligence Bidder	Findings
	<p>She did not responded directly to any of the questions posed making it very difficult to get an accurate assessment for the questions. Spoke volumes and one had to shift through what she was said to extract specific points raised which could address the question asked.</p> <p>Priorities are set at the Call Centre (Help Desk). Dedicated teams looking after strategic accounts. At the level 2/3 there is enough skill for it not to create a bottleneck should multiple Priority 1 issues arise.</p> <p>Her compensation not effected directly by client satisfaction ratings, SLA's being met etc. Other areas of Gijima business are effected and KPI's are used as measurement for those.</p> <p>Company communications strategy appears fluid so it does not follow a company defined communications process. Communication is done but generally at the team level based on information provided to them from their management. Company communication appears to work.</p> <p>Gijima people are recruited based on the cultural fit with the client as a main driver. Skill and culture thus plays a large decision making role. The word "family" was used to describe the way that Gijima treats its staff. Executives support the teams should challenges arise at client sites.</p>

The following table provides a high level Site Visit Risk Profile for the bidders

Table 6. Site Visit Risk Assessment

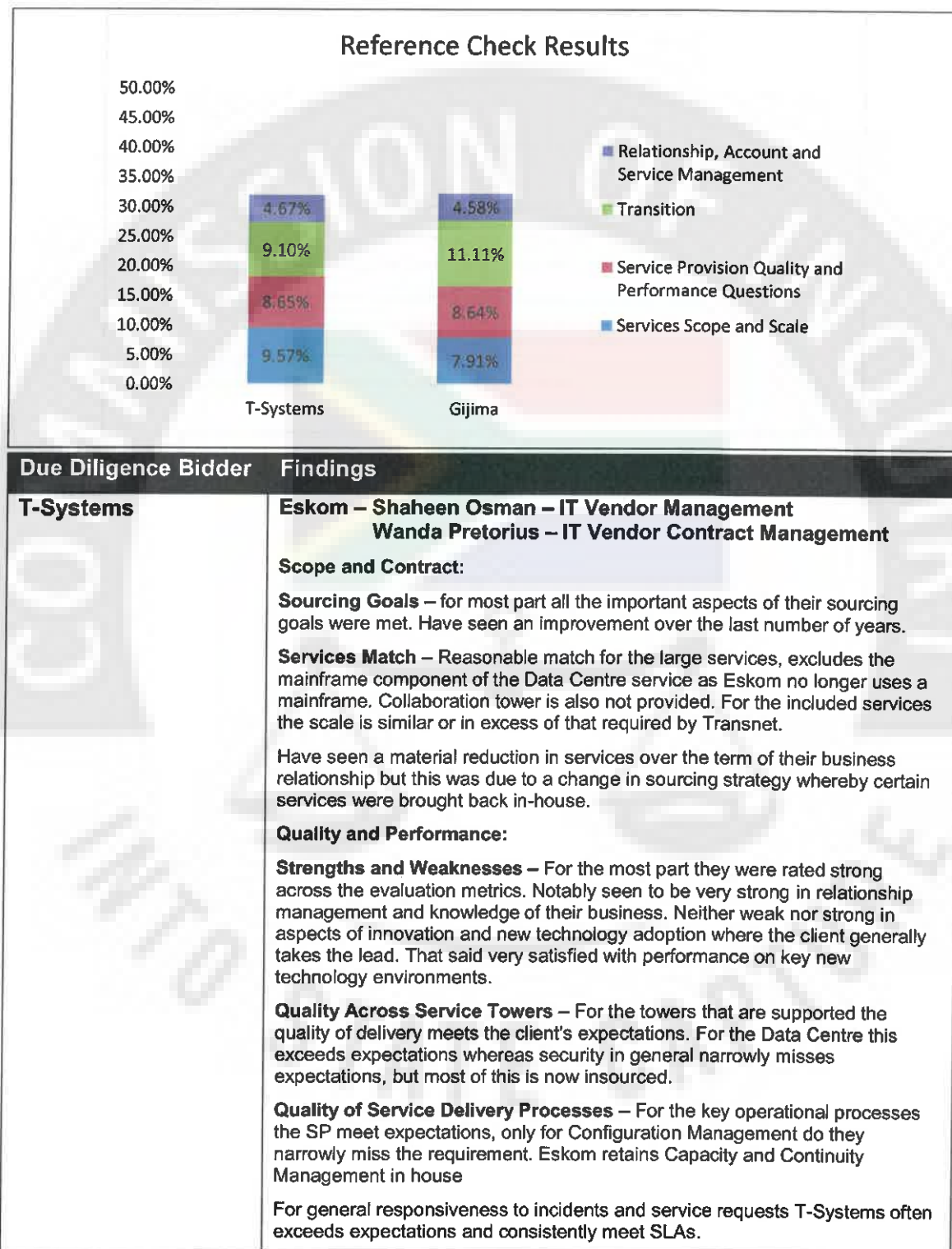
Risk Category	T-Systems Site Visit Risk Profile		Gijima Site Visit Risk Profile	
	T-Systems		Gijima	
General Observations	<p>No to minimal risk, evaluators were happy with the level of preparedness for the site visit, the Data Centre tour, correct personnel available. Expectations were met regarding the operational tools</p>		<p>Minimal to marginal risk, evaluators were happy with the level of preparedness for the site visit, the DC tour. Note the site was demonstrated by Vodacom as the owner of the facility so not altogether sure of the Gijima/IBM processes for managing their portions of the DC. Discussion on operations tools met with expectations. Service Provider relationship management did not meet all the evaluators expectations</p>	

T-Systems		Gijima
Risk Category		
DC Facilities Observations	No to minimal risk regarding the DC Facilities observation, purpose built and well run DC that is secure and meets tier 3 standards (awaiting certification). Staffing seen as appropriate and technology investment meets expectations	Moderate risk regarding the DC Facilities observation, this is a new Tier 3 Data Centre adopting the latest in Data Centre technology which met and even exceeded the evaluators expectations. Looked impressive but considerable work is required to build the Transnet only facility i.e. cage, power, racks etc. risk of delays to transition
DC Facilities Questions	No to minimal risk. Met all the evaluator's expectations on how conflicting priorities are handled, interactions and communications between DC sites via centralised Ops Centre. Maintain small focussed team of qualified personnel in the DC and operated from the OC	Gijima/IBM operations staff will mostly operate from their Ops centres and visit the DC as required (treated as a dark centre). Reliant on Vodacom as the DC landlord for physical facilities/environmental & security services which is expected.
Security Questions	No to minimal risk. Established methods using virtualisation technologies across the infrastructure stack. Role based access and strong authentication for remote access to Transnet DC service delivery infrastructure.	Marginal risk. On average the answers to the Security questions met with the evaluators expectations. Concern that there is not a separate SOC.
Transition Scope	Transition effort and cost is less being the incumbent. Have undertaken to get to FMO within the 6 month period. Do intend to do considerable infrastructure equipment refresh during the transition period to keep the environment modernised. This poses a risk but no more so if this had been undertaken as part of business as usual.	High risk due to only committing to Current Mode of Operation (CMO) migration within the 6 month transition term. This will then evolve to Final Mode of Operation (FMO) over time. Experience with this is that this requires focussed projects during Business as Usual (BAU) that require resources from both parties and is costly. Moreover, Transnet would be paying for FMO services scope and SLAs prior to reaching FMO.
Transition Project	Marginal risk that the transition project could overrun in time and budget given the level of transition effort required	Certain risk of the project running over time and budget given the complexity of the environment and aggressive time period of 6 months as noted above. Overruns in time invariably incur additional costs as at a minimum the Transnet project team would need additional funding.

Service Provider Client Reference Checks

As a requirement of the RFP all bidders were required to provide contactable reference clients that are representative of the scope and scale of the services required by Transnet as detailed in the RFP.

Table 7. Reference Check Ratings



Due Diligence Bidder	Findings
	<p>T-Systems meet expectations when it comes to tracking technology innovations and the value of this to Eskom. Moreover, have shown the ability to adapt to changing requirements</p> <p>From a cost perspective although seen to be expensive in some areas this is managed in detail using regular benchmarking to bring in line with the market</p> <p>Projects – The process, tools, methods, skills and project delivery meets expectations. However, have missed on some project deadlines but this has improved.</p> <p>Satisfied with the business value add provided, marked improvement over the last year</p> <p>Transition:</p> <p>Satisfied with the level of planning and execution meeting 90% of milestones in time and budget. HR change management could have been better.</p> <p>Took too long (2.5 Years) to get to full FMO with all the required reporting etc.</p> <p>Relationship and Account Management:</p> <p>Meets expectations for the majority of these important processes and capabilities. Notably exceeds expectations for Invoicing and Billing but falls short with Asset Management where accuracy of the CMDB is sometimes an issue.</p> <p>Key measurement metrics regarding Account and Service Delivery capabilities all meet Eskom's expectations. Also seen to be reasonably flexible to assist beyond their contracted mandate.</p> <p>General experience has shown that considerable resource commitment in time and people are required to actively manage the relationship. Eskom has 1 Contract and 3 Technical delivery personnel assigned to this contract</p> <p>Old Mutual – Tony Sutter, Head: Information Technology and Outsource Services</p> <p>Old Mutual is changing their Business Strategy (which has a direct impact on their Sourcing Strategy) and is busy with a project to split the Old Mutual Group into geographical entities. As such Old Mutual (South Africa), Nedbank and Mutual & Federal have agreed to consolidate their IT infrastructure within the Nedbank IT Services. This involves moving away from TSSA and other service providers to achieve these "shared services".</p> <p>Scope and Contract:</p> <p>Old Mutual's main goals for the sourcing contract was to achieve reduced cost and capital investment as well as to improved agility and service delivery. These have been achieved. The scope of the service delivered by TSSA to Old Mutual are identical at the various Transnet Towers of Service and as such was an excellent and comparable reference client. The Old Mutual/ Nedbank/ Mutual & Federal mainframe environment is significantly larger than the Transnet requirements.</p> <p>Service Provision Quality and Performance:</p> <p>Old Mutual view the TSSA capability as "strong to very strong" with operational delivery, deployment of tools and technologies and customer satisfaction being "neither weak nor strong". The only weak point was the lack of "innovation" brought to the table by TSSA. TSSA work effort meets or exceeds expectations and only "narrowly misses" expectations for the End User Computing environment due to the number of re-visits required in certain instances. TSSA consistently meets or exceeds expectations but 'narrowly misses' on problem management, some project delivery timelines and some project quality. They use TSSA outside of the scope of the Agreement and specifically for the TSSA project management competency.</p> <p>Transition:</p>

Due Diligence Bidder	Findings
	<p>Old Mutual is satisfied that the transition was managed well by TSSA and are "satisfied to very satisfied". Old Mutual deems the performance against the agreement, the SLA reporting and transition timelines to be reasonable based on scope, complexity and work effort.</p> <p>Relationship Management:</p> <p>TSSA is mature in their processes and management. Of the 24 measures they only "narrowly miss" on 5. The initial contract period had some turbulence but TSSA have really delivered over the last 2 years. They are reasonably flexible when required to work beyond the scope of the contract.</p> <p>Based on the scale of: Utility to Enablement to Transformation, the Old Mutual expectation was Transformation whilst the services are largely Utility. The common expectation is now Enablement. The contract has experienced growth in service volumes over the contract term. Old Mutual would use TSSA again but would structure some services differently.</p>
Gijima	<p>ArcelorMittal – Hennie Mey: Group Manager, Information Management</p> <p>The ArcelorMittal services received from Gijima did map well to the Transnet services with the exception of the data centre mainframe services. That said the annual contract value is about 150 million per year which is significantly smaller than Transnet's spend for the services.</p> <p>Scope and Contract:</p> <p>As stated above the services did map well however the scope and scale of the services are smaller than those required by Transnet. For example the End User Computing user base is between 5000 and 10000 users. This contract has been static in nature over the contract term.</p> <p>Service Provision Quality and Performance:</p> <p>The biggest strength that Gijima has is the knowledge of the business as AST was created when ArcelorMittal initially outsourced (AST was then taken over by Gijima). Account & Service Management and Service Delivery are deemed to be a "strength". Weaknesses are Relationship Management (being addressed currently by Hennie), innovation, tools and technologies. They meet service expectations and delivery processes, but "narrowly miss" with regard to security services (this was in a way confirmed, when we did the site visit as Gijima do not operate a separate operations centre for Security management). They meet and deliver against all the project management requirements except for the project communications where Hennie felt that they "narrowly miss".</p> <p>Transition:</p> <p>Hennie could not comment on the original transition as he was not with ArcelorMittal at that time. The feeling was that they did deliver when the original outsource was done, when AST was created.</p> <p>Relationship Management:</p> <p>Gijima meets expectations for management processes and the account and service management requirements. They do "narrowly miss" on keeping to commitments which require ArcelorMittal follow up and the existing account management teams ability to forge relationships (Hennie is in the process of addressing this with Gijima).</p> <p>Gijima is flexible when working to the letter of the contract. The relationship that ArcelorMittal has with Gijima is one of Utility/Enablement services whilst ArcelorMittal were looking for a Transformational relationship.</p> <p>FNB Merchant Services – Francois Wessels, Account Management</p> <p>FNB has been using Gijima for a number of years. FNB as a client reference was not comparable to Transnet (RFP requested client references similar in scope and scale of the Transnet environment/ requirements). This client</p>

Due Diligence Bidder	Findings
	<p>reference as such fell way short on comparison as they only use Gijima for break/fix and Installations, Moves, Adds and Dismantlement (IMACD) End User Computing environment. Moreover, this service is shared with another service provider. The FNB end user base is only a third of the Transnet end user base (volumes).</p> <p>Scope and Contract:</p> <p>The goals of the contract were to reduce cost, increase agile and flexibility, obtain access to IT and business best practices, improve service delivery and reduce capital expenditure. FNB feels that these focus areas have been attained through the Gijima contract for End User Computing services. They also use the Gijima project delivery capability to deploy new signatures to the desktops.</p> <p>Service Provision Quality and Performance:</p> <p>FNB view the Gijima End User Computing service delivery as “strong”. They view the Gijima operational service delivery as “very strong”. FNB feels that the Gijima services for account management, innovation and continuous improvement, knowledge of FNB business and the deployment of tools and technologies in the End User Computing environment as “neither a weakness nor a strength”. Incident, release and financial management meets FNB expectations. Gijima however do not deliver any configuration management services, help & service desk services, change management nor capacity or continuity management. As such the contract focus is very narrow even for the FNB End User Computing scope when compared to Transnet’s requirements for that Tower of Service.</p> <p>Transition:</p> <p>FNB is satisfied with the transition of the End User Computing environment. Gijima met all transition requirements and milestones. Transition complexity for the End User Computing environment is very low and as such Gijima did not need an extended period of time to meet contract requirements and transition SLA performance</p> <p>Relationship Management:</p> <p>Gijima scores well in the relationship management aspects of the End User Computing contract services (post the removal of the previous relationship management person). They “meet or exceed expectations”. They are always flexible to assist in tasks that are out of scope of the contract terms.</p> <p>Based on the scale of: Utility to Enablement to Transformation, the FNB expectation was Utility in nature for the FNB End User Computing environment. The FNB End User Computing volumes have grown marginally over the contract term.</p>

The following table provides a high level Reference Check Risk Profile for the bidders

Table 8. Reference Check Risk Assessment

T-Systems Reference Check Risk Profile		Gijima Reference Check Risk Profile	
	<p>Risk Impact</p> <p>High</p> <p>Major</p> <p>Moderate</p> <p>Minor</p> <p>Low</p>		<p>Risk Impact</p> <p>High</p> <p>Major</p> <p>Moderate</p> <p>Minor</p> <p>Low</p>
Risk Category		Likelihood	
Scope and Contract	Reference clients were well matched to the Transnet services portfolio scope and size. Their experience with TSSA as their service provider is positive and meets their expectation. Additionally, as the incumbent service provider Transnet has full knowledge of the services that they provide	Likelihood	
	ArcelorMittal scope of services was a reasonable match but the scale of the service offering is considerably less than that required by Transnet. These are services provided by Gijima. The other Gauteng based reference client was FNB Merchant Bank where the services provided are limited to rudimentary (EUC Break/fix and IMACD services) when compared to Transnet's services portfolio.	Likelihood	

T-Systems		Gijima
Risk Category		
Quality and Performance	currently, only small additions and changes the RFP services portfolio. The reference clients mostly rated that the quality and performance generally met their expectations and where this was not the case it narrowly missed their expectations. Impact of failure in this category would be high but there is confidence that the likelihood of this happening would be rare.	Minimal risk on the scope of the services that they are providing.
Transition	Reference clients rated T-Systems capabilities to transition services as good. This is good to know but somewhat moot given that awarding to the current incumbent minimises the transition effort to those aspects that require improvement to meet new services and service levels. These changes are more evolutionary and have little risk to current state service delivery.	ArcelorMittal have no view on the transition capability as this happened back in the '90s. FNB were happy with the capabilities and execution of their transition project
Relationship, Account and Service Management	Reference clients are happy with the governance, processes and roles that provide for effective relationship management with T-Systems. Transnet has established relationships with T-Systems which minimises the risk as it is largely maintaining the status quo whilst the relationship is improved to more actively involve the ODs	Reference clients are happy with the governance, processes and roles that provide for effective relationship management with Gijima.

**Any questions regarding this Report
should be addressed to:**

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**This Report was prepared for
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Annexure MMAM04



Ms Disebo Moephuli
Chief Corporate & Regulatory Officer

05 October 2016

We have been agonizing on the below matter, thinking keeping quiet and rolling over is not in the best interest of our company Transnet.

A group of us are concerned about the tender evaluation team and would like to raise our concerns of a process undertaken, post the BAFO stage, by lead members in our evaluation team, on the tender, IT Data Services RFP (GSM/15/08/1310). A group of 16 formed the evaluation team.

From the outset, the technical evaluation, due diligence process of the two shortlisted companies (T-Systems (our current incumbent) and bidder Gijima), as well as and up to the BAFO process, fulfilled the tender evaluation process and in particular, fulfilled our Transnet governance processes. The evaluation team included all relevant role players, including internal audit and risk, so as to mitigate the risk exposure of Transnet.

We were happy with the open and transparent manner in which the various stages of the tender evaluation process up to stage 5 (BAFO) were undertaken and followed in line with the tender.

After the technical evaluation as per the defined process, we conducted a due diligence on both T-Systems and Gijima where both companies satisfied the tender requirements. Thereafter, both parties were requested to price BAFO as greenfields in order to level the playing field, as per the tender requirement.

However, post BAFO we were surprised that the evaluation team leaders raised technical issues about bidder Gijima and engaged in a new process not defined in the tender nor in our Transnet processes.

This was a huge surprise as Gijima came in almost R230m cheaper than T-Systems, yet we were questioning how they could deliver at their tender price.

This new process included a mail/letter been sent to bidder Gijima to now respond to the so-called identified risks and respond by mitigating these risks as well as to new terminologies not part of the tender document, namely Current Mode of Operation (CMO) and Future Mode of Operation (FMO).

This letter from the evaluation team leaders raised our concern that the process post BAFO was now a new one.

Bidder Gijima were the only company asked to respond to a letter. Bidder Gijima responded to our letter satisfactory as far as many of us could see as they explained their mitigation and should have been acceptable to us, but our leaders now wanted to use processes not mentioned in the tender nor the draft MSA namely CMO and FMO.

These new conditions are not only new but do not make any sense. How can a new bidder ever submit a bid price for a FMO without having had the opportunity to manage what is required by both the tender and draft MSA. This is not only bizarre but a deliberate ploy to bring T-Systems through a back door to win a contract they are losing on merit.

To us, a group of more than 12 persons, the interactions and lobbying post BAFO by the evaluation team leaders indicated that whilst on merit alone, bidder Gijima are the just winners, the new process undertaken, which included voting, was a clear ploy to go against the tender evaluation process and find ways to ensure that the current incumbent succeeds no matter that they are over R230m more expensive.

The voting after BAFO in particular was found concerning by many of us as we were spoken to before we were called to the urgent voting meeting and bulldozed to vote.

Out of fear of losing our jobs, we voted in favour, as per lead Macdonald, who claimed the bosses want the current incumbent to succeed.

Many of us have silently viewed the new process pushed down our throats as unlawful and a attempt to rig the results.

If the intention was to keep the incumbent T-Systems as our supplier, Transnet should not have gone out on tender and rather confirmed the tender.

We all know that the intention of the tender was to look for a better service provider and a lower and competitive price.

The incumbent has not been providing the services required and have missed its SLA's several times over. The incumbent has also provided the MSA Service for a long time at a price much higher than it's recent BAFO pricing presented.

The competitive process has now ensured that Transnet will receive a huge cost saving for the services provided by the successful bidder through BAFO. Bidder Gijima scored high on all stages. Through our evaluation, bidder Gijima on merit alone presented a superior bid than T-Systems.

Please note that our concerns are not only being raised because bidder Gijima is a black owned SA company, but more importantly that we now have, through a transparent competitive process, a winning bidder on merit that is a local SA company.

This is what Transnet should be proud off that a BBEE and 100% Black owned company have succeeded on merit without being pushed over the line. Why do we cheat the local company?

We are amazed at the flouting of the tender process where we prejudice a local company that scored high on technical, BBEE and Financial as per the tender criteria. This is what we know as the only criteria that Transnet uses in evaluating tenders (90/10), but for this tender every rule in the book is being ignored or changed in order to arrive at a different decision.

Here are the results for the two shortlisted companies, T-Systems and Gijima, in summary:

1. TECHNICAL EVALUATION - Gijima lead;
2. DUE DILIGENCE - Both T-Systems and Gijima had undergone a due diligence process;
3. BAFO - We received the BAFO from the two shortlisted companies who responded as follows: T-Systems (+R1,550billion) and Gijima (+R1,330billion);
4. In line with our Transnet 90/10 principle, post BAFO, Gijima has presented a winning final price which equates to a massive cost saving to Transnet. Before BAFO we never raised any technical concerns to Gijima until they came back far cheaper (R230m less) after BAFO.

We request you to investigate these new shenanigans. We invite you to talk to each one of our evaluation team members separately and ask them how do they feel about the new process post BAFO.

We are also aware that legal was not happy with this new process to eliminate a deserving local company. Legal was also concerned about the use of the so-called FUTURE MODE OF OPERATION (FMO) as these fly in the face of fairness.

Further, check the evaluation reports that speak for themselves. Check why audit and risk were deliberately excluded during some of the meetings, especially post the BAFO stage to date.

We expect you in leadership to safeguard Transnet's interests at all times against the abuse of positions in the name of top bosses.

We do not want to see negative news media articles about tender irregularities being printed about this tender when all we tried to do what is right and expected of us, is now post BAFO flouted with impunity in the name of the bosses.

This kind of behaviour will ensure that we have a case to answer to and we do not want to be a party to such disregard of the procurement rules, Transnet's governance and PFMA as bidder Gijima may approach the courts.

Please engage with each one of us separately and if we are guaranteed protection from losing our jobs, we will talk without fear of intimidation. We cannot name our concerned group because we are protecting ourselves, but are ready to engage our senior leaders when you start the investigation in order to protect our company and our respective integrity.

During the meetings it was raised that the losing bidder may take us to court but the evaluation team leaders said T-Systems will continue providing the services whilst the loser tries to set aside the award. This is wrong to place Transnet name and reputation to disrepute.

We do not expect this kind of response from responsible leaders. Why then do something that we all know is wrong and then know that the courts will find against us. Why not just do the right thing, if protecting Transnet is what we stand for.

The question that's glaring then is who stands to benefit here? Transnet will definitely be the loser here from the media scrutiny and failing our transformation agenda where a local company is on top on merit. The issue of state capture is topical amongst SOE's and we do not want to add fuel to the fire where a service provider who lost is retained at all costs.

We are concerned why our team leaders find nothing wrong in bringing Transnet into disrepute and want to divert from the tender award process knowingly.

To assist you, I suggest you request the voice recordings of all internal and external meetings, including with the bidders, to verify some of the points raised above. I suggest you ask why audit and risk were conveniently excluded from some of the meetings.

As we were told it's an instruction from the top, who amongst our senior bosses are driving the manipulation of the tender evaluation process and why?

We know that the GCE and other Executives cannot condone such disregard of our Transnet governance and procurement rules.

We strongly believe in doing the right thing and request your intervention.

If no action is taken by the leadership, we will be left with no other option but to go outside of our company. We want to maintain our innocence and only want justice for all.

Concerned and proud Transnet Employees



Annexure MMAM05



TRANSNET



19 January 2017
 Mrs. E. Wilton
 47 Landmark Avenue
 Cosmosdal, Samrand
 Centurion, 0046

Dear Mrs. Wilton

Re: IT Data Services RFP request for clarifications meeting – GSM/15/08/1310

The Transnet team would like to invite Gijima to a clarifications session pertaining to your IT Data Services Best and Final Offer submission.

The session will take place at Transnet Engineering offices, 160 Lynette Street, Kilner Park, Pretoria on Monday, 23 January 2017 from 09h00 to 11h00. The Transnet Cross Functional Sourcing Team (CFST) would like Gijima to provide further clarify on among other things the following items:

1. Section 3, paragraph 5 of the IT Data Service RFP required bidders to commit to a transition period of up to six (6) months:
 - 1.1 How do you intend to adhere to the prescribed transition period in line with your 'transition plan'; and
 - 1.2 What measures will you put in place to manage any delays that may affect your adherence to the prescribed transition period?
 - 1.3 If the due date of the transition period arrives and the Data Centre (DC) and/or other requirements and resources are not in place, how do you envisage providing the required services?
2. The final price submitted by Gijima reflects a reduction of approximately R560 million (R1,8 billion to R1,3 billion) which represents a 31% reduction. May you please provide a rational justification to explain the material reduction in your tendered pricing.
3. Please confirm if the tendered price of R1,3 billion is to provide the services of the "AS IS" (CMO) environment as per paragraph 3 of your Best and Final Offer (BAFO).

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 BG Stagman PG Williams GJ Pita* (Group Chief Financial Officer)
 *Executive

www.transnet.net

Group Company Secretary: NE Khumalo

4. Please confirm if there will be additional effort and costs in performing the "enhancements and improvements (CMO+)" as per your paragraph 3 of your Best and Final Offer, to bring the service levels to the level as required by Transnet and as set out in the RFP and SLA.
5. As per your statement in paragraph 3 of your Best and Final Offer that the "AS IS" (CMO) environment will be provided", please provide specific details of which services and service levels will not be provided as required by Transnet and as set out in the RFP and SLA.
6. Please provide specific details of the additional time, effort and resources required from Gijima and Transnet to implement the "enhancements and improvements (CMO+)" as per paragraph 3 of your BAFO to bring the services to the level required by Transnet.
7. Please confirm if your billing in terms of critical deliverables, paragraph 8 of Attachment K of the MSA, will be based on your price of R1,3 billion and if the acceptance criteria "As per the transition plan for Full Mode of Operation (FMO) reporting" will apply or will the billing, based on R1,3 billion be "As per the revised transition plan for "AS IS" (CMO) reporting". Noting that the requirement is that the transition plan is the plan that will be followed to manage the transition to completion within the transition period.
8. Gijima's Best and Final Offer indicated that the following amounts will be payable to Gijima for early termination fee:

Within the first 6 months	Greater than 6 months and up to 12 months	Greater than 12 months and Earlier than 18 months	Greater than 18 months and Earlier than 24 months
R 461 884 063.85	R 437 065 380.77	R 395 356 925.12	R 358 557 327.83

- 8.1 How will Gijima deal with this aspect should the early contract termination be as a result of Gijima's failure to transition all services in line with the contractual scope of work and service levels that were stipulated in the RFP and within the transition period of six (6) months.

The above is not an exhaustive list of issues that might be discussed at the requested session hence it is recommended that Gijima brings all the duly mandated stakeholders with sound knowledge of Gijima's IT Data Services proposal, who will be able to adequately deal with the above items during the clarifications session.

Please confirm receipt of this request and your attendance of the above requested meeting by no later than Friday, 20 January 2017 at 12h00. Please contact the undersigned in writing if you need any clarity pertaining to this request.

Regards,



Macdonald Maluleke
Category Manager, Group Strategic Sourcing
Transnet SOC Limited
Date: 19/01/2017



Annexure MMAM06





MEMORANDUM

www.transnet.net

To: Siyabonga Gama, Group Chief Executive (GCE)

From: Garry Pita, Group Chief Financial Officer (GCFO)
Makano Mosidi, Group Chief Information Officer (GCIO)
Edward Thomas, Group Chief Supply Chain Officer

Subject: **RFP No. GSM/15/08/1310 for Provision of IT Data Services – Request for approval of contract award of IT Data Services to T-Systems South Africa (Pty) Ltd**

PURPOSE OF SUBMISSION:

1. To request the Group Chief Executive (GCE) to:
 - a) Approve the award of business to T-Systems SA (Pty) Ltd;
 - b) Grant approval to issue a Letter of Intent (LOI) to T-Systems SA (Pty) Ltd as the preferred bidder on this RFP;
 - c) Sign the Letter of Intent (LOI) for the preferred bidder (See Annexure A); and
 - d) Sign letter of regret for the eight (8) unsuccessful bidders (See Annexure B).

BACKGROUND:

2. The current five (5) year T-Systems contract for Information Technology (IT) Outsourcing was established through a sale agreement of Arivia.kom to T-Systems in 2009. The contract was extended for two (2) years and it expires on 31 December 2016.
3. All Transnet Operating Divisions (ODs) make use of this contract for their IT Data Services requirements and the contract is managed at Group level by Enterprise Information Management Services (EIMS) previously known as Group Information and Communications Technology (ICT).
4. The IT Data Services sourcing strategy and RFP were prepared by the Cross Functional Sourcing Team (CFST) that consisted of technical representatives from all Operating Divisions (ODs). This sourcing strategy was approved by the Board on 27 August 2015.

DISCUSSION

5. The Board sub-delegated authority to the Group Chief Executive (GCE) to approve the RFP, issuing of the RFP to the market as well as, conducting due diligence and post tender negotiations (See Annexure C).

6. The GCE approved the issuing of the RFP on 18 November 2015 (See Annexure D) and it was advertised on the National Treasury e-tender portal, as per the National Treasury Instruction Note 1 of 2015/2016 (Advertisement of bids and the Publication of awards on the e-tender publication portal). Transnet issued the IT Data Services RFP to the market from the 23rd of November 2015 and the tender closed on 26 January 2016.
7. The tender was advertised on the National Treasury's e-tender portal website at no cost to bidders. A compulsory briefing session was held on 09 December 2015 and fifty (50) bidders attended the briefing session. Only nine (9) bidders responded to the invitation to submit responses.
8. The IT Data Services Cross Functional Evaluation Team (CFET) started with the evaluations on 28 January 2016 and completed the evaluations on 09 March 2016.
9. The received bids were evaluated against specific and predetermined criteria as set out on the RFP. Initially five (5) bidders passed stages 1 to 4, but after Transnet Internal Audit's (TIA) High Value Tender (HVT) team conducted a High Value Tender Gateway 3 review, it was discovered that two bidders, Bidder 2 (WIPRO Technologies South Africa) and Bidder 3 (Mobile Telecommunication Networks (MTN)) were erroneously disqualified at stage 2 (Substantive responsiveness) on the technical prequalification criteria. The HVT team recommended that these two bidders advance to the next stage (Stage 3). The substantive re-evaluation of the above two bidders, allowed them to progress to stage 3 (technical evaluation stage).
10. Subsequent to the second technical evaluations for bidders 2 and 3, all seven (7) bidders passed stages 1 to 3 and reached stage 4. A total of seven (7) bidders advanced to stage 4 (commercial and preference evaluation stage) and they were:
 - Bidder 1: Ubuntu Technologies
 - Bidder 2: Wipro Technologies South Africa
 - Bidder 3: MTN
 - Bidder 4: EOH Mthombo
 - Bidder 5: T-Systems South Africa
 - Bidder 6: Business Connexion (BCX)
 - Bidder 7: Gijima Holdings
11. The table below indicates the number of bidders that reached and passed each of the evaluation stages.

Evaluations										
Stage 1		Stage 2		Stage 3		Stage 4		Stage 5		Stage 6
Administrative Responsiveness		Substantive Responsiveness		Technical Evaluation		Commercial Evaluation		Due Diligence incl. Post Tender Negotiations		Contract award
Bidders at this stage	Bidders that passed stage	Bidders at this stage	Bidders that passed stage	Bidders at this stage	Bidders that passed stage	Bidders at this stage	Bidders that passed stage	Bidders at this stage	Bidders that passed stage	
9	8	8	7	7	7	7	2	2	1	TBA

Table 1: Evaluation Stages

12. The Administrative responsiveness stage (Stage 1), evaluated the bids in terms of:
- Submission within the stipulated date and time; and
 - Submission of complete and valid returnable documents.
13. The Substantive responsiveness stage (Stage 2), evaluated whether bidders complied with the technical and Supplier Development (SD) prequalification criteria. At this stage bidders were also evaluated on the presence of a priced offer and their commitment to a successful transition from the current service provider to the new service provider in line with the RFP Service Level Agreements (SLAs). The mandatory transition period was a maximum period of six (6) months.
14. The technical evaluation (Stage 3) prescribed a threshold of 70%, as per the criteria in table 2 below. All seven (7) bidders passed the technical threshold.

Technical Criteria	% Weightings
Service Provider Assessment	20%
Technical Service Towers	70%
Service Credits	10%
Total Weighting:	100%
Minimum qualifying score required:	70%

Table 2: Technical Evaluation

15. As mentioned above on paragraph 10 and 11, seven (7) bidders progressed to the Commercial evaluation stage (Stage 4), where they were evaluated on price and preference (B-BBEE). A number of bidders had made numerous assumptions on their initial bids regarding Transnet's requirements, the assumptions on the bidders' pricing workbook made it difficult for the Cross Functional Evaluation Team (CFET) to evaluate bids on a comparative basis. The bidders were then invited to the IT Data Room, where they had a view of Transnet's Information Technology (IT) landscape, to get a better

understanding of Transnet's environment. Subsequent to the visit to the Data Room, all bidders were invited to a "closing the gap session", which was a session to clear all assumptions, in order to enable bidders to provide Transnet with a revised pricing workbook. The bidders submitted their revised prices on 06 June 2016, after which the second commercial evaluation was conducted.

16. Subsequent to the commercial evaluation on 15 July 2016, the GCE approved that negotiations and due diligence exercises to be conducted with the top two (2) ranked bidders [T-Systems (bidder 5) and Ubuntu Technologies (bidder 7)], (See Annexure E). These two bidders scored the highest overall points against their counterparts on price and preference (See Annexure F).
 - The first (1st) ranked bidder (T-Systems) achieved a total score of 99% and the second (2nd) ranked bidder (Ubuntu Technologies) achieved a total score of 86.2%.
 - There was a price variance of 12.8% between the first and second ranked bidder. Whilst, the price variance between the first and third ranked bidder was 19.79%.
17. Due to the fact that the RFP validity period was close to expiry, Transnet advised all nine (9) IT Data Services bidders of its intention to extend the validity period by a further 120 business days. The tender validity period was extended with an additional 120 business days after approval was sought and granted from the GCE on 15 July 2016 (See Annexure G). This means that the tender offers are still valid until 11 January 2017.
18. The bidders were also requested to confirm that their prices will remain valid for the duration of the extended validity period.
19. On 19 July 2016, Transnet communicated with T-Systems and Ubuntu Technologies that post tender negotiations and due-diligence exercises needs to be undertaken on July/August 2016. Subsequent to the receipt of the above notification from Transnet, the second (2nd) ranked bidder (Ubuntu Technologies) sent to Transnet their formal letter withdrawing from the bidding process, citing the reason that their strategic partner (Hitachi Data Systems) had indicated that it is not able to keep its prices firm during the extended validity period of 120 business days (See Annexure H). Ubuntu Technologies could have opted to amend their prices, as per paragraph 6.2 of the General Bid Conditions, which allow bidders to amend their prices in line with changes in the market. Ubuntu Technologies instead opted to withdraw from the bidding process without exercising the option to amend their tendered prices. The General Bid Conditions were issued together with the RFP document (Appendix I of the RFP) and Ubuntu Technologies had signed at the bottom of each and every page of the RFP document, to indicate their acquaintance with the contents of the General Bid Conditions.
20. The due diligence and post tender negotiations continued as scheduled with T-Systems on 25 and 27 July 2016 respectively. The third (3rd) ranked bidder (Gijima) was added on the shortlist, to replace the second ranked bidder (Ubuntu Technologies) in order to maintain competitiveness in the bidding process.

21. The inclusion of the third ranked bidder was necessitated by the withdrawal of Ubuntu Technologies (second ranked bidder) from the bidding process. The GCE approved the addition of the third ranked bidder for due diligence and negotiations on 11 August 2016 (See Annexure I).
22. The due diligence and post tender negotiations on the third ranked bidder were conducted on 11 and 12 August 2016.
23. The due diligence on both bidders comprised of bidder reference checks and site visits. In the RFP document on paragraph 3 of section 3, the bidders were requested to submit details of three (3) client references in their RFP submission, where they offered similar service towers comparable in size and complexity to Transnet. The Cross Functional Evaluation Team (CFET) contacted two (2) of the three (3) references, for both bidders. The second part of the due diligence included site visits to the offices of the bidder and their Tier 3 Data Centres (DC). The CFST visited bidders' premises for an assessment of their Data and Operations Centres. The site visits also included "face to face" interviews with the bidders' Relationship and Senior Technical Managers which were conducted at the bidder's offices. Due diligence was conducted as a capacity validation tool and risk mitigation exercise.
24. After the conclusion of the due diligence and post tender negotiations with T-Systems and Gijima, the bidders were requested to submit their Best and Final Offers (BAFOs) on 17 August 2016. Gijima (bidder 7) provided the lowest priced bid in the BAFO stage, scoring a final score of 99%. T-Systems (bidder 5) scored a final score of 85.07%, (See Annexure J).
25. The bidders were also requested to submit their high level transition plans and their final Master Services Agreement (MSA) mark-ups together with their BAFOs. The MSA mark-ups were requested in preparation for the final contract negotiations with the preferred bidder and the high level transition plans were requested to get a better understanding of how the bidders will approach their respective transition periods.
26. A report was compiled by the CFET, which gives a comprehensive overview of the due diligence process. The due diligence report gives an overall score of both bidders and the second part of the report is a risk report (See Annexure K). The first ranked bidder (Gijima) achieved an overall score of 71.26% and the second ranked bidder (T-Systems) achieved an overall score of 71.59%, without factoring in any identified risks. The due diligence report scores were based solely on the site observation and client reference checks. The risk report delved deeper into the business risks that were identified by the CFET on both bidders and the overall impact on Transnet.
27. The bidders were informed that a maximum period of six (6) months for the transition period still applied and it was also emphasized during the commercial negotiations that after the six (6) months transition period, Transnet requires to be operating on Full Mode of Operation (FMO) in order for operations to be stable with no major ICT transformational activities for at least eighteen (18) months.

28. After the BAFOs were submitted and reviewed, it was noted that Gijima indicated in their transition plan that after the six (6) months transition period, Transnet will still be in their Current Mode of Operation (CMO), which poses a major risk to Transnet due to the fact that it will require ICT transformation projects to reach the FMO. The ICT transformation projects will require additional resources (time, people and money) to implement, after the first six (6) months. Moreover, Transnet will be paying for FMO services scope and service levels prior to the service provider achieving same.
29. On the initial submission Gijima had accepted the transition period condition, but on their high level transition plan that was submitted with their BAFO on 17 August 2016, it stated the following: *"Gijima understands the complexity of a transition project. It is therefore imperative that we transition the AS-IS (CMO) environment during the proposed 6 months. Enhancements and improvements (CMO+) will be done after the transition and stabilisation period"*. This means that Gijima will continue providing Transnet with the Current Mode of Operation (CMO) services after the 6 months transition period. The requirement was for Transnet to operate at FMO after the six (6) months transition period has been finalised. The above statement by Gijima, poses significant business and financial risks to Transnet.

PROJECT RISKS

30. The purpose of the due diligence report was to highlight all the business risks that were identified during the due diligence process in order to minimize Transnet's operational risks after contract award. The risks which were highlighted by the CFET on the due diligence report can be summarized as follows (See Annexure K).

Bidder 5 (T-Systems)

- The bidder intends to conduct a considerable infrastructure equipment refresh during the six (6) months transition period in order to keep the environment modernised. This poses a minimal risk as it will be undertaken as part of business as usual.
- Transnet and the bidder need to commit the required number of skilled resources in order to be able to manage the transition period within the stipulated timeframe. Failure to commit the required number of adequately skilled resources by both parties, will result in delays in finalising the transition period.
- Apart from the above two risks, no major risks were identified on this bidder.

Bidder 7 (Gijima)

- There is a risk in that the Vodacom Data Centre (DC) that Gijima will be using to host Transnet as it still needs to be built i.e. cages, power racks, servers etc. There is still outstanding equipment which still needs to be procured from the overseas Original Equipment Manufacturer (OEM). The standard DC equipment shipping time is 8 to 12 weeks excluding the customs inspection and clearance timelines. Once delivered to the DC, the equipment needs approximately two (2) months to be built before data

transfer to the new Data Centre can commence. This might result in Gijima not being able to complete transition within the maximum stipulated period of six (6) months which poses significant operational risks for Transnet.

- The CFST team identified a security risk in that Gijima does not have a dedicated Security Operations Centre (SOC) but this risk was considered marginal as they do have qualified security personnel who are operating from their Customer Contact Centre.
 - The CFST team identified a major risk with regards to the transition from the current service provider as Gijima only committed to CMO migration within the first six (6) months transition period, instead of the required CMO to FMO. Transnet's experience with this is that this requires focused projects during Business as Usual (BAU) that require resources from both parties and it is costly. Moreover, Transnet would be paying for FMO services scope and Service Level Agreements (SLAs) prior to reaching FMO. This change in transition commitment has resulted in a fundamental change in the RFP submission of Gijima.
 - Transnet and the bidder need to commit the required number of skilled resources in order to be able to execute the transition period within the stipulated timeframe. Failure to commit the required number of adequately skilled resources by both parties will result in delays in finalising the transition period.
31. Based on the risks that were identified on Bidder 7 (Gijima), Group Strategic Sourcing sent a request for clarification to Gijima on 05 September 2016, in order to give them an opportunity to advise Transnet on how they will address the identified risks. In the letter, clarity was requested on the IT Data Centre Facilities, Business Requirement-Transition Scope, Scope and Contract as well as Transition project and Contract Delivery. The letter was very explicit on the points that needed clarity from the bidder (See Annexure L)
 32. The bidder (Gijima) responded back to Transnet in writing on 07 September 2016 (See Annexure M). Gijima's response did not adequately address the risks that were addressed and as a result, the CFST requested that Group Legal provide counsel on the way forward. Group Legal indicated that the correspondence that was sent to Gijima was very clear on the points that were identified as risks, further reiterating the requirement of six (6) months transition from CMO to FMO. Gijima was given an opportunity to indicate how they will mitigate the identified risks and their response was still vague, as they did not explicitly indicate how they will transition to FMO after the six (6) months transition, as well as provide a plan on how they will mitigate the risk of procuring and installing equipment in their Data Centres, as well as mitigating the data from the current incumbent's Data Centre to their Data Centre within the six (6) months transition period.
 33. Gijima did not provide a strategy on mitigating these risks and as a result the CFST had reservations in selecting Gijima as the preferred bidder for this tender, as the risks identified are material. By selecting Gijima with their current proposition, Transnet runs the risks of not being at CMO and FMO within six (6) months. Furthermore, there is also a risk of the transition project over-running, which means that the current incumbent may

continue to service Transnet for some of the services that are not fully transitioned, which will be costly for Transnet.

34. iSCM Governance's counsel was also sought on the requirements of using objective criteria to recommend the second ranked bidder (T-Systems) as the preferred bidder, due to the major risks that were identified on the first ranked bidder (Gijima). The use of objective criteria was covered in the IT Data Services RFP as a standard clause, in Section 1. Paragraph 10 (disclaimers) of the RFP. The recommendation from Governance was for Transnet to send a request for clarification to Gijima, in order for them to make representations on how it intends to manage the risks that were identified by the CFST, in the event, where Gijima fails to properly address the identified risks, the CFST may award the tender to the second ranked bidder, only where it is lawful, reasonable and procedurally fair to do so. Furthermore the risks that were identified must be material in order to justify the use of objective criteria (See Annexure N).
35. The conditions stated by Governance, satisfies the need to apply objective criteria in the award of the contract to T-Systems as Gijima has already been provided with an opportunity to make representations on the identified risks and they failed to adequately address the identified risks. This is further supported by Group Legal's opinion regarding the identified business risks. Group Legal's opinion was that the use of objective criteria by the CFST to recommend award to the second ranked bidder is allowed as the process that was followed in arriving at that recommendation was lawful and procedurally and administratively fair, (See Annexure O).
36. Based on the identified business risks, the CFST decided that Gijima should not be recommended for award, due to the significant risks that have been identified to Transnet and that T-Systems should be recommended for contract award.
37. The Tender Evaluation and Recommendation Report (TEAR) (See Annexure P), provides detailed information on the tender evaluation process that was followed from stage one (1) up to stage five (5).
38. Transnet Internal Audit (TIA) was part of the IT Data Services RFP evaluation process including due diligence and negotiations and they issued satisfactory audit reports for High Value Tender (HVT) Gateway 3 and 4, (See Annexure Q). The satisfactory TIA reports on both Gateway 3 and 4 confirm that the evaluation process which was followed by the CFST and the recommendation made on this project were in line with the Transnet Procurement Procedures Manual (PPM) and the High Value Tender (HVT) process and therefore fully complies to the prescripts of the Preferential Procurement Policy Framework Act, No. 5 of 2000 (PPFA).
39. The Group Chief Supply Chain Officer further requested the Transnet Group Risk and Compliance department to conduct an independent risk assessment based on the residual risk that exists on the IT Data Services project due to the fact that the recommendation for award that was done by the CFST was based on objective criteria due to the business risks that were identified on bidder 7 (Gijima) who were the first ranked bidder. The independent risk assessment that was conducted by Group Risk and Compliance

confirmed that the IT Data Services CFST has adequately applied its mind and was justified in recommending award of business to the second ranked bidder (T-Systems) based on the business risks that were identified with the first ranked bidder (Gijima), (See Annexure R).

40. Table 4 below indicates project timelines for the remaining activities to complete this procurement event for the acquisition of IT Data Services RFP:

Item	Activity	Planned Completion Date
1	Stage 1 (Administrative Evaluations and Moderation)	Finalised
2	Stage 2 (Substantive Evaluations and Moderations)	Finalised
3	Stage 3 (Technical Evaluations and Moderations)	Finalised
4	Stage 4 (Commercial Evaluations and Moderations)	Finalised
	-Data Rooms	Finalised
	-Clarifying assumptions for revised pricing workbook	Finalised
5	Stage 5 (Due Diligence and Post Tender Negotiations)	Finalized
6	-Bidders submit Best and Final Offers (BAFO)	Finalized
7	Submit final contract award to the GCE as per the new DOA	08 December 2016
8	Stage 6 Issue LOI to the preferred bidder	Issue LOI upon GCE's approval
9	Discuss Implementation Plan with the preferred bidder	To be negotiated after issuing LOI
10	Negotiate and sign Master Services Agreement (MSA) during the transition period	To be negotiated after issuing LOI

Table 4: Project Timelines

SUPPLIER DEVELOPMENT:

41. The recommended bidder (T-Systems) has committed to spend 57.31% of the IT Data Services contract value on Supplier Development (SD) initiatives. The requested minimum SD commitment on the IT Data Services RFP was 40%.

APPROVALS AND DELEGATION:

42. As per the Board resolution passed on 27 August 2015, the GCE was delegated with the authority to approve the RFP for issue, negotiate and sign-off all the relevant documentation in line with the approved sourcing strategy. As per the delegation of authority framework effective from 01 September 2016, the approval of this award falls within the mandate of the GCE. The GCE has already provided the following approvals:
- (a) Approval to issue the IT Data Services Request for Proposal (RFP) for a period of five (5) years with an option to extend for a further two (2) years to the open market;
 - (b) Approval to conduct due diligence and negotiations with the top two ranked bidders (T-Systems and Ubuntu Technologies and subsequently between T-Systems and Gijima).

- (c) Approval to extend the RFP validity period by a further one hundred and twenty (120) business days.
- (d) Approval for addition of the third ranked bidder for due diligence and negotiations after withdrawal of the second ranked bidder from the bidding process.

43. Separate memoranda will be written to the Transnet Acquisitions and Disposals Committee (ADC) and the Board of Directors (Board) for them to note the contract award, after approval of this recommendation for award by the GCE.

FINANCIAL IMPLICATIONS:

- 44. The final tendered pricing for the recommended bidder over a period of five (5) years (T-Systems) is R1, 545,181,620.76.
- 45. The estimated savings over a period of five (5) years on this contract based on the current five-year contract spend of R2,5 billion is R954,818,379.24 which is equivalent to a monthly saving of R15,913,639,654.00
- 46. The CFST will negotiate further cost savings and SD obligations with the preferred bidder during contract negotiations, after issuing of the Letter of Intent (LOI).

BUDGET IMPLICATIONS:

- 47. All Transnet OD's have budgets available for their respective IT Data Services requirements.

RECOMMENDATION:

48. It is recommended that the Group Chief Executive (GCE):

- a) Approve the award of business to T-Systems SA (Pty) Ltd;
- b) Grant approval to issue a Letter of Intent (LOI) to T-Systems SA (Pty) Ltd as the preferred bidder on this RFP;
- c) Sign the Letter of Intent (LOI) for the preferred bidder (See Annexure A); and
- d) Sign letters of regret for the eight (8) unsuccessful bidders (See Annexure B).

COMPILED BY

Reetsang Modise
Commodity Specialist: Group Strategic Sourcing
Date:

RECOMMENDED / NOT RECOMMENDED

Fanie van der Walt
Executive Manager: Group Strategic Sourcing
Date:

RECOMMENDED / NOT RECOMMENDED

Rishana Sunderlall
Acting Executive Manager: Governance
Date:

RECOMMENDED / NOT RECOMMENDED

Edward Thomas
Group Chief Supply Chain Officer
Date:

RECOMMENDED / NOT RECOMMENDED

Garry Pita
Group Chief Financial Officer
Date:

RECOMMENDED / NOT RECOMMENDED

Macdonald Maluleke
Category Manager: Group Strategic Sourcing
Date:

RECOMMENDED / NOT RECOMMENDED

Martin Sehlapelo
Executive Manager: Office of the GCIO
Date:

RECOMMENDED / NOT RECOMMENDED

Ndiphiwe Silinga
Group Executive: Legal Services
Date:

RECOMMENDED / NOT RECOMMENDED

Makano Mosidi
Group Chief Information Officer
Date:

APPROVED / NOT APPROVED

Siyabonga Gama
Group Chief Executive
Date:

Annexure MMAM07



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MEMORANDUM

www.transnet.net

To: Siyabonga Gama, Group Chief Executive (GCE)

From: Garry Pita, Group Chief Financial Officer (GCFO)

Subject: **RFP No. GSM/15/08/1310 for the Provision of IT Data Services – Request for the GCE to recommend award of contract on the IT Data Services RFP to Gijima Holdings (Pty) Ltd to the Acquisitions and Disposals Committee (ADC) for recommendation to the Board of Directors for approval**

PURPOSE OF SUBMISSION:

1. The purpose of this submission is to request the Group Chief Executive (GCE) to:
 - a) Recommend the award of contract to Gijima Holdings (Pty) Ltd to the Acquisitions and Disposals Committee (ADC) for recommendation to the Transnet Board of Directors (Board) for approval; and
 - b) Recommend that the Acquisitions and Disposals Committee (ADC) recommends to the Board to grant authority to the GCE to sign the Letter of Intent (LOI) to the preferred bidder (Gijima), Letters of Regret (LOR) to the unsuccessful bidders, the contract and all relevant documentation including any subsequent contract amendments.

BACKGROUND:

2. The current five (5) year T-Systems contract for Information Technology (IT) Outsourcing was established through a sale agreement of Arivia.kom to T-Systems in 2009. The contract was extended for two (2) years and it was due to expire on 31 December 2016. Prior to its expiry, the Board recommended a nine (9) months (month to month) extension on the T-Systems Master Services Agreement (MSA) and the National Treasury (NT) approved a contract extension in line with the SCM Instruction Note 3 of 2016/2017 (Prevention and combating the abuse of the SCM system). The revised T-Systems contract expiry date is 30 September 2017.
3. All Transnet Operating Divisions (ODs) make use of this contract for their IT Data Services requirements and the contract is managed at Group level by Group Information and Communications Technology (GICT).

4. The IT Data Services sourcing strategy and Request for Proposal (RFP) were prepared by the Cross Functional Sourcing Team (CFST) that consisted of technical representatives from all ODs. This sourcing strategy was approved by the Board on 27 August 2015.

DISCUSSION:

5. The Board sub-delegated their authority to the Group Chief Executive (GCE) to approve the RFP, issuing of the RFP to the market, conducting due diligence, post tender negotiations and signing all relevant documentation excluding contract award which has to be tabled to the Board for approval.
6. The GCE approved the issuing of the RFP on 18 November 2015. The RFP was advertised on the National Treasury e-tender portal, as per the ISCM Instruction Note 1 of 2015/2016 (Advertisement of bids and the Publication of awards on the e-tender publication portal) at no cost to the bidders. Transnet issued the IT Data Services RFP to the market from the 23rd of November 2015 and the tender closed on 26 January 2016.
7. A compulsory briefing session was held on 09 December 2015 and fifty (50) bidders attended the briefing session. Only nine (9) bidders responded to the invitation to submit responses. The IT Data Services Cross Functional Evaluation Team (CFET) started with the evaluations on 28 January 2016 and completed the evaluations on 09 March 2016.
8. The received bids were evaluated against specific and predetermined criteria as set out on the RFP. Initially five (5) bidders passed stages 1 to 4, but after Transnet Internal Audit's (TIA) High Value Tender (HVT) team conducted a High Value Tender Gateway 3 review, it was discovered that two bidders, Bidder 2 (WIPRO Technologies South Africa) and Bidder 3 (Mobile Telecommunication Networks (MTN)) were erroneously disqualified at stage 2 (Substantive responsiveness) on the technical prequalification criteria. The HVT team recommended that these two bidders advance to the next stage (Stage 3). The substantive re-evaluation of the above two bidders, allowed them to progress to stage 3 (technical evaluation stage). The detailed information about the outcome of each stage is available on the Tender Evaluation and Recommendation Report (TEAR) which is available on file.
9. Subsequent to the second technical evaluations for bidders 2 and 3, a total of seven (7) bidders passed stages 1 to 3 and reached stage 4. A total of seven (7) bidders advanced to stage 4 (commercial and preference evaluation stage) and they were:
 - Bidder 1: Ubuntu Technologies
 - Bidder 2: Wipro Technologies South Africa
 - Bidder 3: MTN
 - Bidder 4: EOH Mthombo
 - Bidder 5: T-Systems South Africa
 - Bidder 6: Business Connexion (BCX)
 - Bidder 7: Gijima Holdings

10. Table 1 indicates the number of bidders that reached and passed each of the evaluation stages.

Evaluations										
Stage 1		Stage 2		Stage 3		Stage 4		Stage 5		Stage 6
Administrative Responsiveness		Substantive Responsiveness		Technical Evaluation		Commercial Evaluation		Risk Assessment performed though Due Diligence incl. Post Tender Negotiations		Contract award
Bidders at this stage	Bidders that passed stage	Bidders at this stage	Bidders that passed stage	Bidders at this stage	Bidders that passed stage	Bidders at this stage	Bidders shortlisted	Bidders at this stage	Bidders that passed stage	
9	8	8	7	7	7	7	2	2	1	TBA

Table 1: Evaluation Stages

11. The Administrative responsiveness stage (Stage 1), evaluated the bids in terms of:
- Submission within the stipulated date and time; and
 - Submission of complete and valid returnable documents.
12. The Substantive responsiveness stage (Stage 2), evaluated whether bidders complied with the technical and Supplier Development (SD) prequalification criteria. At this stage bidders were also evaluated on the presence of a priced offer and their commitment to a successful transition from the current service provider to the new service provider in line with the RFP Service Level Agreements (SLAs). The mandatory transition period is a maximum period of six (6) months.
13. The technical evaluation stage (Stage 3) had a threshold of 70%, as per the criteria in table 2 below. All seven (7) bidders passed the technical threshold.

Technical Criteria	% Weightings
Service Provider Assessment	20%
Technical Service Towers	70%
Service Credits	10%
Total Weighting:	100%
Minimum qualifying score required:	70%

Table 2: Technical Evaluation

14. During the evaluation of the commercial aspects of the bids (Stage 4), the CFET realised that bidders had made numerous assumptions on their initial bids regarding Transnet's

requirements. These assumptions on the bidders' pricing workbook made it difficult for the CFET to evaluate bids on a comparative basis. The bidders were then invited to the Information Technology (IT) Data Room, where they had a view of Transnet's IT landscape, to get a better understanding of Transnet's environment. Subsequent to the visit to the Data Room, all bidders were invited to a "closing the gap session", which was a session to clear all assumptions, in order to enable bidders to provide Transnet with a revised pricing workbook. The bidders submitted their revised prices on 06 June 2016, after which the second commercial evaluation was conducted.

15. Subsequent to the commercial evaluation on 15 July 2016, the GCE approved that negotiations and due diligence exercises to be conducted with the top two (2) ranked bidders [T-Systems (bidder 5) and Ubuntu Technologies (bidder 7)]. These two bidders scored the highest overall points against their counterparts on price and preference.
 - The first (1st) ranked bidder (T-Systems) achieved a total score of 99% and the second (2nd) ranked bidder (Ubuntu Technologies) achieved a total score of 86.2%.
 - There was a price variance of 12.8% between the first and second ranked bidder. Whilst, the price variance between the first and third ranked bidder was 19.79%.
16. Due to the fact that the RFP validity period was close to expiry, Transnet advised all nine (9) IT Data Services bidders of its intention to extend the validity period by a further 120 business days. The tender validity period was extended with an additional 120 (one hundred and twenty) business days after approval was sought and granted from the GCE on 15 July 2016. This meant that the tender offers were valid until 11 January 2017. In December 2016, a further ninety (90) business days' validity period extension was approved by the GCE. The revised IT Data Services RFP validity period expiry date is 24 May 2017. The bidders confirmed in writing that their prices will remain valid for the duration of the extended validity period.
17. On 19 July 2016, Transnet communicated with T-Systems and Ubuntu Technologies that post tender negotiations and due-diligence exercises needs to be undertaken between July and August 2016. Subsequent to the receipt of the above notification from Transnet, the second (2nd) ranked bidder (Ubuntu Technologies) sent to Transnet their formal letter withdrawing from the bidding process, citing the reason that their strategic partner (Hitachi Data Systems) had indicated that it is not able to keep its prices firm during the extended validity period of 120 business days. Ubuntu Technologies could have opted to amend their prices, as per paragraph 6.2 of the General Bid Conditions (GBC), which allows bidders to amend their prices in line with changes in the market. Ubuntu Technologies instead opted to withdraw from the bidding process without exercising the option to amend their tendered prices. The GBC were issued together with the RFP document (Appendix I of the RFP) and Ubuntu Technologies had signed at the bottom of each page of the RFP document, to indicate their acquaintance with the contents of the GBC.
18. The risk assessment performed through due diligence and post tender negotiations continued as scheduled with T-Systems on 25 and 27 July 2016 respectively. The third

(3rd) ranked bidder (Gijima) was added on the shortlist, to replace the second ranked bidder (Ubuntu Technologies) in order to maintain competitiveness in the bidding process. The GCE approved the addition of the third ranked bidder for risk assessment and negotiations on 11 August 2016.

19. The risk assessment and post tender negotiations on the third ranked bidder were conducted on 11 and 12 August 2016.
20. The risk assessment on both bidders comprised of bidder reference checks, site visits and interviews with bidders' key personnel. In the RFP document on paragraph 3 of section 3, bidders were requested to submit details of three (3) client references with their bid submissions, where they offered similar service towers comparable in size and complexity to Transnet. The CFET contacted two (2) of the three (3) references, for both bidders. The second part of the risk assessment included site visits to the offices of the bidders and their Tier 3 Data Centres (DC). The CFET visited bidders' premises for an assessment of their Data and Operations Centres. The site visits also included "face to face" interviews with the bidders' Relationship and Senior Technical Managers which were conducted at the bidder's offices. A risk assessment was also conducted to validate the two (2) shortlisted bidders' capacity and capabilities.
21. After the conclusion of the risk assessment and post tender negotiations with T-Systems and Gijima, the bidders were requested to submit their Best and Final Offers (BAFOs) on 17 August 2016. Gijima (bidder 7) provided the lowest priced bid in the BAFO stage, scoring a final score of 99% for price and preference. T-Systems (bidder 5) scored a final score of 85.07%.
22. The bidders were also requested to submit their high level transition plans and their final Master Services Agreement (MSA) mark-ups together with their BAFOs. The MSA mark-ups were requested in preparation for the final contract negotiations with the preferred bidder and the high level transition plans were requested to get a better understanding of how the bidders will approach their respective transition periods.
23. A report was compiled by the CFET, which gave a comprehensive overview of the risk assessment process. The due diligence report gave an overall score of both bidders and the second part of the report is a risk assessment report (See Annexure A). The first ranked bidder (Gijima) achieved an overall score of 71.26% and the second ranked bidder (T-Systems) achieved an overall score of 71.59%, without factoring in any identified risks. The due diligence report scores were based solely on the site observation and client reference checks. The risk report delved deeper into the business, technical and financial risks that were identified by the CFET on both bidders and the overall impact on Transnet.
24. The bidders were informed that a maximum period of six (6) months for the transition period still applied and it was also emphasized during the commercial negotiations that after the six (6) months transition period, Transnet requires to be operating on the full services in line with the RFP in order for operations to be stable with no major ICT transformational activities for at least eighteen (18) months.

25. The Full Mode of Operation (FMO) is what the bidders were required to price for in their bids and is based on the Service Level Agreements (SLAs) that were issued with the IT Data Services RFP. Any pricing that is not based on FMO pricing cannot be objectively compared with other bidders' pricing as it is based on lesser service levels.
26. In the initial submission Gijima had accepted the transition period condition, but on their high level transition plan that was submitted with their BAFO on 17 August 2016, it stated the following: *"Gijima understands the complexity of a transition project. It is therefore imperative that we transition the AS-IS (CMO) environment during the proposed 6 months. Enhancements and improvements (CMO+) will be done after the transition and stabilisation period"*. This was assumed to mean that Gijima will continue providing Transnet with the Current Mode of Operation (CMO) services as currently delivered by the incumbent after the six (6) months transition period. The requirement was for Transnet to operate at full services as per the RFP requirements after the six (6) months transition period has been finalised. The above statement by Gijima, projected probable significant business and financial risks to Transnet.

RISK ASSESSMENT:

27. Due Diligence was the mechanism used to perform the required risk assessment before making a recommendation on the preferred bidder. This was done to identify all business risks that could have potential adverse consequences on Transnet's operations after the award of the contract. The risks which were highlighted by the CFET on the due diligence report can be summarized as follows.
28. The risk assessment was performed by Gartner and the technical members of the CFET through the usage of a risk assessment template, site visits and interviews with the shortlisted bidders' key personnel. The risk assessment template was compiled by Gartner. Gartner is the world's leading information technology research and advisory company. Gartner Consultants who compiled the risk assessment template were contracted by Transnet to provide technical support and advice on the IT Data Services project.
29. The key areas that were assessed during the risk assessment of the two (2) shortlisted bidders were amongst other things the following:
- Scope and contract;
 - Transition Scope;
 - Transition Project;
 - Quality and Performance; and
 - Relationship Management.
30. The high level summary of the risk assessment conducted on both shortlisted bidders are as follows:

Bidder 5 (T-Systems)

- The bidder intends to conduct a considerable infrastructure equipment refresh during the six (6) months transition period in order to keep the environment modernised. This poses a minimal risk as it will be undertaken as part of business as usual.
- Transnet and the bidder need to commit the required number of skilled resources in order to be able to manage the transition period within the stipulated timeframe. Failure to commit the required number of adequately skilled resources by both parties, will result in delays in finalising the transition period.
- Apart from the above two risks, no major risks were identified on this bidder.

Bidder 7 (Gijima)

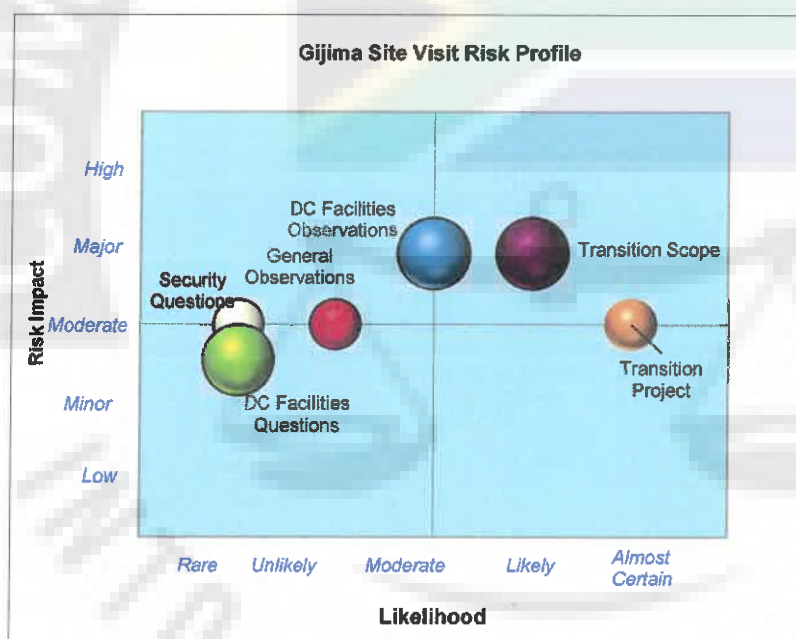
- There is a risk in that the Vodacom Data Centre (DC) that Gijima will be using to host Transnet as it still needs to be built i.e. cages, power racks and servers, *etcetera*. There is still outstanding equipment which still needs to be procured from the overseas Original Equipment Manufacturer (OEM). The standard DC equipment shipping time is eight to twelve weeks excluding the customs inspection and clearance timelines. Once delivered to the DC, the equipment needs approximately two (2) months to be built before data transfer to the new DC can commence. This might result in Gijima not being able to complete transition within the maximum stipulated period of six (6) months which poses significant operational risks for Transnet.
 - The CFST team identified a security risk in that Gijima does not have a dedicated Security Operations Centre (SOC) but this risk was considered marginal as they do have qualified security personnel who are operating from their Customer Contact Centre.
 - The CFST team identified a major risk with regards to the transition from the current service provider as Gijima was understood to have only committed to CMO migration within the first six (6) months transition period, instead of the required CMO to FMO. Transnet's experience with this is that this requires focused projects during Business as Usual (BAU) that require resources from both parties and it is costly. Moreover, Transnet would be paying for FMO services scope prior to reaching FMO. This change in transition commitment would have resulted in a fundamental change in the RFP submission of Gijima.
 - Transnet and the bidder need to commit the required number of skilled resources in order to be able to execute the transition period within the stipulated timeframe. Failure to commit the required number of adequately skilled resources by both parties will result in delays in finalising the transition period.
31. Gartner and the CFET did a detailed analysis of the above identified risks by conducting a detailed analysis of the type of risk, risk impact rating and likelihood rating. The

assessment provides a likelihood rating which ranges from one (1) to five (5) as follows; "Rare", "Unlikely", "Moderate", "Likely" and "Almost Certain".

32. Based on the outcome of the site visit risk assessment that was conducted on the top two (2) ranked bidders using the above-mentioned ratings, the first ranked bidder (Gijima) was found to have two (2) items which fell between "rare" and "unlikely", one (1) between "unlikely" and "moderate", one (1) "moderate", one (1) "likely" and one (1) "almost certain". The items which fell between "likely" and "almost certain" were transition scope and transition project respectively. These items posed a material risk to Transnet as failure to successfully transition services from CMO to FMO within the stipulated period of six (6) months will result in both operational and financial risk to Transnet. The impact of these two items was ranked between "moderate" to "major" and failure to implement these two items will have a material impact to Transnet. The consolidation of the various risks would have placed an unacceptable risk on Transnet (Top right quadrant).

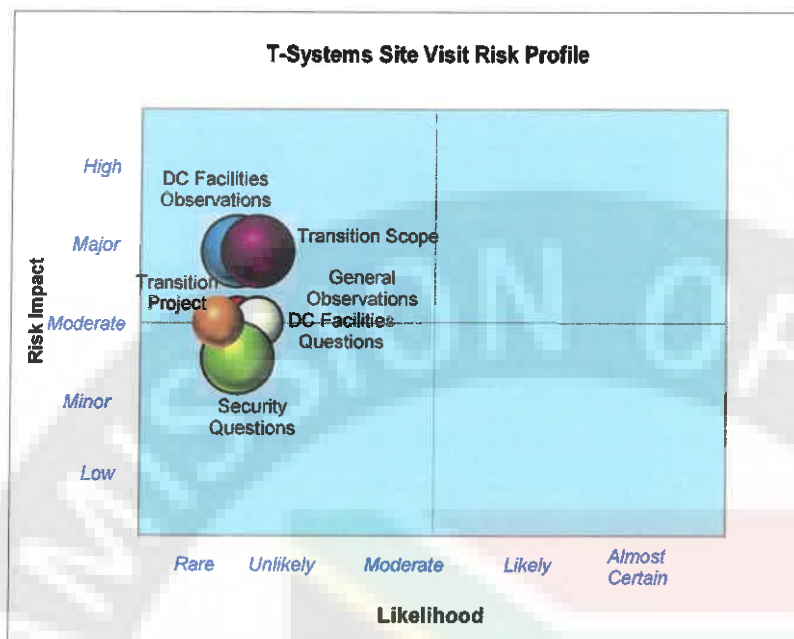
Table 3: Site Visit Risk Assessment

First ranked bidder (Gijima) site visit risk profile



33. The second ranked bidder (T-Systems) was found to have all six (6) items between "rare" and "likely" which translated into minimal risk to Transnet. Below is a schematic representation of the site visit risk profile that was extracted from the Gartner report (Table 6):

Second ranked bidder (T-Systems) site visit risk profile



34. Based on the risks that were identified on Bidder 7 (Gijima), Group Strategic Sourcing sent a request for clarification to Gijima on 05 September 2016, in order to give them an opportunity to advise Transnet on how they will address the identified risks. In the letter, clarity was requested on the IT Data Centre Facilities, Business Requirement-Transition Scope, Scope and Contract as well as Transition project and Contract Delivery. The letter was very explicit on the points that needed clarity from the bidder.
35. The bidder (Gijima) responded back to Transnet in writing on 07 September 2016. Gijima's response did not adequately address the risks that were addressed and as a result, the CFET requested that Group Legal provide counsel on the way forward.

ISCM GOVERNANCE OPINION:

36. Integrated Supply Chain Management (ISCM) Governance's counsel was also sought on the requirements of using objective criteria to recommend the second ranked bidder (T-Systems) as the preferred bidder, due to the major risks that were identified on the first ranked bidder (Gijima).
37. The use of objective criteria was covered in the IT Data Services RFP as a standard clause, in Section 1, at Paragraph 10 (Disclaimers) of the RFP.
38. The recommendation from Governance was for Transnet to send a request for clarification to Gijima, in order for them to make representations on how they intend to manage the risks that were identified by the CFET, in the event, where Gijima fails to properly address the identified risks, the CFET may award the tender to the second ranked bidder, only where it is lawful, reasonable and procedurally fair to do so. Furthermore the risks that

were identified must be material in order to justify the use of objective criteria (See Annexure B).

39. The conditions stated by Governance, satisfied the need to apply objective criteria in the award of the contract to T-Systems as Gijima had already been provided with an opportunity to make representations on the identified risks and they failed to adequately address the identified risks.
40. This was further supported by Group Legal's opinion regarding the identified business risks. Group Legal's opinion was that the use of objective criteria by the CFST to recommend award to the second ranked bidder was allowed as the process that was followed in arriving at the recommendation was lawful, procedurally fair and administratively fair.

GROUP LEGAL OPINION:

41. Group Legal reviewed the request for clarification that was sent to the first ranked bidder (Gijima) dated 05 September 2016 and their response letter dated 07 September 2016.
42. Subsequent to reviewing the above documents Group Legal advised the IT Data Services CFST that the correspondence that was sent to Gijima was very clear on the points that were identified as risks, further reiterating the requirement of six (6) months transition from CMO to FMO.
43. Group Legal further indicated that Gijima was given an opportunity to indicate how they will mitigate the identified risks and their response was still vague, as they did not explicitly indicate how they will transition to FMO after the six (6) months transition, as well as provide a plan on how they will mitigate the risk of procuring and installing equipment in their DC, as well as transferring the data from the current incumbent's DC to their Data Centre within the six (6) months transition period.
44. Group Legal indicated to the IT Data Services CFET that it was justifiable to select the second ranked bidder based on the material risks which were identified on the first ranked bidder and that this decision can be legally defended in the court of law as "Transnet acted in a manner that was lawful, reasonable and procedurally fair" (See Annexure C).

GROUP RISK AND COMPLIANCE OPINION:

45. The Group Chief Supply Chain Officer (GCSCO) further requested the Transnet Group Risk and Compliance department to conduct an independent risk assessment based on the residual risks that existed on the IT Data Services project. This was due to the fact that the recommendation for award that was done by the CFET was based on objective criteria as a result of the business risks that were identified on bidder 7 (Gijima) who was the first ranked bidder.
46. The independent risk assessment that was conducted by Group Risk and Compliance confirmed that the IT Data Services CFET has adequately applied its mind and was

justified in recommending the award of business to the second ranked bidder (T-Systems) based on the material business risks that were identified with the first ranked bidder (Gijima), (See Annexure D).

47. Group Risk and Compliance identified five (5) risks which were adequately discussed in their Risk Report namely:
 - Transition Scope
 - Transition Project
 - Procurement Risk
 - Reputational Risk
 - Pricing Risk
48. Under the transition scope and transition project, Group Risk and Compliance highlighted similar risks that were highlighted in the Gartner report around the first ranked bidder's (Gijima) failure to commit to transition services from CMO to FMO within a stipulated period of six (6) months.
49. Under procurement risks, Group Risk and Compliance indicated that the fact that Transnet has to pay an early termination fee of R494 million should it elect to terminate the contract within the first six (6) months due to the first ranked bidder's (Gijima) inability to transition all services within a period of (6) months, posed a significant risk to Transnet should Transnet decide to proceed with the award while it was fully aware of the risks identified on the first ranked bidder as the courts would find that Transnet was aware of the risks but nevertheless went ahead with the contract award to the first ranked bidder (Gijima).
50. Group Risk and Compliance indicated that *"If Transnet awards the contract to Gijima based on the 90/10 principle, as they are the lowest priced bidder without taking the identified risks into account, it might be difficult for Transnet to terminate the contract without payment of an early termination fee if the court can establish that Transnet knew about the risks associated with Gijima prior to contract award but nevertheless proceeded with the contract award to them"*.
51. Under reputational risk, Group Risk and Compliance indicated that should Transnet award the contract to Gijima despite them having priced only for transition services from CMO to CMO within the stipulated six (6) months transition period, Transnet runs the risk of being challenged by other bidders whose pricing was found to be higher than that of Gijima as it was based of transition from CMO to FMO.
52. Under pricing risk, Group Risk and Compliance indicated that Gijima dropped their pricing by R560 million on their BAFO submission without providing any rational justification for such a significant reduction. Group Risk and Compliance discovered that Gijima's pricing in respect of Help and Service Desk was dropped by 53.8% and in respect of DC services, the reduction was 31.1%.
53. Group Risk and Compliance concluded that the GCSCO needs to consider the risk ratings in reaching a conclusion on the award of this contract as their opinion was that the pricing

schedule provided by Bidder 7 (Gijima), does not make provision for the transition from CMO to FMO and would thus be considered to be procedurally unfair to compare this BAFO to that of Bidder 5 (T-Systems).

54. Group Risk and Compliance further concluded that they support the view of the IT Data Services CFET that the risks raised in the Gartner report are high and should business decide to accept these risks, a risk acceptance process should be followed and accountability established.

HIGH VALUE TENDER (HVT) PROCESS:

55. Transnet Internal Audit (TIA) was part of the IT Data Services RFP evaluation process including risk assessment and negotiations and they issued satisfactory audit reports for HVT Gateway 3 and 4, (See Annexure E). The satisfactory TIA reports on both Gateway 3 and 4 confirms that the evaluation process which was followed by the CFET and the recommendation that was initially made on this project was in line with the Transnet Procurement Procedures Manual (PPM) and the HVT procedures and therefore fully complied to the prescripts of the Preferential Procurement Policy Framework Act, No. 5 of 2000 (PPPFA).

THE CROSS FUNCTIONAL EVALUATION TEAM RECOMMENDATION:

56. Gijima initially did not provide a strategy on mitigating the identified business risks and as a result, the IT Data Services CFET had reservations in selecting Gijima as the preferred bidder for this tender, as the risks identified were material. By selecting Gijima with their BAFO proposition, Transnet ran the risks of not being at full services as requested in the RFP within six (6) months. Furthermore, there was also a risk of the transition project over-running, which meant that the current incumbent may continue to service Transnet for some of the services that were not fully transitioned, which would have been costly for Transnet. Further risks remained regarding cancellation fees in excess of R400 million for the twelve (12) months.
57. The above risk was based on the fact that there was an early termination fee in excess of R400 million in the first ranked bidder (Gijima's) BAFO, that Transnet had to pay if it elected to terminate the contract for convenience. The CFET assumed that this amount will also be payable if Transnet were to terminate the contract due to Gijima's failure to transition services within the stipulated six months period.
58. Initially based on the business risks that were highlighted by the risk assessment performed through Due Diligence, the assessment by Group Risk and Compliance and by the advice provided by iSCM Governance and Group Legal, the Cross Functional Evaluation Team (CFET) recommended that Gijima should not be recommended for award. The risks that were considered by the CFET in making a recommendation for award to the second ranked bidder (T-Systems) based on objective criteria are as follows:

Transition Scope

- The first ranked bidder (Gijima) only committed to transition services from "AS-IS" (CMO) environment within the stipulated period of six (6) months. This was interpreted by Transnet to mean that the requested services will only be transitioned based on the current service levels provided by the incumbent and not the improved service levels that have been requested on the IT Data Services RFP;

Transition Project

- The fact that Gijima's leased Data Centre was still empty i.e. there were no cabinets, shelves and racks and the equipment still needed to be ordered from overseas with unpredictable shipping times, additional time required to build the Data Centre, transfer data and do acceptance testing once completed;

Procurement Risk

- The early termination fee in excess of R400 which Transnet has to pay if it elects to terminate the contract for convenience within the first twelve (12) months.
- The price is not for the services required in the RFP based on their "AS-IS" (CMO) comment, thus a risk of the offer being non-compliant.

Reputational Risk

- Reputational risk should other bidders who tendered on full services (FMO) challenge Transnet for awarding a contract to a bidder who was perceived to have priced on lower service levels based on their BAFO pricing caveat around "CMO" and "CMO+" transitioning.

Pricing Risk

- The risk of "low balling" in order to get their "foot in the door" based on their BAFO pricing reduction of R560m (31%) which they initially did not provide any justification to support. The "CMO to CMO" transition that was mentioned by Gijima in their BAFO submission could have also meant that they have not priced for the full services as requested in the RFP.

59. The CFET's view in this regard was further supported by Group Legal opinion and the Group Risk and Compliance's report which are included as Annexures to this memorandum.

60. The CFET consisted of subject matters experts from various Transnet ODs and functional areas including representatives from; SCM, EIMS, Group Legal, Transnet Internal Audit (TIA) and Gartner Consultants who were the ICT experts responsible for providing technical support and advice on the IT Data Services RFP.

61. The IT Data Services CFET's view was that the risks that were highlighted in the Gartner and Group Risk and Compliance's reports were material enough to justify the use of objective criteria to recommend the second ranked bidder (T-Systems) for contract award as the identified risks had possible cost implications for Transnet and also had a potential to render the entire tender process unjust to the other bidders who submitted their tendered pricing based on transition from current service levels to the service levels required by the RFP.

THE GROUP CHIEF INFORMATION OFFICER'S RECOMMENDATION:

62. The CFET recommendation for award to T-Systems based on objective criteria as a result of the business risks that were highlighted above, was submitted to the Group Chief Information Officer (GCIO) for recommendation to the GCE in December 2016. The GCIO did not support the CFET recommendation as the GCIO's view was that the risks that were highlighted in both the Gartner and the Group Risk and Compliance reports needed to be fully tested as they did not emerge during the RFP evaluation process.
63. The GCIO discussed the matter with the GCE, GCFO, Chief Legal Counsel, Chief Corporate and Regulatory Officer and Chief Audit Executive. The GCE recommended that the GCIO needs to engage the first ranked bidder (Gijima) to clarify and assess the identified business risks and assess their response and to confirm together with Supply Chain Management that the pricing that was submitted by the first ranked bidder (Gijima) on their BAFO submission constituted a valid bid which could be compared with other bidders on a "like for like" basis and was compliant with the Transnet RFP requirements.
64. The Acting GCE on the day granted the Transnet team permission to engage with the first ranked bidder (Gijima) for further clarifications on 19 January 2017.

CLARIFICATIONS SESSION WITH THE FIRST RANKED BIDDER (GIJIMA):

65. Group Strategic Sourcing (GSS) in consultation with the Office of the GCIO and GCSCO drafted the clarification questions that were sent to the first ranked bidder (Gijima) on 19 January 2017. The first ranked bidder (Gijima) was also invited to a clarifications meeting which was held at Transnet offices on 23 January 2017. The clarifications meeting was facilitated by the GCSCO, GCIO and attended by representatives from EIMS (Group ICT), GSS, ISCM Governance, TIA and various representatives from Gijima.
66. During the clarifications session, the first ranked bidder (Gijima) was requested to provide clarity on the questions that were asked by Transnet on its clarifications request letter dated 19 January 2017. The first ranked bidder (Gijima) provided the required clarity which confirmed among others the following:
- The first ranked bidder confirmed their commitment to the six (6) months transition period as requested in the RFP and that they have the required skills and capacity to transition all the required services within the stipulated RFP timelines and service levels;

- That they have the management backing and OEM (IBM) support to receive the equipment in-country within four (4) weeks and complete the Data Centre build and transition within the stipulated period of six (6) months without any delays;
- That they have contingency plans identified to ensure that Transnet continues to receive the required services after the six (6) months transition period should they fail to complete transition period within the stipulated period due to "force majeure" (act of God). These contingency plans has not yet been formalised;
- That their tendered pricing is fixed and firm for the entire duration of the contract (5 years) and includes all required services and service levels in line with the RFP and that the "CMO" terminology used in their BAFO submission, was based on their internal terminology which refers to the requested RFP scope of work and service levels and did not refer to reduced scope of work nor inferior service levels as it might have been interpreted in the Transnet clarification request;
- That the "CMO+" referred to in their BAFO response refers to continuous improvement initiatives that might be required by Transnet or Gijima during the duration of the contract after completion of the transition period;
- That the R560m (31%) pricing reduction in their BAFO was made possible by their improved understanding of the Transnet requirements after due diligence and negotiations, equipment preferential pricing from their sub-contractor (IBM), reduction of their input costs and appointment of experienced employees with Transnet domain knowledge;
- That the early termination fee amounts that were indicated in their BAFO pricing workbook only applies to termination for convenience and Transnet will not be expected to pay these amounts should Gijima's contract be terminated due to their failure to transition all services within the stipulated six (6) months period, as this will be covered under the termination for breach clauses that are on the IT Data Services MSA;
- Gijima also confirmed that their BAFO pricing is profitable for them and their technology partner (IBM) and that they are confident that they will be able to sustain their tendered pricing for the duration of the contract (5 years).

67. The above clarifications meeting was voice recorded by both Transnet and Gijima for minutes' purposes and the Transnet recording will be shared with the TIA team for their records. Gijima was also requested to confirm their responses that were provided at the clarifications meeting in writing for audit purposes. Gijima duly complied with the above request and their written clarifications response letter was submitted to Transnet through the office of the Transnet Acquisition Council (TAC) Secretariat within the agreed due date and time of 24 January 2017 at 15h00.

68. Any residual risks that are remaining will be mitigated through robust contract management and stringent Service Level Agreements which will be negotiated and signed with Gijima. The residual risks and their mitigations are set out in the table below:

No.	Residual Risks	Mitigating actions
1.	<p>Pricing risk:</p> <p>Besides the bidder's assurances and written confirmation that their BAFO pricing will be sustainable for the duration of the contract, there is still a possibility that they might be "low balling" to get the contract and will only realise afterwards that their pricing cannot be sustained for the five (5) year contractual period.</p> <p>Gijima did not satisfactorily respond to the request for rational justification of the material reduction in price. This residual risk is caused by the following factors:</p> <p>Gijima's revised pricing increased by R63,570,579.60 from R1,835,378,865.76 to R1,898,949,445.36. Technical and commercial evaluations subsequently took place and thereafter risk assessment and negotiations were conducted with the shortlisted bidder in Stage 5 of the evaluations process. Besides Transnet's technical requirements not having been amended after the Data Room and clarification sessions, Gijima's pricing was reduced by R560,835,121.32 from R1,898,949,445.36 to R1,338,114,324.04 in their BAFO submission.</p> <p>The justification provided by Gijima for this significant reduction (31%) was that they have been offered preferential pricing by their OEM subcontractor (IBM) on the Data Centre equipment, that they</p>	<p>Contractual clauses to be included in the contract which indicates the measures to be taken for mitigating these risks.</p> <p>Contract Management Plan will be drafted and implemented.</p> <p>Continuous Contract Management and key milestone management.</p>

	introduced some efficiencies in their contact centre operations and that they also gained additional knowledge of Transnet's requirements through their subsequent employment of technical resources with Transnet's domain knowledge.	
2.	<p>Service Delivery Risk</p> <p>Poor service delivery risk exists as the scope of services which Gijima is providing to their current customers, and the references to Transnet, in their RFP submission, are much smaller than the services which are required by Transnet in both size and value.</p>	<p>Continuous (monthly) monitoring of key deliverables.</p> <p>Implement expedited escalation processes to ensure early action on non-delivery including initiation of breach processes.</p> <p>Actively enforce Service Level Agreements and claim penalties due.</p> <p>Dedicated Contract Managers in each Operating Division and at Group to enforce service delivery.</p>
3.	<p>Critical Skills Risk</p> <p>Gijima's response to Transnet was heavily reliant on technical resources who have Transnet's domain knowledge. These resources retain the specialised knowledge and skills that Gijima needs to entrench in their own organisation and staff. This risk is a standard risk to suppliers providing services at a size greater and more complex than they have provided before based on the information that was provided on their bid.</p>	<p>Contract clauses to be included to request Gijima to provide Transnet with the Skills Transfer Plan and Critical Skills Retention Plan.</p> <p>Active monitoring of these contractual clauses.</p> <p>Gijima will be requested to advise if there are any Restraint of Trade issues between its employees who are providing critical services and assure Transnet that the service delivery would not be affected if these risks regarding restraints and critical skills arise.</p>
4.	<p>Early Termination Risk</p> <p>In the event of Transnet cancelling the contract as a result of Gijima's breach, Gijima claims their "sunk costs" for example, hardware and software costs of Data Centre and any other set up costs.</p>	<p>Contract to include express undertakings from Gijima that any event of cancellation by Transnet for breach, Gijima waives any claim for its start-up costs and costs incurred in trying to meet the deliverable under the contract.</p>

69. In addition, Gijima identified some internal risk management controls such as establishing its own Project Committees, Board Risk Committees, Project Management tools and Executive Management support during the clarification session. The obligation to maintain these controls will be included in the terms of the contract. The effectiveness of these controls will only be realised once the contract is underway.

REVISED RECOMMENDATION FOR CONTRACT AWARD:

70. Based on the above clarifications meeting and after having perused the clarifications response letter from the first ranked bidder (Gijima), the Group Chief Information Officer (GCIO) indicated that she is satisfied that all the previously identified risks have been adequately mitigated and that the recommendation for award should be made to the first ranked bidder (Gijima) in line with the 90/10 principle (See Annexure G).
71. Supply Chain Management perused Gijima's clarification response letter and did not find any grounds for non-responsiveness based on the first ranked bidder (Gijima) not having priced for the full scope of services as required in the RFP.
72. Group Risk and Compliance also reviewed Gijima's clarifications request letter and their response letter and are satisfied that the risks that were highlighted in their Risk Report have been adequately addressed. The Business Owner has followed the risk acceptance process and will ensure that these risks are mitigated through contract management processes and procedures.
73. TIA was part of the clarifications process and has been provided with all the relevant documentation to issue a revised High Value Tender (HVT) process Gateway 4 report in respect of the latest developments. TIA indicated that they are satisfied with the clarifications process that was followed and the revised recommendation for award and will provide a satisfactory HVT Gateway 4 report as soon as they have received all their internal approvals.
74. It is against this background and based on the GCIO's satisfaction as requested by the GCE that the risks has been adequately mitigated and the recommendation that the first ranked bidder (Gijima) is being recommended for award of contract as the preferred bidder, based on the PPM principle of 90/10.
75. The Tender Evaluation and Recommendation Report (TEAR) (See Annexure H), provides detailed information on the tender evaluation process that was followed from stage one (1) up to stage five (5).
76. Table 4 below indicates project timelines for the remaining activities to complete this procurement event for the acquisition of IT Data Services RFP:

Item	Activity	Planned Completion Date
1	Stage 1 (Administrative Evaluations and Moderation)	Finalised
2	Stage 2 (Substantive Evaluations and Moderations)	Finalised
3	Stage 3 (Technical Evaluations and Moderations)	Finalised

4	Stage 4 (Commercial Evaluations and Moderations)	Finalised
	-Data Rooms	Finalised
	-Clarifying assumptions for revised pricing workbook	Finalised
5	Stage 5 (Due Diligence and Post Tender Negotiations)	Finalised
6	-Bidders submit Best and Final Offers (BAFO)	Finalised
7	Submit final recommendation for contract award to the Acquisitions and Disposals Committee (ADC) for recommendation to the Board for approval	January 2017
8	Stage 6 Issue LOI to the preferred bidder	Issue LOI upon Board's approval
9	Discuss Implementation Plan with the preferred bidder	To be negotiated after issuing LOI
10	Negotiate and sign Master Services Agreement (MSA) during the transition period	To be negotiated after issuing LOI

Table 4: Project Timelines

SUPPLIER DEVELOPMENT:

77. The recommended bidder (Gijima) has committed to spend 46% of the IT Data Services contract value on Supplier Development (SD) initiatives. The second ranked bidder (T-Systems) SD commitment is 57.31%. The requested minimum SD commitment on the IT Data Services RFP was 40%.

APPROVALS AND DELEGATION:

78. As per the Board resolution passed on 27 August 2015, the GCE was delegated with the authority to approve the RFP for issue, negotiate and sign-off all the relevant documentation in line with the approved sourcing strategy excluding contract award. The recommendation for contract award on the IT Data Services RFP is accordingly submitted to the GCE to recommend to the Acquisitions and Disposals Committee (ADC) for recommendation to the Board for approval in line with the Board resolution dated 27 August 2015. The GCE has already provided the following approvals:

- (a) Approval to issue the IT Data Services Request for Proposal (RFP) for a period of five (5) years with an option to extend for a further two (2) years to the open market;
- (b) Approval to conduct due diligence and negotiations with the top two ranked bidders (T-Systems and Ubuntu Technologies and subsequently between T-Systems and Gijima).
- (c) Approval to extend the RFP validity period by a further one hundred and twenty (120) business days.
- (d) Approval for addition of the third ranked bidder for due diligence and negotiations after withdrawal of the second ranked bidder from the bidding process.
- (e) Approval to conduct post tender communication and clarifications with the first ranked bidder (Gijima).

FINANCIAL IMPLICATIONS:

79. The final tendered pricing for the recommended bidder (Gijima) over a period of five (5) years is R1, 338,114,324.04.
80. The estimated savings over a period of five (5) years on this contract based on the current five-year contract spend of R2,5 billion is R1, 161,885,675.96 which is equivalent to a monthly actual saving of R19,364,761.27.
81. The CFET will negotiate further cost savings and SD obligations with the preferred bidder during contract negotiations, after issuing of the Letter of Intent (LOI) and before signature of the contract.

BUDGET IMPLICATIONS:

82. All Transnet Operating Divisions (ODs) have budgets available for their respective IT Data Services requirements.

RECOMMENDATION:

83. It is recommended that the Group Chief Executive (GCE):
- a) Recommends the award of contract to Gijima Holdings (Pty) Ltd to the Acquisitions and Disposals Committee (ADC) for recommendation to the Transnet Board of Directors (Board) for approval; and
 - b) Recommend that the Acquisitions and Disposals Committee (ADC) recommends to the Board to grant authority to the GCE to sign the Letter of Intent (LOI) to the preferred bidder (Gijima), Letters of Regret (LOR) to the unsuccessful bidders, the contract and all relevant documentation including any subsequent contract amendments.

COMPILED BY:

 Fanie van der Walt
 Executive Manager: Group Strategic Sourcing
 Date:

RECOMMENDED / NOT RECOMMENDED

 Edward Thomas
 Group Chief Supply Chain Officer
 Date:

RECOMMENDED / NOT RECOMMENDED

 Ndiphiwe Silinga
 Group Executive: Legal Services
 Date:

RECOMMENDED / NOT RECOMMENDED

 Siyabonga Gama
 Group Chief Executive
 Date:

RECOMMENDED / NOT RECOMMENDED

 Thulani Mtshwene
 Acting Executive Manager: Governance
 Date:

RECOMMENDED / NOT RECOMMENDED

 Makano Mosidi
 Group Chief Information Officer
 Date:

RECOMMENDED / NOT RECOMMENDED

 Garry Pita
 Group Chief Financial Officer
 Date:

Annexure MMAM08



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TRANSNET



MEMORANDUM

www.transnet.net

To: Siyabonga Gama, Group Chief Executive (GCE)

From: Garry Pita, Group Chief Financial Officer (GCFO)

Subject: RFP No. GSM/15/08/1310 for the Provision of IT Data Services – Request for the GCE to recommend award of contract on the IT Data Services RFP to Gijima Holdings (Pty) Ltd to the Acquisitions and Disposals Committee (ADC) for recommendation to the Board of Directors for approval

PURPOSE OF SUBMISSION:

1. The purpose of this submission is to request the Group Chief Executive (GCE) to:
 - a) Recommend the award of a contract to Gijima Holdings (Pty) Ltd to the Acquisitions and Disposals Committee (ADC) for recommendation to the Transnet Board of Directors (Board) for approval; and
 - b) Recommend that the Acquisitions and Disposals Committee (ADC) recommends to the Board to grant authority to the GCE to sign the Letter of Intent (LOI) to the preferred bidder (Gijima), Letters of Regret (LOR) to the unsuccessful bidders, the contract and all relevant documentation including any subsequent contract amendments.

BACKGROUND:

2. The current five (5) year T-Systems contract for Information Technology (IT) Outsourcing was established through a sale agreement of Arivia.com to T-Systems in 2009. The contract was extended for two (2) years and it was due to expire on 31 December 2016. Prior to its expiry, the Board recommended a nine (9) months (month to month) extension on the T-Systems Master Services Agreement (MSA) and the National Treasury (NT) approved a contract extension in line with the Supply Chain Management (SCM) Instruction Note 3 of 2016/2017 (Prevention and combating the abuse of the SCM system). The revised T-Systems contract expiry date is 30 September 2017.
3. All Transnet Operating Divisions (ODs) make use of this contract for their IT Data Services requirements and the contract is managed at Group level by Group Information and Communications Technology (GICT).


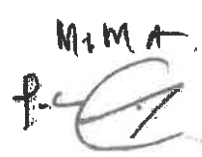
Handwritten signatures and initials at the bottom of the page, including 'MMA' and other illegible marks.

4. The IT Data Services sourcing strategy and Request for Proposal (RFP) were prepared by the Cross Functional Sourcing Team (CFST) that consisted of technical representatives from all ODs. This sourcing strategy was approved by the Board on 27 August 2015.

DISCUSSION:

5. The Board sub-delegated their authority to the Group Chief Executive (GCE) to approve the RFP, issuing of the RFP to the market, conducting due diligence, post tender negotiations and signing all relevant documentation excluding contract award which has to be tabled to Transnet's Board for approval.
6. The GCE approved the issuing of the RFP on 18 November 2015. The RFP was advertised on the National Treasury e-tender portal, as per the ISCM Instruction Note 1 of 2015/2016 (Advertisement of bids and the Publication of awards on the e-tender publication portal) at no cost to the bidders. Transnet issued the IT Data Services RFP to the market from the 23rd of November 2015 and the tender closed on 26 January 2016.
7. A compulsory briefing session was held on 09 December 2015 and fifty (50) bidders attended the briefing session. Only nine (9) bidders responded to the invitation to submit responses. The IT Data Services Cross Functional Evaluation Team (CFET) started with the evaluations on 28 January 2016 and completed the evaluations on 09 March 2016.
8. The received bids were evaluated against specific and predetermined criteria as set out on the RFP. Initially five (5) bidders passed stages 1 to 4, but after Transnet Internal Audit's (TIA) High Value Tender (HVT) team conducted a High Value Tender Gateway 3 review, it was discovered that two bidders, Bidder 2 (WIPRO Technologies South Africa) and Bidder 3 (Mobile Telecommunication Networks (MTN)) were erroneously disqualified at stage 2 (Substantive responsiveness) on the technical prequalification criteria. The HVT team recommended that these two bidders advance to the next stage (Stage 3). The substantive re-evaluation of the above two bidders, allowed them to progress to stage 3 (technical evaluation stage). The detailed information about the outcome of each stage is available on the Tender Evaluation and Recommendation Report (TEAR) which is available on file.
9. Subsequent to the second technical evaluations for bidders 2 and 3, a total of seven (7) bidders passed stages 1 to 3 and reached stage 4. A total of seven (7) bidders advanced to stage 4 (commercial and preference evaluation stage) and they were:
 - Bidder 1: Ubuntu Technologies
 - Bidder 2: Wipro Technologies South Africa
 - Bidder 3: MTN
 - Bidder 4: EOH Mthombo
 - Bidder 5: T-Systems South Africa
 - Bidder 6: Business Connexion (BCX)
 - Bidder 7: Gijima Holdings



10. Table 1 Indicates the number of bidders that reached and passed each of the evaluation stages.

Table 1: Evaluation Stages

Evaluations										
Stage 1		Stage 2		Stage 3		Stage 4		Stage 5		Stage 6
Administrative Responsiveness		Substantive Responsiveness		Technical Evaluation		Commercial Evaluation		Risk Assessment performed through Due Diligence incl. Post Tender Negotiations		Contract award
Bidders at this stage	Bidders that passed stage	Bidders at this stage	Bidders that passed stage	Bidders at this stage	Bidders that passed stage	Bidders at this stage	Bidders shortlisted	Bidders at this stage	Bidders that passed stage	
9	8	8	7	7	7	7	2	2	1	TBA

11. The Administrative responsiveness stage (Stage 1), evaluated the bids in terms of:

- Submission within the stipulated date and time; and
- Submission of complete and valid returnable documents.

12. The Substantive responsiveness stage (Stage 2), evaluated whether bidders complied with the technical and Supplier Development (SD) prequalification criteria. At this stage bidders were also evaluated on the presence of a priced offer and their commitment to a successful transition from the current service provider to the new service provider in line with the RFP Service Level Agreements (SLAs). The mandatory transition period is a maximum period of six (6) months.

13. The technical evaluation stage (Stage 3) had a threshold of 70%, as per the criteria in table 2 below. All seven (7) bidders passed the technical threshold.

Table 2: Technical Evaluation

Technical Criteria	% Weighting
Service Provider Assessment	20%
Technical Service Towers	70%
Service Credits	10%
Total Weighting:	100%
Minimum qualifying score required:	70%

14. During the evaluation of the commercial aspects of the bids (Stage 4), the CFET realised that bidders had made numerous assumptions on their initial bids regarding Transnet's requirements. These assumptions on the bidders' pricing workbook made it difficult for

the CFET to evaluate bids on a comparative basis. The bidders were then invited to the IT Data Room, where they had a view of Transnet's IT landscape, to get a better understanding of Transnet's environment. Subsequent to the visit to the Data Room, all bidders were invited to a "closing the gap session", which was a session to clear all assumptions, in order to enable bidders to provide Transnet with a revised pricing workbook. The bidders submitted their revised prices on 06 June 2016, after which the second commercial evaluation was conducted.

15. Subsequent to the commercial evaluation on 15 July 2016, the GCE approved that negotiations and due diligence exercises be conducted with the top two (2) ranked bidders [T-Systems (bidder 5) and Ubuntu Technologies (bidder 7)]. These two bidders scored the highest overall points against their counterparts on price and preference.
 - The first (1st) ranked bidder (T-Systems) achieved a total score of 99% and the second (2nd) ranked bidder (Ubuntu Technologies) achieved a total score of 86.2%.
 - There was a price variance of 12.8% between the first and second ranked bidder. Whilst, the price variance between the first and third ranked bidder was 19.79%.
16. Due to the fact that the RFP validity period was close to expiry, Transnet advised all nine (9) IT Data Services bidders of its intention to extend the validity period by a further 120 business days. The tender validity period was extended with an additional 120 (one hundred and twenty) business days after approval was sought and granted from the GCE on 15 July 2016. This meant that the tender offers were valid until 11 January 2017. In December 2016, a further ninety (90) business days' validity period extension was approved by the GCE. The revised IT Data Services RFP validity period expiry date is 24 May 2017. The bidders confirmed in writing that their prices will remain valid for the duration of the extended validity period.
17. On 19 July 2016, Transnet communicated with T-Systems and Ubuntu Technologies that post tender negotiations and due-diligence exercises needs to be undertaken between July and August 2016. Subsequent to the receipt of the above notification from Transnet, the second (2nd) ranked bidder (Ubuntu Technologies) sent to Transnet their formal letter withdrawing from the bidding process, citing the reason that their strategic partner (Hitachi Data Systems) had indicated that it is not able to keep its prices firm during the extended validity period of 120 business days. Ubuntu Technologies could have opted to amend their prices, as per paragraph 6.2 of the General Bid Conditions (GBC), which allows bidders to amend their prices in line with changes in the market. Ubuntu Technologies instead opted to withdraw from the bidding process without exercising the option to amend their tendered prices. The GBC were issued together with the RFP document (Appendix I of the RFP) and Ubuntu Technologies had signed at the bottom of each page of the RFP document, to indicate their acquaintance with the contents of the GBC.
18. The risk assessment performed through due diligence and post tender negotiations continued as scheduled with T-Systems on 25 and 27 July 2016 respectively. The third (3rd) ranked bidder (Gijima) was added on the shortlist, to replace the second ranked

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bidder (Ubuntu Technologies) in order to maintain competitiveness in the bidding process. The GCE approved the addition of the third ranked bidder for risk assessment and negotiations on 11 August 2016.

19. The risk assessment and post tender negotiations on the third ranked bidder were conducted on 11 and 12 August 2016.
20. The risk assessment on both bidders comprised of bidder reference checks, site visits and interviews with bidders' key personnel. In the RFP document on paragraph 3 of section 3, bidders were requested to submit details of three (3) client references with their bid submissions, where they offered similar service towers comparable in size and complexity to Transnet. The CFET contacted two (2) of the three (3) references, for both bidders. The second part of the risk assessment included site visits to the offices of the bidders and their Tier 3 Data Centres (DC). The CFET visited bidders' premises for an assessment of their Data and Operations Centres. The site visits also included "face to face" interviews with the bidders' Relationship and Senior Technical Managers which were conducted at the bidder's offices. A risk assessment was also conducted to validate the two (2) shortlisted bidders' capacity and capabilities.
21. After the conclusion of the risk assessment and post tender negotiations with T-Systems and Gijima, the bidders were requested to submit their Best and Final Offers (BAFOs) on 17 August 2016. Gijima (bidder 7) provided the lowest priced bid in the BAFO stage, scoring a final score of 99% for price and preference. T-Systems (bidder 5) scored a final score of 85.07%.
22. The bidders were also requested to submit their high level transition plans and their final Master Services Agreement (MSA) mark-ups together with their BAFOs. The MSA mark-ups were requested in preparation for the final contract negotiations with the preferred bidder and the high level transition plans were requested to get a better understanding of how the bidders will approach their respective transition periods.
23. A report was compiled by the CFET, which gave a comprehensive overview of the risk assessment process. The due diligence report gave an overall score of both bidders and the second part of the report is a risk assessment report (See Annexure A). The first ranked bidder (Gijima) achieved an overall score of 71.26% and the second ranked bidder (T-Systems) achieved an overall score of 71.59%, without factoring in any identified risks. The due diligence report scores were based solely on the site observation and client reference checks. The risk report delved deeper into the business, technical and financial risks that were identified by the CFET on both bidders and the overall impact on Transnet.
24. The bidders were informed that a maximum period of six (6) months for the transition period still applied and it was also emphasized during the commercial negotiations that after the six (6) months transition period, Transnet requires to be operating on the full services in line with the RFP in order for operations to be stable with no major ICT transformational activities for at least eighteen (18) months.

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25. The Full Mode of Operation (FMO) is what the bidders were required to price for in their bids and is based on the Service Level Agreements (SLAs) that were issued with the IT Data Services RFP. Any pricing that is not based on FMO pricing cannot be objectively compared with other bidders' pricing as it is based on lesser service levels.
26. In the initial submission Gijima had accepted the transition period condition, but on their high level transition plan that was submitted with their BAFO on 17 August 2016, it stated the following: "*Gijima understands the complexity of a transition project. It is therefore imperative that we transition the AS-IS (CMO) environment during the proposed 6 months. Enhancements and improvements (CMO+) will be done after the transition and stabilisation period*". This was assumed to mean that Gijima will continue providing Transnet with the Current Mode of Operation (CMO) services as currently delivered by the incumbent after the six (6) months transition period. The requirement was for Transnet to operate at full services as per the RFP requirements after the six (6) months transition period has been finalised. The above statement by Gijima, projected probable significant business and financial risks to Transnet.

RISK ASSESSMENT:

27. A due diligence exercise was conducted as a mechanism to perform the required risk assessment before making a recommendation on the preferred bidder. This was done to identify all business risks that could have potential adverse consequences on Transnet's operations after the award of the contract. The risks which were highlighted by the CFET on the due diligence report can be summarized as follows.
28. The risk assessment was performed by Gartner and the technical members of the CFET through the usage of a risk assessment template, site visits and interviews with the shortlisted bidders' key personnel. The risk assessment template was compiled by Gartner. Gartner is the world's leading information technology research and advisory company. Gartner Consultants who compiled the risk assessment template were contracted by Transnet to provide technical support and advice on the IT Data Services project.
29. The key areas that were assessed during the risk assessment of the two (2) shortlisted bidders were amongst other things the following:
- Scope and contract;
 - Transition Scope;
 - Transition Project;
 - Quality and Performance; and
 - Relationship Management.
30. The high level summary of the risk assessment conducted on both shortlisted bidders are as follows:

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Bidder 5 (T-Systems)

- The bidder intends to conduct a considerable infrastructure equipment refresh during the six (6) months transition period in order to keep the environment modernised. This poses a minimal risk as it will be undertaken as part of business as usual.
- Transnet and the bidder need to commit the required number of skilled resources in order to be able to manage the transition period within the stipulated timeframe. Failure to commit the required number of adequately skilled resources by both parties, will result in delays in finalising the transition period.
- Apart from the above two risks, no major risks were identified on this bidder.

Bidder 7 (Gijima)

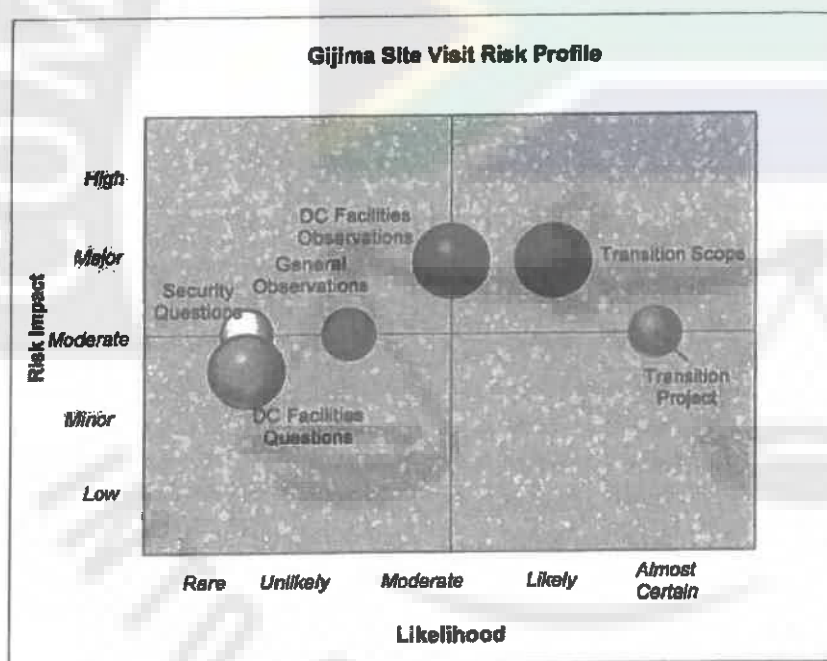
- There is a risk in that the Vodacom Data Centre (DC) that Gijima will be using to host Transnet as it still needs to be built i.e. cages, power racks and servers, *etcetera*. There is still outstanding equipment which still needs to be procured from the overseas Original Equipment Manufacturer (OEM). The standard DC equipment shipping time is eight to twelve weeks excluding the customs inspection and clearance timelines. Once delivered to the DC, the equipment needs approximately two (2) months to be built before data transfer to the new DC can commence. This might result in Gijima not being able to complete transition within the maximum stipulated period of six (6) months which poses significant operational risks for Transnet.
 - The CFST team identified a security risk in that Gijima does not have a dedicated Security Operations Centre (SOC) but this risk was considered marginal as they do have qualified security personnel who are operating from their Customer Contact Centre.
 - The CFST team identified a major risk with regards to the transition from the current service provider as Gijima was understood to have only committed to CMO migration within the first six (6) months transition period, instead of the required CMO to FMO. Transnet's experience with this is that this requires focused projects during Business as Usual (BAU) that require resources from both parties and it is costly. Moreover, Transnet would be paying for FMO services scope prior to reaching FMO. This change in transition commitment would have resulted in a fundamental change in the RFP submission of Gijima.
 - Transnet and the bidder need to commit the required number of skilled resources in order to be able to execute the transition period within the stipulated timeframe. Failure to commit the required number of adequately skilled resources by both parties will result in delays in finalising the transition period.
31. Gartner and the CFET did a detailed analysis of the above identified risks by conducting a detailed analysis of the type of risk, risk impact rating and likelihood rating. The

assessment provides a likelihood rating which ranges from one (1) to five (5) as follows; "Rare", "Unlikely", "Moderate", "Likely" and "Almost Certain".

32. Based on the outcome of the site visit risk assessment that was conducted on the top two (2) ranked bidders using the above-mentioned ratings, the first ranked bidder (Gijima) was found to have two (2) items which fell between "rare" and "unlikely", one (1) between "unlikely" and "moderate", one (1) "moderate", one (1) "likely" and one (1) "almost certain". The items which fell between "likely" and "almost certain" were transition scope and transition project respectively. These items posed a material risk to Transnet as failure to successfully transition services from CMO to FMO within the stipulated period of six (6) months will result in both operational and financial risk to Transnet. The impact of these two items was ranked between "moderate" to "major" and failure to implement these two items will have a material impact to Transnet. The consolidation of the various risks would have placed an unacceptable risk on Transnet (Top right quadrant).

Table 3: Site Visit Risk Assessment

First ranked bidder (Gijima) site visit risk profile

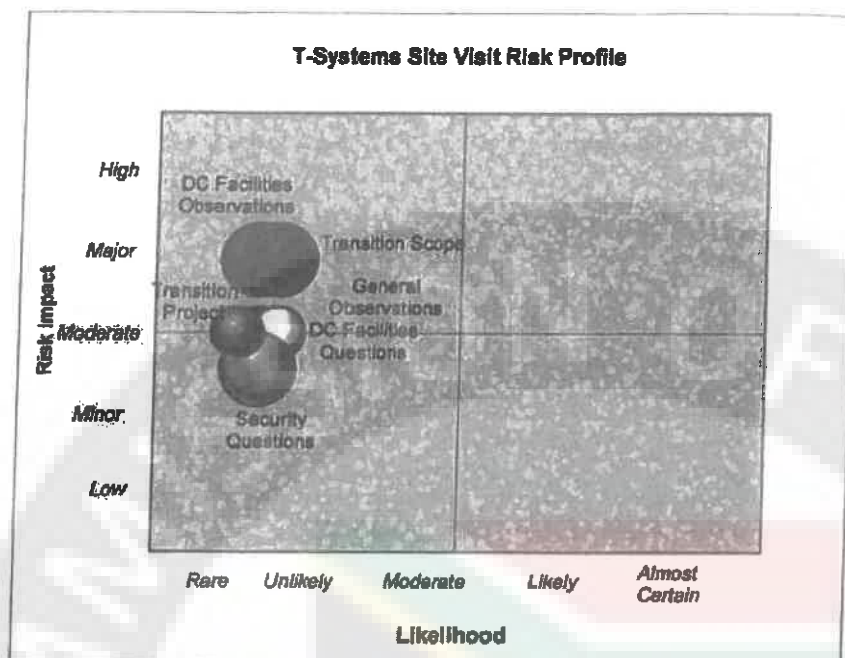


33. The second ranked bidder (T-Systems) was found to have all six (6) items between "rare" and "unlikely" which translated into minimal risk to Transnet. Below is a schematic representation of the site visit risk profile that was extracted from the Gartner report (Table 6):






Second ranked bidder (T-Systems) site visit risk profile



34. Based on the risks that were identified on Bidder 7 (Gijima), Group Strategic Sourcing sent a request for clarification to Gijima on 05 September 2016, in order to give them an opportunity to advise Transnet on how they will address the identified risks. In the letter, clarity was requested on the IT Data Centre Facilities, Business Requirement-Transition Scope, Scope and Contract as well as Transition project and Contract Delivery. The letter was very explicit on the points that needed clarity from the bidder.
35. The bidder (Gijima) responded back to Transnet in writing on 07 September 2016. Gijima's response did not adequately address the risks that were addressed and as a result, the CFET requested that Group Legal provide counsel on the way forward.

ISCM GOVERNANCE OPINION:

36. Integrated Supply Chain Management (ISCM) Governance's counsel was also sought on the requirements of using objective criteria to recommend the second ranked bidder (T-Systems) as the preferred bidder, due to the major risks that were identified on the first ranked bidder (Gijima).
37. The use of objective criteria was covered in the IT Data Services RFP as a standard clause, in Section 1, at Paragraph 10 (Disclaimers) of the RFP.
38. The recommendation from Governance was for Transnet to send a request for clarification to Gijima, in order for them to make representations on how they intend to manage the risks that were identified by the CFET, in the event, where Gijima fails to properly address the identified risks, the CFET may award the tender to the second ranked bidder, only where it is lawful, reasonable and procedurally fair to do so. Furthermore the risks that

were identified must be material in order to justify the use of objective criteria (See Annexure B).

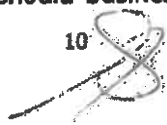

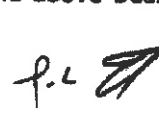

39. The conditions stated by Governance, satisfied the need to apply objective criteria in the award of the contract to T-Systems as Gijima had already been provided with an opportunity to make representations on the identified risks and they failed to adequately address the identified risks.
40. This was further supported by Group Legal's opinion regarding the identified business risks. Group Legal's opinion was that the use of objective criteria by the CFST to recommend award to the second ranked bidder was allowed as the process that was followed in arriving at the recommendation was lawful, procedurally fair and administratively fair.

GROUP LEGAL OPINION:

41. Group Legal reviewed the request for clarification that was sent to the first ranked bidder (Gijima) dated 05 September 2016 and their response letter dated 07 September 2016.
42. Subsequent to reviewing the above documents Group Legal advised the IT Data Services CFST that the correspondence that was sent to Gijima was very clear on the points that were identified as risks, further reiterating the requirement of six (6) months transition from CMO to FMO.
43. Group Legal further indicated that Gijima was given an opportunity to indicate how they will mitigate the identified risks and their response was still vague, as they did not explicitly indicate how they will transition to FMO after the six (6) months transition, as well as provide a plan on how they will mitigate the risk of procuring and installing equipment in their DC, as well as transferring the data from the current Incumbent's DC to their Data Centre within the six (6) months transition period.
44. Group Legal indicated to the IT Data Services CFET that it was justifiable to select the second ranked bidder based on the material risks which were identified on the first ranked bidder and that this decision can be legally defended in the court of law as "Transnet acted in a manner that was lawful, reasonable and procedurally fair" (See Annexure C).

GROUP RISK AND COMPLIANCE OPINION:

45. The Group Chief Supply Chain Officer (GCSCO) further requested the Transnet Group Risk and Compliance department to conduct an independent risk assessment based on the residual risks that existed on the IT Data Services project. This was due to the fact that the recommendation for award that was done by the CFET was based on objective criteria as a result of the business risks that were identified on bidder 7 (Gijima) who was the first ranked bidder.
46. "Group Risk and Compliance supports the view by the IT Data Services CFST that the risks raised in the report are high. Should business decide to accept the above business

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risks, they will be required to provide the necessary mitigating actions and accept the accountability thereof should such risks materialise. Consequences of materialisation of the risk could unnecessary increase the cost of doing business. The overall risk rating of Level II would require a formal risk acceptance by business should the contract be awarded to Gijima", (See Annexure D).

47. Group Risk and Compliance Identified five (5) risks which were adequately discussed in their Risk Report namely:
 - Transition Scope;
 - Transition Project;
 - Procurement Risk;
 - Reputational Risk; and
 - Pricing Risk.
48. Under the transition scope and transition project, Group Risk and Compliance highlighted similar risks that were highlighted in the Gartner report around the first ranked bidder's (Gijima) failure to commit to transition services from CMO to FMO within a stipulated period of six (6) months.
49. Under procurement risks, Group Risk and Compliance indicated that the fact that Transnet has to pay an early termination fee of R494 million should it elect to terminate the contract within the first six (6) months due to the first ranked bidder's (Gijima) inability to transition all services within a period of (6) months, posed a significant risk to Transnet should Transnet decide to proceed with the award while it was fully aware of the risks identified on the first ranked bidder as the courts would find that Transnet was aware of the risks but nevertheless went ahead with the contract award to the first ranked bidder (Gijima). It was later clarified by Gijima that the termination fee only applied where Transnet would terminate the contract for convenience.
50. Group Risk and Compliance indicated that *"If Transnet awards the contract to Gijima based on the 90/10 principle, as they are the lowest priced bidder without taking the identified risks into account, it might be difficult for Transnet to terminate the contract without payment of an early termination fee if the court can establish that Transnet knew about the risks associated with Gijima prior to contract award but nevertheless proceeded with the contract award to them"*.
51. Under reputational risk, Group Risk and Compliance indicated that should Transnet award the contract to Gijima despite them having priced only for transition services from CMO to CMO within the stipulated six (6) months transition period, Transnet runs the risk of being challenged by other bidders whose pricing was found to be higher than that of Gijima as it was based of transition from CMO to FMO.
52. Under-pricing risk, Group Risk and Compliance indicated that Gijima dropped their pricing by R560 million on their BAFO submission without providing any rational justification for such a significant reduction. Group Risk and Compliance discovered that Gijima's pricing in respect of Help and Service Desk was dropped by 53.8% and in respect of DC services, the reduction was 31.1%.

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53. Group Risk and Compliance concluded that the GCSCO needs to consider the risk ratings in reaching a conclusion on the award of this contract as their opinion was that the pricing schedule provided by Bidder 7 (Gijima), does not make provision for the transition from CMO to FMO and would thus be considered to be procedurally unfair to compare this BAFO to that of Bidder 5 (T-Systems).
54. Group Risk and Compliance further concluded that they support the view of the IT Data Services CFET that the risks raised in the Gartner report are high and should business decide to accept these risks, a risk acceptance process should be followed and accountability established.

HIGH VALUE TENDER (HVT) PROCESS:

55. Transnet Internal Audit (TIA) was part of the IT Data Services RFP evaluation process including risk assessment and negotiations and they issued satisfactory audit reports for HVT Gateway 3 and 4, (See Annexure E). The satisfactory TIA reports on both Gateway 3 and 4 confirms that the evaluation process which was followed by the CFET and the recommendation that was initially made on this project was in line with the Transnet Procurement Procedures Manual (PPM) and the HVT procedures and therefore fully complied to the prescripts of the Preferential Procurement Policy Framework Act, No. 5 of 2000 (PPPFA).

THE CROSS FUNCTIONAL EVALUATION TEAM RECOMMENDATION:

56. Gijima initially did not provide a strategy on mitigating the identified business risks and as a result, the IT Data Services CFET had reservations in selecting Gijima as the preferred bidder for this tender, as the risks identified were material. By selecting Gijima with their BAFO proposition, Transnet ran the risks of not being at full services as requested in the RFP within six (6) months. Furthermore, there was also a risk of the transition project over-running, which meant that the current incumbent may continue to service Transnet for some of the services that were not fully transitioned, which would have been costly for Transnet. Further risks remained regarding cancellation fees in excess of R400 million for the twelve (12) months.
57. The above risk was based on the fact that there was an early termination fee in excess of R400 million in the first ranked bidder (Gijima's) BAFO, that Transnet had to pay if it elected to terminate the contract for convenience. The CFET assumed that this amount will also be payable if Transnet were to terminate the contract due to Gijima's failure to transition services within the stipulated six months period.
58. Initially based on the business risks that were highlighted by the risk assessment performed through Due Diligence, the assessment by Group Risk and Compliance and by the advice provided by ISCM Governance and Group Legal, the CFET recommended that Gijima not be recommended for award. The risks that were considered by the CFET in making a recommendation for award to the second ranked bidder (T-Systems) based on objective criteria are as follows:

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Transition Scope

- The first ranked bidder (Gijima) only committed to transition services from "AS-IS" (CMO) environment within the stipulated period of six (6) months. This was interpreted by Transnet to mean that the requested services will only be transitioned based on the current service levels provided by the Incumbent and not the improved service levels that have been requested on the IT Data Services RFP;

Transition Project

- The fact that Gijima's leased Data Centre was still empty i.e. there were no cabinets, shelves and racks and the equipment still needed to be ordered from overseas with unpredictable shipping times, additional time required to build the Data Centre, transfer data and do acceptance testing once completed;

Procurement Risk

- The early termination fee in excess of R400 which Transnet has to pay if it elects to terminate the contract for convenience within the first twelve (12) months.
- The price is not for the services required in the RFP based on their "AS-IS" (CMO) comment, thus a risk of the offer being non-compliant.

Reputational Risk


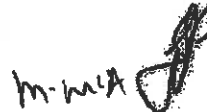


- Reputational risk should other bidders who tendered on full services (FMO) challenge Transnet for awarding a contract to a bidder who was perceived to have priced on lower service levels based on their BAFO pricing caveat around "CMO" and "CMO+" transitioning.

Pricing Risk

- The risk of "low balling" in order to get their "foot in the door" based on their BAFO pricing reduction of R560m (31%) which they initially did not provide any justification to support. The "CMO to CMO" transition that was mentioned by Gijima in their BAFO submission could have also meant that they have not priced for the full services as requested in the RFP.

59. The CFET's view in this regard was further supported by Group Legal's opinion and the Group Risk and Compliance's report which are included as Annexures to this memorandum.
60. The CFET consisted of subject matters experts from various Transnet ODs and functional areas including representatives from; SCM, EIMS, Group Legal, Transnet Internal Audit (TIA) and Gartner Consultants who were the ICT experts responsible for providing technical support and advice on the IT Data Services RFP.

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61. The IT Data Services CFET's view was that the risks that were highlighted in the Gartner and Group Risk and Compliance's reports were material enough to justify the use of objective criteria to recommend the second ranked bidder (T-Systems) for contract award as the identified risks had possible cost implications for Transnet and also had a potential to render the entire tender process unjust to the other bidders who submitted their tendered pricing based on transition from current service levels to the service levels required by the RFP.

THE GROUP CHIEF INFORMATION OFFICER'S RECOMMENDATION:

62. The CFET recommendation for award to T-Systems based on objective criteria as a result of the business risks that were highlighted above, was submitted to the Group Chief Information Officer (GCIO) for recommendation to the GCE in December 2016. The GCIO did not support the CFET recommendation as the GCIO's view was that the risks that were highlighted in both the Gartner and the Group Risk and Compliance reports needed to be fully tested as they did not emerge during the RFP evaluation process.
63. The GCIO discussed the matter with the GCE, GCFO, Chief Legal Counsel, Chief Corporate and Regulatory Officer and Chief Audit Executive. The GCE recommended that the GCIO needs to engage the first ranked bidder (Gijima) to clarify and assess the identified business risks and assess their response and to confirm together with Supply Chain Management that the pricing that was submitted by the first ranked bidder (Gijima) on their BAFO submission constituted a valid bid which could be compared with other bidders on a "like for like" basis and was compliant with the Transnet RFP requirements.
64. The Acting GCE on the day granted the Transnet team permission to engage with the first ranked bidder (Gijima) for further clarifications on 19 January 2017.

CLARIFICATIONS SESSION WITH THE FIRST RANKED BIDDER (GIJIMA):

65. Group Strategic Sourcing (GSS) in consultation with the Office of the GCIO and GCSCO drafted the clarification questions that were sent to the first ranked bidder (Gijima) on 19 January 2017. The first ranked bidder (Gijima) was also invited to a clarifications meeting which was held at Transnet offices on 23 January 2017. The clarifications meeting was facilitated by the GCSCO, GCIO and attended by representatives from EIMS (Group ICT), GSS, ISCM Governance, TIA and various representatives from Gijima.
66. During the clarifications session, the first ranked bidder (Gijima) was requested to provide clarity on the questions that were asked by Transnet on its clarifications request letter dated 19 January 2017. The first ranked bidder (Gijima) provided the required clarity which confirmed among others the following:
- The first ranked bidder confirmed their commitment to the six (6) months transition period as requested in the RFP and that they have the required skills and capacity to transition all the required services within the stipulated RFP timelines and service levels;

- That they have the management backing and OEM (IBM) support to receive the equipment in-country within four (4) weeks and complete the Data Centre build and transition within the stipulated period of six (6) months without any delays;
- That they have contingency plans identified to ensure that Transnet continues to receive the required services after the six (6) months transition period should they fail to complete transition period within the stipulated period due to "force majeure" (act of God). These contingency plans has not yet been formalised;
- That their tendered pricing is fixed and firm for the entire duration of the contract (5 years) and includes all required services and service levels in line with the RFP and that the "CMO" terminology used in their BAFO submission, was based on their internal terminology which refers to the requested RFP scope of work and service levels and did not refer to reduced scope of work nor inferior service levels as it might have been interpreted in the Transnet clarification request;
- That the "CMO+" referred to in their BAFO response refers to continuous improvement initiatives that might be required by Transnet or Gijima during the duration of the contract after completion of the transition period;
- That the R560m (31%) pricing reduction in their BAFO was made possible by their improved understanding of the Transnet requirements after due diligence and negotiations, equipment preferential pricing from their sub-contractor (IBM), reduction of their input costs and appointment of experienced employees with Transnet domain knowledge;
- That the early termination fee amounts that were indicated in their BAFO pricing workbook only applies to termination for convenience and Transnet will not be expected to pay these amounts should Gijima's contract be terminated due to their failure to transition all services within the stipulated six (6) months period, as this will be covered under the termination for breach clauses that are on the IT Data Services MSA;
- Gijima also confirmed that their BAFO pricing is profitable for them and their technology partner (IBM) and that they are confident that they will be able to sustain their tendered pricing for the duration of the contract (5 years).

67. The above clarifications meeting was voice recorded by both Transnet and Gijima for minutes' purposes and the Transnet recording will be shared with the TIA team for their records. Gijima was also requested to confirm their responses that were provided at the clarifications meeting in writing for audit purposes. Gijima duly complied with the above request and their written clarifications response letter was submitted to Transnet through the office of the Transnet Acquisition Council (TAC) Secretariat within the agreed due date and time of 24 January 2017 at 15h00.
68. Any residual risks that are remaining should be mitigated through robust contract management and stringent Service Level Agreements to be negotiated and signed with Gijima. The residual risks and their proposed mitigations are set out in the table below:

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Table 4: Residual risks and mitigating actions

No.	Residual Risks	Mitigating actions
1.	<p>Pricing risk:</p> <p>Besides the bidder's assurances and written confirmation that their BAFO pricing will be sustainable for the duration of the contract, there is still a possibility that they might be "low balling" to get the contract and will only realise afterwards that their pricing cannot be sustained for the five (5) year contractual period.</p> <p>Gijima did not satisfactorily respond to the request for a rational justification of the material reduction in price. This residual risk is caused by the following factors:</p> <ul style="list-style-type: none"> • Gijima's revised pricing increased by R63,570,579.60 from R1,835,378,865.76 to R1,898,949,445.36 after the Data Room and clarification sessions. Technical and commercial evaluations subsequently took place and thereafter risk assessment and negotiations were conducted with the shortlisted bidder in Stage 5 of the evaluations process. • Despite Transnet's technical requirements staying the same after the Data Room and clarification sessions, Gijima's pricing was reduced by R560,835,121.32 from R1,898,949,445.36 to R1,338,114,324.04 in their BAFO submission. 	<p>Contractual clauses to be included in the contract which indicates the measures to be taken for mitigating these risks.</p> <p>Contract Management Plan to be drafted and implemented.</p> <p>Continuous Contract Management and key milestone management.</p>

	<ul style="list-style-type: none"> The justification provided by Gijima for this significant reduction (31%) was that they have been offered preferential pricing by their OEM subcontractor (IBM) on the Data Centre equipment, that they introduced some efficiencies in their contact centre operations and that they also gained additional knowledge of Transnet's requirements through their subsequent employment of technical resources with Transnet's domain knowledge. 	
2.	<p>Early Termination Risk</p> <p>In the event of Transnet cancelling the contract as a result of Gijima's breach, Gijima claims their "sunk costs" for example, hardware and software costs of Data Centre and any other set up costs. This risk may produce a ripple effect for Supplier Development and local black owned companies in the Data Centre industries.</p>	<p>Contract to include express undertakings from Gijima that in the event that Transnet cancels the contract as a result of Gijima's breach, Gijima waives any claim for its start-up costs and costs incurred in trying to meet the deliverable under the contract.</p>

69. In addition, Gijima identified some internal risk management controls such as establishing its own Project Committees, Board Risk Committees, Project Management tools and Executive Management support during the clarification session. The obligation to maintain these controls will be included in the terms of the contract. The effectiveness of these controls will only be realised once the contract is underway.

REVISED RECOMMENDATION FOR CONTRACT AWARD:

70. Based on the above clarifications meeting and after having perused the clarifications response letter from the first ranked bidder (Gijima), the Group Chief Information Officer (GCIO) indicated that she is satisfied that all the previously identified risks have been adequately mitigated and that the recommendation for award should be made to the first ranked bidder (Gijima) in line with the 90/10 principle (See Annexure G).

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71. Supply Chain Management perused Gijima's clarification response letter and did not find any grounds for non-responsiveness based on the first ranked bidder (Gijima) not having priced for the full scope of services as required in the RFP.
72. Group Risk and Compliance also reviewed Gijima's clarifications request letter and their response letter and are satisfied that the risks that were highlighted in their Risk Report have been adequately addressed. The Business Owner has followed the risk acceptance process and will ensure that these risks are mitigated through contract management processes and procedures.
73. TIA was part of the clarifications process and has been provided with all the relevant documentation to issue a revised High Value Tender (HVT) process Gateway 4 report in respect of the latest developments. TIA indicated that they are satisfied with the clarifications process that was followed and the revised recommendation for award and will provide a satisfactory HVT Gateway 4 report as soon as they have received all their internal approvals.
74. It is against this background and based on the GCIO's satisfaction as requested by the GCE that the risks has been adequately mitigated and the recommendation that the first ranked bidder (Gijima) is being recommended for award of contract as the preferred bidder, based on the PPM principle of 90/10.
75. The Tender Evaluation and Recommendation Report (TEAR) (See Annexure H), provides detailed information on the tender evaluation process that was followed from stage one (1) up to stage five (5).
76. Table 5 below indicates project timelines for the remaining activities to complete this procurement event for the acquisition of IT Data Services RFP:

Table 5: Project Timelines

Item	Activity	Planned Completion Date
1	Stage 1 (Administrative Evaluations and Moderation)	Finalised
2	Stage 2 (Substantive Evaluations and Moderations)	Finalised
3	Stage 3 (Technical Evaluations and Moderations)	Finalised
4	Stage 4 (Commercial Evaluations and Moderations)	Finalised
	-Data Rooms	Finalised
	-Clarifying assumptions for revised pricing workbook	Finalised
5	Stage 5 (Due Diligence and Post Tender Negotiations)	Finalised
6	-Bidders submit Best and Final Offers (BAFO)	Finalised
7	Submit final recommendation for contract award to the Acquisitions and Disposals Committee (ADC) for recommendation to the Board for approval	February 2017
8	Stage 6 Issue LOI to the preferred bidder	Issue LOI upon Board's approval
9	Discuss Implementation Plan with the preferred bidder	To be negotiated after issuing LOI

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10	Negotiate and sign Master Services Agreement (MSA) during the transition period	To be negotiated after issuing LOI
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SUPPLIER DEVELOPMENT:

77. The recommended bidder (Gijima) has committed to spend 46% of the IT Data Services contract value on Supplier Development (SD) initiatives. The second ranked bidder (T-Systems) SD commitment is 57.31%. The requested minimum SD commitment on the IT Data Services RFP was 40%.

APPROVALS AND DELEGATION:

78. As per the Board resolution passed on 27 August 2015, the GCE was delegated with the authority to approve the RFP for issue, negotiate and sign-off all the relevant documentation in line with the approved sourcing strategy excluding contract award. The recommendation for contract award on the IT Data Services RFP is accordingly submitted to the GCE to recommend to the Acquisitions and Disposals Committee (ADC) for recommendation to the Board for approval in line with the Board resolution dated 27 August 2015. The GCE has already provided the following approvals:

- (a) Approval to issue the IT Data Services Request for Proposal (RFP) for a period of five (5) years with an option to extend for a further two (2) years to the open market;
- (b) Approval to conduct due diligence and negotiations with the top two ranked bidders (T-Systems and Ubuntu Technologies and subsequently between T-Systems and Gijima).
- (c) Approval to extend the RFP validity period by a further one hundred and twenty (120) business days.
- (d) Approval for addition of the third ranked bidder for due diligence and negotiations after withdrawal of the second ranked bidder from the bidding process.
- (e) Approval to conduct post tender communication and clarifications with the first ranked bidder (Gijima).

FINANCIAL IMPLICATIONS:

79. The final tendered pricing for the recommended bidder (Gijima) over a period of five (5) years is R1, 338,114,324.04.
80. The estimated savings over a period of five (5) years on this contract based on the current five-year contract spend of R2,5 billion is R1, 161,885,675.96 which is equivalent to a monthly actual saving of R19,364,761.27.
81. The CFET will negotiate further cost savings and SD obligations with the preferred bidder during contract negotiations, after issuing of the Letter of Intent (LOI) and before signature of the contract.

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BUDGET IMPLICATIONS:

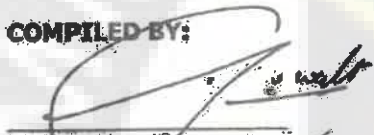
82. All Transnet Operating Divisions (ODs) have budgets available for their respective IT Data Services requirements.

RECOMMENDATION:


83. It is recommended that the Group Chief Executive (GCE):

- a) Recommends the award of contract to Gijima Holdings (Pty) Ltd to the Acquisitions and Disposals Committee (ADC) for recommendation to the Transnet Board of Directors (Board) for approval; and
- b) Recommend that the Acquisitions and Disposals Committee (ADC) recommends to the Board to grant authority to the GCE to sign the Letter of Intent (LOI) to the preferred bidder (Gijima), Letters of Regret (LOR) to the unsuccessful bidders, the contract and all relevant documentation including any subsequent contract amendments.

COMPILED BY:


Faris van der Walt
Executive Manager: Group Strategic Sourcing
Date: 07/02/2017


RECOMMENDED / NOT RECOMMENDED


Thulani Mtshwene
Acting Executive Manager: Governance
Date: 02/20/17


RECOMMENDED / NOT RECOMMENDED


Edward Thomas
Group Chief Supply Chain Officer
Date: 7/2/17


RECOMMENDED / NOT RECOMMENDED


Makano Mosidi
Group Chief Information Officer
Date: 07/2/17

RECOMMENDED / NOT RECOMMENDED


Ndiphwe Silinga
Group Executive: Legal Services
Date: 07/02/2017

RECOMMENDED / NOT RECOMMENDED


Garry Pita
Group Chief Financial Officer
Date: 07/02/17

RECOMMENDED / NOT RECOMMENDED


Siyabonga Sema
Group Chief Executive
Date: 06/17/02.08

Supplier development could
still be enhanced to
be between 55-60%?

Annexure MMAM09



MINUTES OF THE ACQUISITIONS AND DISPOSALS COMMITTEE MEETING NO. 7-16/17FY HELD ON 13 FEBRUARY 2017 AT 10:05 AT BOARDROOM 4901, 49TH FLOOR CARLTON CENTRE, 150 COMMISSIONER STREET, JOHANNESBURG

**Resolution No/
For Attention**

1 CONSTITUTION OF MEETING

1.1 Present

Mr SD Shane	Chairperson
Mr SI Gama	Member (Group Chief Executive)
Ms LC Mabaso	Member
Mr ZA Nagdee	Member

1.2 In Attendance

Mr GJ Pita	Chief Financial Officer
Mr M Sigonyela	General Manager: Office of the Group Chief Executive
Mr N Silinga	Chief Legal Counsel
Mr E Thomas	Chief Supply Chain Officer
Ms L Beaumont	Company Secretary
Ms B Ndlovu	Deputy Group Company Secretary

1.3 Partial Attendance

Mr R Nair	Chief Executive: Transnet Freight Rail
Ms S Mackay	Chief Procurement Officer: Transnet Freight Rail
Ms MA Mosidi	Group Chief Information Officer
Ms L Sangqu	Chief Information Officer: Transnet Freight Rail
Mr K Reddy	Chief Capital Officer
Mr M Shongwe	General Manager, Capacity Development Services: Group Capital

1.4 Welcome and Signing of Attendance Register

1.4.1 The Chairperson welcomed all members and attendees present, and having noted that there was a quorum, declared the meeting duly constituted. The Attendance Register was circulated for signature.

1.4.2 The Chairperson noted that the GCE was delayed from a prior meeting. The Chairperson requested that the meeting be adjourned on arrival of the GCE for a briefing meeting between the Group Chief Executive, Chief Financial Officer and the Chairperson.

1.5 Adoption of Agenda

1.5.1 The Committee noted the withdrawal of agenda item 5.6, and that agenda item 5.1 is tabled for noting purposes, as it was approved at the Board meeting held on 22 January 2017. The Agenda was adopted subject to those amendments.

2 SAFETY BRIEFING AND EVACUATION PROCEDURE

2.1 The safety and evacuation procedures for the 49th Floor were conducted through video system.

3 DECLARATION OF INTERESTS

3.1 The Declaration of Interests Register was circulated to all members and attendees for signature.

4 LIST OF SUPPLY CHAIN ACRONYMS

4.1 The Committee noted the list of Supply Chain Acronyms.

5 MATTERS FOR DISCUSSION/APPROVAL

The Chairperson requested that items 5.1, 6.3, 5.2, 6.2, 5.3, 6.1, 5.4, 5.5, 6.4, 7, 8, 9, 10, 11, 12 and 13 be dealt with next. These minutes reflect the order of the meeting.

5.4 IT Data Services Award

Mses Mosidi and Khumalo joined the meeting at 12:50.

- 5.4.1 Management took the Committee through the submission as contained in the meeting pack. The submission was taken as read. The purpose of the submission was to request the Committee to consider the following recommendations for Board approval:
- The award of a contract to *Gijima Holdings (Pty) ("Gijima") Ltd*; and

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GROUP COMPANY SECRETARY – CONFIDENTIAL



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7

Resolution No/
For attention

- Grant authority to the Group Chief Executive to sign a Letter of Intent ("LOI") to the preferred bidder (*Gijima*), Letter of Regret ("LOR") to the unsuccessful bidders, the contract and all relevant documentation including any subsequent contract amendments.

5.4.2 Management indicated that the current 5 year *T-Systems* contract for Information Technology Outsourcing was established through a sale agreement of *Arivia.com* to *T-Systems* in 2009. The contract was extended for 2 years and it was due to expire on 31 December 2016. Prior to expiry, the Board recommended a 9 months (month-to-month) extension on the *T-Systems Master Services Agreement ("MSA")* and the National Treasury approved a contract extension in line with the Supply Chain Management Instruction Note 3 of 2016/17FY (Prevention and Combating the abuse of the SCM system). Management stated that the revised *T-System* contract expiry date is 30 September 2017.

5.4.3 Management stated that all the ODs/SUs make use of this contract for their IT Data Services requirements and the contract is managed at Group level by Group Information and Communications Technology (GICT). The IT Data Services sourcing strategy and Request for Proposal were prepared by the Cross Functional Sourcing Team that consisted of technical representatives from all ODs/SUs. This sourcing strategy was approved by the Board on 27 August 2015.

5.4.4 The Committee noted the Governance and Legal opinions provided in relation to the applicable process and requirement, which supported awarding the tender to the second place bidder. The Legal and Governance Teams had reviewed the documentation and the risks identified, therefore the recommendation was based on an objective risk criteria. Furthermore, the CIO held meetings with the recommended bidder for clarification purposes. The bidder had subsequently written to the Company, setting out its mitigation plans which were manageable through existing controls.

Ms Khumalo was excused from the meeting at 13:03.

5.4.5 The Committee held a lengthy discussion where the merits and risks of the recommendation were noted as follows:

- The preferred bidder had seemingly reduced pricing by R500m after being selected as the second bidder, pursuant to Ubuntu's withdrawal from the tender process.
- The perceived leniency towards the recommended bidder as it received a number of opportunities to manage the risks raised by the Company.
- The risks of changing suppliers far outweighed the risks of continuing with the current service provider, who could be assisted to improve services.
- The migration from the current incumbent to the next one, from a transitioning risk perspective.
- The risks related to the proposed Award would attract a possible R468m penalty if the Company terminates the contract.

5.4.6 Management noted the concerns of the Committee, and provided assurance that due assessments were conducted on whether the risks could be mitigated before recommending the said bidder. The following clarity was provided to the Committee:

- The reduction of costs by R500m was as a basis of the bidder having received clarification on the initially misunderstood scope, at the clarification meeting.
- Management clarified the outsourced elements of the project, highlighting the differences of which the major component was Data Services.
- The pricing risk could be easily mitigated and managed. Furthermore, the cost of data was progressively declining, hence the reduced pricing.
- The perceived leniency towards the recommended bidder was essential in a standard process of engagement for clarity purposes. This is in accordance with the provisions of the PFMA and other legal prescripts. The purpose thereof is to allow delivery of a fair process. Management further highlighted that this process did not allow for resubmission

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Resolution No/
For attention

of Tender documentation, but served to clarify the content of the submitted tender documents.

- The termination clause and related penalty is a standard contractual clause and would be applicable if the Company terminated the contract without breach and could be considered on the basis of the Company buying out the remainder of the contract.
- Management further noted that the six-month transition period between the two service providers would assist in mitigating the inherent risks related to that process.
- Management further advised that two business references, namely *Vodacom* and *IBM* provided assurance on the recommended bidder's capabilities to manage the identified risks.
- Management further noted that the memorandum provided cumulative, transactional details and points of clarity from an operational perspective to provide the Committee with a view on the thoroughness of the process. The risks raised as part of the process were therefore adequately resolved before arriving at the decision.
- The risks could be managed and monitored through effective contract management.

5.4.7 Management further reported that *T-Systems* had also reduced its price on some of the elements after due clarification, and therefore the price reduction was not unique to the recommended bidder. The Committee noted the cost comparison between the 2 bidders, and that the cost difference in most of the tender elements was marginal. Management further assured the Committee that the similarities in costs were more industry based than possible collusion.

5.4.8 Management confirmed that the R1bn reduction in price on the entire project, compared to the existing contract with *T-Systems* could be considered as savings. Management added that the motivation to initiate the tender process was for the Company to test the market and consider new partners as part of transforming the environment. A Member recommended that Management should consider contractually managing *T-Systems* as a means of improving services and performance thus meet the Company expectations. Management noted that over the past 7 years, *T-Systems* had not achieved the 6 guiding principles as articulated in the tender documents. Management was not confident that this was achievable going forward.

The Committee did not support the approach to closely monitor and manage the risks through contract management due to the existing challenges related to contract management that plagued the Company. The identified risks could result in the Company remaining in the same position as with the current incumbent, coupled with the challenges of migration between the current incumbent and a new service provider, and applicable penalties, as stated above.

5.4.9 The Committee requested Management to review the Procurement process that allows suppliers to invite their lawyers to clarification meetings.

Mr Pila

5.4.10 The Committee did not support the award of the contract to *Gijima Holdings (Pty) Ltd*, based on the inherent risks as discussed in the meeting.

RESOLVED that the Committee recommended that the Board:

- Approves the award of the IT Data Services Contract to *T-Systems (Pty) Ltd*.
- Delegates authority to the Group Chief Executive to sign a Letter of Intent ("LOI") to the preferred bidder, Letter of Regret ("LOR") to the unsuccessful bidders, the contract and all relevant documentation including any subsequent contract amendments.

7-16/17FY-03

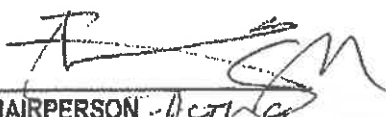
Ms Mosidi was excused from the meeting at 14:08.


12.2 MATTERS ARISING (CLOSED SESSION)

12.2.1 The minutes of the closed session held on 20 October 2016 were deferred to the next meeting scheduled for 13 March 2017.

13 CLOSE

13.1 There being no further business to conduct, the Chairperson declared the meeting closed at 14:47.


CHAIRPERSON - Acting
DATE: 2017/07/12


DEPUTY GROUP COMPANY SECRETARY
DATE: 2017/07/12

ADC 7-16/17 FY 13 FEBRUARY 2017

GROUP COMPANY SECRETARY - CONFIDENTIAL



Annexure MMAM10



TRANSNET SOC LTD**ACQUISITIONS AND DISPOSALS COMMITTEE MEETING**
NUMBER 7-16/17FY**HELD AT JOHANNESBURG****DATE: 2017-02-13****Boardroom 4901
49th Floor Carlton Centre
150 Commissioner Street****PRESENT:**

- | | | |
|-----|----------------|--|
| 1. | Mr SD Shane | Chairperson |
| 2. | Mr SI Gama | Member (Group Chief Executive) |
| 3. | Ms LC Mabaso | Member |
| 4. | Mr ZA Nagdee | Member |
| 5. | Mr GJ Pita | Chief Financial Officer |
| 6. | Mr M Sigonyela | GM: Office of the Group Chief Executive |
| 7. | Mr N Sillinga | Chief Legal Counsel |
| 8. | Mr E Thomas | Chief Supply Chain Officer |
| 9. | Ms L Beaumont | Company Secretary |
| 10. | Ms B Ndlovu | Deputy Group Company Secretary |
| 11. | Mr R Nair | Chief Executive: TRF |
| 12. | Ms S Mackay | Chief Procurement Officer: TRF |
| 13. | Ms MA Mosidi | Group Chief Information Officer |
| 14. | Ms L Sangqu | Chief Information Officer: TRF |
| 15. | Mr K Reddy | Chief Capital Officer |
| 16. | Mr M Shongwe | GM: Capacity Development Services: Group Capital |

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FEMALE SPEAKER: Ja.

CHAIRPERSON: You know, it will finish before lunch.

FEMALE SPEAKER: Ja, it is okay.

CHAIRPERSON: I hope so. Okay... (intervenes)

MR PITA: The NMPP Meeting is here and we will stop that meeting once this meeting is, we are happy that it is concluded in (Inaudible). We will wait and make sure we finish everything according to... (intervenes)

CHAIRPERSON: I understand what you are saying, they are having
10 a NMPP meeting here with you guys?

MR GAMA: Yes.

CHAIRPERSON: Oh, I understand.

MR PITA: We will stop that (Inaudible) meeting (Indistinct).

CHAIRPERSON: Right. No exactly, I have got it. Okay, thank you everybody. I am drawing everyone's attention to item 5.4. We have had an opportunity to review the documentation, it is quite detailed and included in the supplementary pack. I think for practical suggestions, who is presenting on this?

MR THOMAS: It is myself and (Inaudible) support.

20 CHAIRPERSON: Right, fire away.

MR THOMAS: All right, thank you Chair. In August 2015 the Board approved this (Inaudible) strategy for IT dated services, for us to get these services on the four pillars of the IT. We issued the RFP in November 2015 that closed in January 2016. We had 50 people attending the compulsory site (Inaudible) things. Once the tender was

closed, we had line responses to the RFP. After the line responses we went through, then the procurement process kicked in and they did the administrative and substantive responses plus exercise.

Seven of the nine bidders passed on the substantive responsive stages, then tender moved into technical evaluations which is basically the responses of the bidders to all the technical questions and the technical cross-functional evaluation team sat down and have reviewed all the submissions from the bidders. There was a 70% minimum pass mark on the threshold and all seven
10 bidders passed the test of the legal exercise.

When they commenced with the commercial exercise, it was identified that there are, there were numerous assumptions made by the bidders, so the procurement team sat down with the business team to get an understanding of what is the reason behind there being numerous assumptions being made by the bidders and a decision was taken that a complete set of information needs to be made available to all of the bidders who had passed at that stage for them to get access to the data room.

The data room contained a lot of detail regarding the current
20 services that Transnet was receiving and the type of services, the number of (inaudible) that needed the services, *et cetera, et cetera* and they also had a closing (inaudible) with all the bidders where any potential questions as a result from the data room exercise could be answered, so that the bidders could provide and revised the pricing for the tender.

At that stage the pricing was then ranked once we felt that the pricing was comparable and our first ranked bill at that stage was T-Systems, second rank was Ubuntu with a 13% price differential, third place was Gijima with a 20% price differential. At that stage because of the delays that took place as a result of giving them access to the data room for them to be able to revise pricing, we had to extend the validity period of the RFP. We got the right approvals and the RFP was then extended.

The second place bidder Ubuntu, they came back to
10 Transnet and indicated that they have to withdraw their bid due to the fact that they could not keep their pricing firm. Obviously Ubuntu did have a right to provide revised pricing at that stage so that they could stay in the running but they chose and they went to withdraw that bid. At that point in time then just to ensure that the organisation's risks were covered, we moved then the third place bidder into the second place position and we started the process of performing a due diligence exercise which was to facilitate a risk assessment which constituted in terms of reference checks, site visits and interviews.

The risk assessment process was facilitated by Bardner(?)
20 who was an expert advisor to Transnet Business on this process and basically revised office who then basically requested out of this process and then on August 2016 the revised office came in. And at this point with the (inaudible) revised office and the outcome of the risk assessment facilitated by the due diligence risks that were of concern, were raised by the cross-functional evaluation team which

2017-02-13

were concerning. And also you will see in paragraph 26 of the submission, in their final submission, the one bid of Gjilma made the statement where it says:

"Gjilma understands the complexity of a transition project, it is therefore imperative that the transition as is (indistinct) six months. Enhancements and (inaudible) plus will be done after the transitions in the organisation period."

And this is obviously, was a bleeding factor in terms of the
10 risk assessment result that came out from the exercise. If you can basically go down to on page 8 where we have got on paragraph 32, there is a visual representation of the risk assessment that came out of the processes. In paragraph 33 we have got the T-Systems' risk assessment where the risks and the likelihood of the risks being impacted, were categorised as where or unlikely and in paragraph 32 the risks, certain of the risks on Gjilma's done by the Bardner and the CFSETs evaluation had certain of the moderate, major and high risk impacts items having in moderate, likely and almost certain assessment provided from the likelihood or perspective.

20 This raised obviously a concern and the CFSET team realised that you know, we are sitting with a very, very risky scenario in the organisation and an investigation was then implemented to say from an objective criteria perspective, are these risks significant enough for the business to propose the award to a second placed bidder? So the CFSET team and the ISO (Inaudible) team had

approached Group Governance for them to review the position and that governance opinion is attached in your packs, you know for us to understand are these risks significant of nature and if our process is going to provide for us to be able to manage and effect these risks in an award process for the organisation.

The governance opinion, they even looked at certain court cases and the outcomes of these cases recommended that we needed to engage with Gijima and asked them in writing to respond to the risks as prescribed by the CFSET team with Bardner. They
10 responded in writing to these risks and the theme was that the assessment of the risks was, did not sufficiently cover the risks. The team then went and engaged with Group Legal to get their opinion whether the team could recommend an award that we contract to the second place bidder due to the fact of the risks which is an objective criteria, being too high for the organisation to accept.

Group Legal, their opinion is also annexed to the documentation you received, provided the feedback that we are justified and the decision can be legally defended in a court of law for us to be able to award the second place bidder. The team then also
20 went to Group Risk and Compliance and asked them to review the process followed, review the risks identified in the process and also to have a look at the responses.

Their review is also attached to the documentation and they basically gave an indication that they support the view that the, of the CFSET that the risks raised are high and should business decide

(Inaudible) these risks, that should be followed by a process of risk acceptance and accountability must be established, so they also supported that the bid could be awarded to the second place bidder. In terms of the audit process of HCT on the transaction, the HCT process, all the audit reports go for having (inaudible).

We had a bidding (inaudible) but that was resolved in November, we got a (inaudible) report up to the negotiation stage and the final recommendation stage is also being currently. In terms of the cross-function evaluation team recommendation, at that point in
10 time was to say in following the procurement process, identifying the problems that exist with risks from an objective criteria perspective as well as based on the support received from Governance, Legal and Group Risk, the recommendation was to award the contract to the second place bidder based on the objective criteria of risk.

The Group CIO's office was concerned with this recommendation and she felt that these risks could be managed and engaged with the executive of the organisation which then said let us engage with each supplier one further time, have a clarification, a further clarification meeting regarding these risks to see what can be
20 done. The questions regarding the risks was issued to Gijima in writing and a clarification meeting (Indistinct) where all of these items was discussed.

The bidder also then provided the clarification in writing. The document also describes the clarification *in camera* there, the risk management areas or the items of how they were going to manage

these risks was also discussed. A lot of it is focused on the implementation of controls that is obviously (inaudible) operations but the believe that their controls would provide any use on that. From the outcome of these processes, they rescheduled risk just to ensure that ADC has got a view of the high end of risks that existed before and then the rescheduled risk that remained after the clarification session.

One of the areas that (inaudible) asked us to do is to ensure (inaudible) around the pricing risk that we had, that the pricings were
10 not for the services as requested which will then be to the bids, actually being not responsive. We have got feedback from the bidder that the prices that they offered were for these services as bid for. The original risk that still resides there is that the pricing is that they offered was substantially low.

They came in, they dropped their prices from 1.8-million to 1.3-million and these risks exists for us that you know, the justification does not quite sound correct for them to have dropped their prices by such a significant margin because we believe that they should surely have provided the best pricing at the data room stage. There is also
20 the determination risk which exists which can impact Transnet because of the size of the investment that they need to make, which they can potentially claim back from the organisation but obviously could contract clauses and contract management can manage that.

With contract management we will also manage the pricing risk issues that are coming out from that, so that is formed on the

outcome of the clarification session, the recommendation for the contract awards supported by the office of the Group Chief Information Officer is for the recommendation based on the production of the risks to Gijima who is the first rank bidder. In terms of supply and development, the first rank bidders (inaudible) the commitment is 46%, the second rank bidder committed 57% of the contract bidding for supply and development. I will take any questions.

CHAIRPERSON: I am going around the table. Let us start with the
10 Committee, (inaudible) the Committee.

MALE SPEAKER: Ja Chair, (inaudible).

MR NAGDEE: Ja, I have a few questions. I think the first question I have, you know I have gone through this and then without mocking the process okay, and I will deal with those items separately, all right. First of all it is wrong to say that they were the second place bidder, they were actually the third place bidder. The fact that Ubuntu Food moved out or withdrew, the withdrawal made them the second place bidder, but they were actually the third place bidder.

The second point I want to make is that hindsight is a
20 wonderful science, okay, and I also questioned them dropping their price. I know how outsources work, I have been in this industry for a long time and for them to justify their pricing based on scope or whatever, and they did not understand it, they had lots of opportunities to understand, you have had that separate meeting with them to understand.

Okay, you had a separate meeting with all the bidders for them to have a data centre, for them to understand and then to come back, at that stage they did not change the price. It is only afterwards when they knew they were the second bidder, okay that is when they came back and changed the pricing. And I look this foot in the door thing, because that is exactly what it is. They knew what the other priced, everybody in the industry knew what the pricing was of the various bids okay, and that is where they priced themselves. So I am suspicious of that.

10 I will be honest with you, I am being suspicious with that, but my third point which I think is the most important point, okay let me elaborate on that as well, is that when I read this it did not and I am going to be brutally honest and say, it looks like Gijima were given so many opportunities to fix things, to mitigate the risks you know, and there is no opportunity for anybody else to... They were given so many opportunities here to fix whatever risks, whatever issues they had, whatever.

20 You know when you do a tender evaluation, your first submission is your first submission, you did not give any other opportunity to the other bidders to adjust their pricing, to justify certain things, but it looks like Gijima were given lots of opportunities right down to Supply Chain having a separate meeting with them. Why did you have a separate meeting with the second bidder but not the first bidder? Just one of the bidders, so and that is why I say the process is also a challenge for me.

But the most important thing for me, the most important challenge that I have, the most important issue I have is around the risk of changing from one supplier to another and I am not for one moment suggesting that the incumbent automatically went... There should be an element of process which I agree with a 100% and the process was followed, but I do not see apples being compared here and to me the risk is very bad here.

The risk of changing from one supplier to the other is a major issue and especially coming with the price that they have, you know it is like a building contractor, when you ask you guy to build the house he will give you a price and you say no, cut this and I cut it down, cut it down there, because somewhere down the line you are going to lose, okay, and you are cutting yourself short because what I do not like here, I am going to cut down there, okay, because of an advisement.

So I am very concerned that the risk of moving from one, from the company to a new company where they have reduced their price, okay so what are we losing, what are we going to lose? Yes, you have given your, they have given us assurances if you like, that they will actually, that that will not happen. I see that, okay, they have given assurances as an example here, but I am still, I am not comfortable. I promise you I am not comfortable at all with their responses and answer there, and their approach. I have got other questions but I am going to allow the team to make some comments as well before I move to other questions.

CHAIRPERSON: Chair?

MS MABASO: I am not going to go through the risks that had been provided here, but I just want to just *prima facie* I am looking at, looking at the document and looking at those, these two scenarios, and so these two companies, Gijima and T-Systems are like Zainul said it, they are not the second preferred, they were the third. We are a state owned company and our primary mandate is the people. We have business but we have the developmental mandate.

We, Transnet, looking at the way Gijima all of a sudden they
10 tricked and changed their price all of a sudden, I do not know what the change of heart, good people said because it is as Zainul said, they just realised that we are a SOC, I do not know and they changed it, but I do not know, but you look at, I have been reading some of these paragraphs, consistently it says, page 9 paragraph 35... Okay let me just start, page 9 paragraph 9:

"The period Gijima responded to Transnet in writing on 7 September 2016"... (Intervenes)

MALE SPEAKER: Paragraph 9?

MS MABASO: No, paragraph 35, page 9. Paragraph 35 they say:

20 "The period Gijima responded to Transnet in writing on 7 September 2016, the Gijima respond did not adequately address the risk that we addressed, as a result the CEFET requested that Group Legal provide counsel on the way forward."

It is one, It is the same thing that has been repeated.

Paragraph 38:

"Recommendation from governance was for Transnet to send a request for clarification to Gijima in order for make a representation on how they intend to manage the risk that were identified by CEFET in the event where Gijima failed to properly address the identified risks. The CEFET may award the tender to the second ranked bidder only where it is lawful."

You can continue but this is the document that we have as a
10 Committee. If you are a member of the Committee and you have this document, honestly I would not go with Gijima based on what has been presented before us. I would not prefer Gijima. We run the risk, it says that should we terminate, we have to pay how much (inaudible)? Something thousand, a million?

MALE SPEAKER: 64.

MS MABASO: Yes, how can we guarantee or not? We are running a risk of running a risk, that the risks are so many, we are running a risk of we can terminate and then we will have to pay that amount. For me it is just *prima facie* it is big no, no. It is a big no, no. Yes?

20 MS MOSIDI: Chair, thank you. Can I... I will try to address all the concerns that the members have raised, but I just want to give a background of this tender.

MS MABASO: Yes.

MS MOSIDI: What it is. This is an outsource of our infrastructure environment. By that I mean our helpdesk is outsourced, our data

centre or our mainframes are outsourced, we just have one mainframe which is actually utilised by TFR. Our data-based, our disaster recoveries, they are all outsourced. The quantum of what this (inaudible) is actually consumed of this project, are totally different, they differ completely and by that I mean the biggest component of this tender is actually the data services, one.

Helpdesk makes only about 8% of this particular tender, so if somebody reduces on the helpdesk side for example, it is actually not even a risk Chair, because like I said it just comprises 8% of this particular tender, it is not covering everybody else in that same market surely. So Chair, the risk of the price for example that have been raised, it is not a risk that is not mitigated if I can use that word, because when you look at where we are as an organisation and where they are as practitioners as well, they know that in the mainframe space for example, costs are going down so fast, so fast that when you start talking cloud computing and talking of over 70% of cost savings, so that is why for us it has not been such a risk that we could not actually manage.

However, the section that the Chair read, that was before we confirmed with Gijima ourselves, because I was fortunately given an opportunity to have a discussion with Gijima just to understand these risks. If you look at the first one that Mr Thomas raised, I cannot remember what section it was, but that is where he talks about CMO and CMO plus, it is correct. You can only transition to the current mode of operation in six months.

There is nothing wrong with it, it is how do you then transition the money and Chair, that is why for us it is also very urgent that we conclude the process so that we can have adequate time to transition. So that particular section, it is exactly what it is, you should transition and be at a current mode of operation because you are not the current incumbent, six months is good enough for you to do it.

However, just to add to that Chair, when we had a discussion with Gijima and we came with our own reputable partners, I think it was Vodacom and IBM, IBM gave us the assurance that they have
10 done what we call a soft order of the equipment, so if you go into a data centre and you find empty racks, it is not strange because you cannot actually fill up your racks without the client.

It is just in the practice of an industry, you will fill up a rack once you have a client and IBM confirmed and it is on record with Mr Thomas that they have done their soft order already, so that is actually not a risk anymore because they even said to us, initially we said to you four weeks we will need to actually put the equipment in place and they said we are now down to two weeks if you want it, because already we have scoped and we have staged the
20 technology, we can actually just plug it and can get it going. My biggest concern was in the transition Chair, as Mr Naidoo rightfully points out... (Intervenes)

MR NAGDEE: Nagdee.

MS MOSIDI: And that we have looked at. Sorry?

MALE SPEAKER: Nagdee.

MS MOSIDI: Ja, you know, when you see people like you, you use to say Naidoo. [Laughs].

MR NAGDEE: Ja. [Laughs].

MS MOSIDI: Sorry. So Chair, yes, it is just and when you see the way the memo has been written, it has been a cumulative way of writing the memo. Right at the end we are at a point where we have looked at all those risks. I have had an opportunity to spend some time with and in the presence of Procurement, (Inaudible) tender and the governance people where we actually interviewed Gijima and it
10 was for us to satisfy ourselves.

Procurement and myself, we put questions together to them and they responded and we felt the adequate response from them and I think all of this that you raised here, were actually responded to by Gijima and we are aware now, I think we are comfortable that the risks as you see them, yes pricing for example you look at the two that are remaining in the document. If you look at the pricing one from Gijima, I am not surprised that they could actually reduce it.

If we look at the industry practice Chair, everyone wants an
outsource contract because of the big margins in the outsource
20 contract, so if somebody reduces, yes there is a real fact it in, we should actually and that is what we do not just want to do, to Dropbox, to drop and drag and drop and drag, they want to look at total service to (Indistinct) for that service. So the drop in price, I think from where I am sitting it is something that I actually welcome.

We have done, just being my last point Chair before I... We

have done what I have called a price diagnostics of a current tender and whilst we can say that we have been reducing our contract by 4%, the actuals on the current one, it has actually gone up by 9% on an annual growth rate and Chair, it is about contract management. So my point with this is that for you to mitigate whatever risk you have with such a big outsource, you need to actually manage it effectively and tightly, otherwise you will always, always never be able to do what we call wiring, you will never be able to find it out because these contracts, when we put them together, we wire them together and you
10 have to be able to go through the maze of saying what is this wiring about?

And this is what we have done now. So Chair, all I am saying, at the end whilst I see the risks that had been raised, that had been documented, we have had an opportunity to mitigate the risk to understand exactly how the transition is going to happen and to actually satisfy ourselves that we will be able to deliver the service that we need to deliver. So Chair, I will stop there and I will take our point as written.

MS MABASO: Can I ask you something Makano? I just, just hold on,
20 I want to ask her something.

MALE SPEAKER: (Inaudible), just on... (Intervenes)

CHAIRPERSON: No, Mabaso have something to say.

MS MABASO: Can I ask you something Makano? Let us check out the prices with both companies, with both bidders. Which one is more riskier? If I would say Makano, if you tell me this is the one, I will say

you bet your life, you will bet your position and say, I can bet my position here, I put my life on the line, this is the one, which one would you say?

MALE SPEAKER: If the prices were the same?

MS MABASO: Yes.

MALE SPEAKER: Ja.

MS MOSIDI: Chair, I would go, you see I believe in our procurement processes and our procurement processes gave me the confidence that Gijima can actually do what they can, because even if you look at
10 the evaluation process, the difference between the two has been just a fraction, it has been 0.21, 0.25, so they were almost neck on neck. There is no big variance between the two, so I have got my comfort in that the procurement processes were actually dated enough and then if you look at the partners that I have in Gijima, if you look at IBM and you look at Vodacom, you look at Vodacom on the internet Chair, they lead in terms of UIT technologies, they lead in terms of their own mainframes.

So you have the comfort that this particular consortium will actually reinforce the black company as in the Gijima company so my,
20 I will put my head on the block for Gijima.

MS MABASO: Despite the fact they were number three, despite the fact that we have worked with IT, with T-Systems, you still vouch that you will vouch for them?

MS MOSIDI: Chair yes, because like I say we have cumulatively, this memo is cumulative. I could have written this memo in one page.

MS MABASO: Okay.

MS MOSIDI: Because as an executive team, we have looked at all the risks and everything now has been put aside. The last recommendation is the old (Inaudible) recommendation. So yes, as we evaluate, for example Eddie will tell you initially the Audit Report was read.

MS MABASO: Okay.

MS MOSIDI: Initially, so people polish up until we end up with a green Audit Report, because you start understanding better.

10 MS MABASO: Yes.

MS MOSIDI: Chair, believe me, I am the one who would be so risk averse because I put my head on this if we cannot transition properly, but if you think about what we have done and Eddie, you will remember, HVT was so red, we went back (Inaudible) but at the end we polished it up as well and remember by then it was still Gijima, it was still T-Systems before we actually... (Intervenes)

CHAIRPERSON: Ja, so you have answered the question. Mr Silinga?

20 MR SILINGA: Thank you, Chair. Chair let me just, there are quite a number of questions that were asked by the Chair and Mr Naksama, Makano, has not been able to come. You know, there had been many opportunities that were given to Gijima to fix and its tender document. You must remember that in terms of per the Constitution section 217 and the PFMA, one of the elements that are required of us when we go on tender, is a fair process and there are others, of

course, equity and so forth.

And in the past it has always happened where you identify a risk, you say no, this company or this bidder technically and so forth and so forth, has got some significant points, we have managed to shortlist it but there are risks that we have identified. You cannot unilaterally just say no, we condemn you because there are these risks. It is incumbent upon a state owned entity like Transnet to deliver a fair process, to go back and say there are these risks, how are we going to mitigate them? This is what was done here. We
10 went back, then they wrote back.

It would appear and remember when then there was a latest clarification, it did not mean that they added some more documents, they were asked to clarify based on the documents you have given us. It may have been a misunderstanding on the part of our team on what was presented to them documentarily, as to what it means. When it was clarified to them around last month, the whole team was happy and no further documents were added, it was just a question of a verbal clarification.

What you mean when you present a document that says A,
20 B, C? So that one is not an unusual process, we have done it in the past. Actually we did it even when the other IT what-do-you-call, IT tender in the previous years. Coming to the payment for 64 and we terminate, we should be very careful there. There we say when you terminate at Transnet's convenience, meaning Gijima has done nothing wrong and remember they go into business, they plan, they

incur expenses and so forth, in six months' time we say not that they have defaulted or anything, no breach on their side but for our own convenience, whatever that convenience would be, we want to buy, basically we are saying we want to buy you out of this contract, you have done nothing wrong, so there is nothing, I do not think there is anything but it would be unfair to the tenderer if we were to say we terminate, kiss goodbye whatever expenses or whatever investment you have made to this, sorry baba, we will see you later, it cannot be like that, this is business. Thank you, sir.

- 10 **MR GAMA:** Ja Chair, I think the, if I listen to the Committee correctly, the issue here is really and it boils down to the whole motion of risk appetite in terms of what the Committee is prepared to accept in terms of risk and for me, I do not think that anyone has got what-do-you-call it, a crystal ball in terms of what may eventually happen. It is really there are two things, you could say the teams have highlighted the risk, Gijima in terms of coming up with their best and final offer, they did reduce their price and they came down to a lower price. T-Systems have also incidentally reduce the price.

- 20 If you look at what we have been paying in the past, in the past five years we have paid them about 2.5-billion. They have also reduced their price to about 1.5, I do not have the actual number in front of me, to about 1.5-billion. So you could say you want the lowest price but there is some residual transitional risk which Makano says is manageable, so there is a 200-million differential between the two entities and over a five-year period which is maybe what, 40-

million four times fives...

CHAIRPERSON: Ja.

MR GAMA: Ja, 40-million a year, so it is up to us to say we want to accept the savings of 40-million but maybe with some transitional risk or we say we will save at least a billion in terms of the second rank bidder but we have worked with them and if so, are there any additional things that... Because at the moment we are issuing a letter of intent, it means we need to still negotiate with whatever party, to make sure that what we have is the kind of service level that is at a
10 level that we want.

So if the risk is not acceptable, we can go to the second party. If the risk, everything, the risk and the price is acceptable, then we stick with this one, so it is really up to the Committee to give us guidance in terms of what is the acceptability of risks and residual risk, the issues of risk are interesting because they are also probably not very objective, it is not a straight science. In that (inaudible) we need guidance from yourselves.

CHAIRPERSON: Can I comment? GCE, thank you. I am going to give everybody a bit of background. You are sitting with a Committee
20 that includes the GCE and the GCFO as Board members, because in addition to their day jobs they are also Board members and they (inaudible). We wear fiduciary risk, we wear publicity risk. The Chair and I specifically, and Mr Pita may also become famous, Mr Nagdee and Mr Gama escaped thus far, but we have been tarred with certain brushes in the press.

We represent a Board of Directors, diminished at the moment, we have one member who is sick, we have one member that was promoted to the GED position and to DPE and we have a very risk of this Board. Unfortunately guys, when it hits the newspaper that the ADC and its Chair or the Chair of the company, it is GCE authorised a transaction, it is our names that appear in the press. We are being unable as an organisation to protect our Board from fame without fortune.

I sit at a table with people in my community, they think that I
10 am a crook and the decision that was recommended by the executive is very nice, but we are the guys that wear the risk, we wear the risk. In the end we are the guys that are going to wind up with the repercussions of a disaster and I was going to use a more of a (inaudible) word which I will not and with no disrespect, we are led down a path where we are going to wind up in mitigation. Mr Silinga is a busy guy, he is going to be more busy because we are going to get sued by Gijima or we are going to get sued by T-Systems.

That is where we are at, that is what you guys are saying to us and that is going to be the outcome. I want to go back a step. T-
20 Systems' business which supplies us with our IT services was a production creation of the great Maria Ramos, of a business called arivia.com. Mr Pita will correct me if I am wrong. Arivia.com was our internal IT Department to get it merged, to get Eskom's IT Department, they have been there for seven years cumulatively.

They are the disingenuous, dishonest thieving outsource

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partner that is incumbent versus the dishonest, disingenuous thieving outsource partner which we can switch to, being Gijima and I am not special about this, you can throw Anderson Consulting now, what do they call these guys, Accentia, you can throw Main Consulting, McKenzie, any of these consultant scum, you can throw them all into the pot and this is recorded so I know where it is going to go, at least when I get Quintin and he has got it this time, they are going to have our version of it.

Now we are to ask the GCE's question, not a risk of this
10 Board, we are a scarred Board. Every decision that we have made, we have worn the repercussions of...

[End of recording]

MEETING ADJOURNS

TRANSNET SOC LTD**ACQUISITIONS AND DISPOSALS COMMITTEE MEETING**
NUMBER 7-16/17FY**HELD AT JOHANNESBURG****DATE:** 2017-02-13Boardroom 4901
49th Floor Carlton Centre
150 Commissioner Street**PRESENT:**

- | | | |
|-----|----------------|--|
| 1. | Mr SD Shane | Chairperson |
| 2. | Mr SI Gama | Member (Group Chief Executive) |
| 3. | Ms LC Mabaso | Member |
| 4. | Mr ZA Nagdee | Member |
| 5. | Mr GJ Pita | Chief Financial Officer |
| 6. | Mr M Sigonyela | GM: Office of the Group Chief Executive |
| 7. | Mr N Sillinga | Chief Legal Counsel |
| 8. | Mr E Thomas | Chief Supply Chain Officer |
| 9. | Ms L Beaumont | Company Secretary |
| 10. | Ms B Ndlovu | Deputy Group Company Secretary |
| 11. | Mr R Nair | Chief Executive: TRF |
| 12. | Ms S Mackay | Chief Procurement Officer: TRF |
| 13. | Ms MA Mosidi | Group Chief Information Officer |
| 14. | Ms L Sangqu | Chief Information Officer: TRF |
| 15. | Mr K Reddy | Chief Capital Officer |
| 16. | Mr M Shongwe | GM: Capacity Development Services: Group Capital |

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SOUND FILE : ADC 13 Feb 2017(3)

CHAIRPERSON: ...the issue, if and when this memo gets to the *Sunday Times* as the last memo did and they pull up the bubbles that are on this page here and they say look, Shane had been assisted by the Chairlady, Mr Nagdee and the CEO, they chose the bubbles that were here instead of the bubbles that we hear, we are uninterested in risk, I could not care about the cost. I will give you an interesting thing, if it cost an extra R1-billion in the over five years, I could not care. I will tell you why, I will tell you why, do you know what our
10 turnover is in this whole (inaudible)? Do you know what the number is for the year, estimated about?

MALE SPEAKER: 65-billion.

CHAIRPERSON: R65-billion. Over five years we are going to assume just to (inaudible) like that far, my maths is not good five sixes have got 300, five fives are 25, five, 5600, give me a number, over 600-billion, guys for us to saving, to be debating to be spending time on saving R200-million over five years when a company that will over their period turn over 600-billion, it does not matter. What I always say here, bring me things that are important. The other day
20 they schlepped in here, a contract, some property deal for R15-million or R20-million because it was more than a ten-year contract, you know.

Guys, we have got to focus on the numbers and we have got to focus on the risk. We cannot afford to be famous again. We have got these mongrels, mongrels I say, there are seven-year (Inaudible),

they have been here forever. These oaks them, you know them, you are relatively new to the environment. It is a risk freely, it is not a risk of this, it is a risk, three options, they cannot shut our mainframes down, they cannot lose our data, they cannot confuse our people, they cannot switch off the electricity, they cannot shut down the...

As you correctly point out, the one mainframe that we have got, am I right, that they manage our mainframe, they manage our memory, they are our memory or do I miss something? Is that more or less correct?

10 MALE SPEAKER: Data.

CHAIRPERSON: Data and all of the data that is stored, so I am very loathed, even though this may be the right solution from a commercial perspective, I am loathe for us to wind up in litigation with T-Systems. That is my motivation. I could not care, as I hate them all. The fact that we, even Marla was stupid enough to do it, no disrespect to anybody who might have been involved in the process, the fact that we do not have control of our own IT infrastructure, in my opinion, my humble opinion, is stupid.

20 But it is too late, it is what it is. That is where we are, they have got us by these they have, that is the fact. To go and source to Gijima or anybody else in my opinion, would be tantamount to suicide. That is my perspective on it, that is the newspaper article that I will rather have, a notice of disrespect to Gijima who are not alien to suing their customers. I will say that again slowly, they are not alien to suing their customers, okay. I am happier with the risk of getting

sued by Gijima who did not get a contract then us getting rid of the incumbent that we helped to create, I think it is suicide.

That is point one. We can get into some of the details, because I am in business, that is what I do primarily for a living, I am not an IT expert, I am not any... When somebody drops their price by 500 large, that is because somebody told them something, no other reason.

MS MABASO: True.

CHAIRPERSON: Now I am not accusing anybody of anything, but if
10 you would like to do a forensic investigation into that, I think that you would find that I might be right, okay. I know that there were accusations that senior management were predisposed to the allocation or the retention and I am going to come to what my perception of this tender was in a second of T-Systems and I will tell you this, that if I was a senior executive in this organisation, I would be predisposed towards keeping the incumbent because I have got very big challenges here in terms of keeping my 65-billion on track, keeping my EBIDTAR in place, keeping my governance in place with my bond holders, keeping the minister happy.

20 The last thing that I want to do guys, with due respect, is change my mainframe supplier and my data supplier and my IT supplier, the last thing that I would want to do. I will tell you what my understanding of this thing was, my understanding at the time of putting this thing out to tender was that we wanted to keep T-Systems honest. That was actually the motivation.

Now I am saying it, it can be quoted, but I am not an expert and I am not an executive, so you might tell me that I am talking rubbish. We put this thing out to make sure that we were not paying T-Systems 2.5-billion where we should be paying them 1.5-billion.

MS MABASO: Ja.

CHAIRPERSON: The result of this process is, we are paying them a billion less over the period of it, which I get. To reiterate, I could not care about it, I can only care about the risk of can you imagine the headline? Transnet, because guys understand one thing, we just put
10 a 182 locomotives into commission, the only locomotive they wrote about in the newspaper... (intervenes)

MS MABASO: Two.

CHAIRPERSON: Were two locomotives that have got vibrations that do not work. Now how do you underrate (inaudible)? The fact is, if we go and change our mainframe and somebody sends an e-mail from their personal e-mail address because the Transnet e-mails have crashed, can you imagine that now guys? Can you imagine for all of us? The risk does not add up to me and that is really what my... I do not know T-Systems, I would not know T-Systems if they were to
20 bump in the street other than the Gijima's documented case against the Technology SETA, I do not know Gijima, I could not care about Gijima, I could not care about any of these people but for my risk point of view, this thing is suicidal and it takes consideration, therefore from a legal point of view, no disrespect to Legal, no disrespect to Risk.

What they said to us is this, if you read these opinions, they said guys, we are happy with the risk of changing, we are happy with the risk of not changing. We are happy with the legal implications of changing, we are happy with the legal implications of not changing. That is how I read it. You want vanilla ice-cream, you want chocolate ice-cream, we could not care. Either way, you are good to go. You are probably not going to get free points from either of them and we concede that.

We are saying as a Board, a Board that has been embattled
10 because the Chair managed to get into that preposterous report, managed to get into the newspaper on a number of occasions including, relating to one ADC submission which we, which somebody sitting at this very table, different people at the time, must have leaked. Somebody must have leaked it somewhere, so I am not confident Makano, that we can deliver on a smooth transition.

Our contract management in this place, excuse my French, is *kak*. It is *kak*, it is terrible. Or I accuse you all of it, you are all useless at it because the contract may be good, Mr Silinga has done his job beautiful, the person managing the contract has not been good
20 until now. You might be the new good manager of contract chain, of contract management, you may be, but I cannot take that risk. I cannot take that risk on so many levels.

I on behalf of this Committee, my recommendation and in the end we are going to have a vote here and we are going to either recommend with Gljima or T-Systems and we are then going to take

that recommendation to the Board, is that correct? And we know where the Board is in terms of this. I have got two more points and then I am going to hand over, I apologise for being somewhat verbose, my apologies. The next thing is, I think I have said... I could go into them.

There is one question that I have, I have got a question. This drop in the prices, can we drill down into the dropping of price in a second? It also fascinates me when somebody reduces the original bid by 500-million as to where they drop that. Could I ask the following question, do we know what the drop was? How much was the drop, in which areas and what was the original bid, what was the new bid and what was the T-Systems bid just out of interest? You know, the number? (Inaudible) am I making myself clear?

MALE SPEAKER: It can be point 80.

CHAIRPERSON: Point?

MALE SPEAKER: 80.

CHAIRPERSON: 80.

MALE SPEAKER: But it only gives you the Gijima price, eight-zero.

CHAIRPERSON: Paragraph 8.

20 MS MABASO: Paragraph what?

CHAIRPERSON: The estimated sale, this one?

MALE SPEAKER: Ja, 80.

MALE SPEAKER: We have got 32 that... (Intervenes)

CHAIRPERSON: No, I want, I am asking something different I think, I am asking if you reduce your price by 500-million, where did you

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reduce the 500-million? What... (Intervenes)

MALE SPEAKER: There was something that talked about the 51...
(Intervenes)

CHAIRPERSON: Ja, the 51 and the 32%.

MALE SPEAKER: Ja.

CHAIRPERSON: What was that and how, and what was...
(Intervenes)

MS MOSIDI: It was on the data centre you know, that I have just...
Eddie just check it and that is why Chair, I mentioned that only 8% of
10 the helpdesk, if you reduce it there, it is really just about ticketing. It
is... Then when you look at the mainframe, (inaudible) are coming
down all the time. They know it, they are the mainframe side, so that
is why I was saying the risk is actually mitigating Chair, because the
two, you can take the two, I think if I remember... (Intervenes)

CHAIRPERSON: What are the numbers?

MR THOMAS: Okay, so Gijima's original bid was 1.8-billion.

CHAIRPERSON: Okay.

MR THOMAS: Then we had the data centre session where they then
provided for us billing and their price went up to 1.898. T-Systems'
20 price at that point was 1.556.

CHAIRPERSON: Okay.

MR THOMAS: On the pricing of the final session between the two, on
the helpdesk services, Gijima's price after the data room was 226-
million and it dropped to a 104-million which is a move of 122-million.

CHAIRPERSON: Okay.

MALE SPEAKER: What was T-Systems?

MR THOMAS: T-Systems was a 156-million and it stayed the same, there was no movement on it.

CHAIRPERSON: Okay.

MR THOMAS: On the other services that was help and service desk, on end user computing the Gijima's original price was 227 and dropped by only 5-million to 222. T-System's price was 371 and it dropped to 351. On the collaboration services Gijima was 188 and they dropped to 153 which is a 34-million drop. T-Systems was 168
10 and that increased to 170. On the relationship management services, Gijima was 65-million and had increased to 66. T-Systems was 76.9 and it stayed the same. On the data centre services, Gijima's revised price after the data room was 1.09-billion and it dropped to 751-million. T-Systems was 770... (intervenes)

MALE SPEAKER: It was what?

MR THOMAS: It was 1.091-billion... (intervenes)

CHAIRPERSON: A quarter 1.1-billion, ja.

MR THOMAS: And it dropped by 340-million to 751-million.

CHAIRPERSON: So that was the call centre, what do you call it?

20 MR THOMAS: That was the data centre.

CHAIRPERSON: The data centre?

MR THOMAS: Yes, and T-Systems was 779 and they dropped to 785.

CHAIRPERSON: No, they went up to 785.

MR THOMAS: Ja, it went up to 785. They had increased by R6-

million.

CHAIRPERSON: So miraculously they both got to 7... That is the big job, that is the 350-million.

MR THOMAS: Yes.

MR GAMA: So that was the data centre there?

CHAIRPERSON: The big numbers, the data centre.

MR THOMAS: The data centre and then one of the service desk offerings, one of the people offerings.

CHAIRPERSON: Is it possible that they would have had access to or
10 did they legally have access to what the other bidder was at, price wise?

MR THOMAS: They should never have legally had any access to...
(intervenes)

CHAIRPERSON: So these oaks wind up, so the final was 785 versus?

MR THOMAS: 785 versus 751.

CHAIRPERSON: From 1.1-billion to 751, that is a 350 bar move, 340 bar. Wow, somebody in your office hacked the laptop?

MR THOMAS: They definitely did not have that.

20 CHAIRPERSON: Okay, I have said my piece, Chair.

MS MABASO: No, I just wanted to ask, you see you mentioned that with T-Systems we, from 2.5-billion to 1.6, we are saving how much? A billion?

MR GAMA: A billion, ja.

MALE SPEAKER: Is it 1.6 or 1.5?

MR PITA: It is 1.5.

MALE SPEAKER: It is 1.5, 1-billion.

MS MABASO: It is a billion. Can it be accounted for them as...

MALE SPEAKER: Savings?

MS MABASO: Yes.

MALE SPEAKER: It is a savings.

CHAIRPERSON: It is documented in that... (Intervenes)

MALE SPEAKER: They both said it.

CHAIRPERSON: I think the Chair is asking, can they come and
10 actually charge us 2.5?

MR SILINGA: No, no, they cannot because the... (intervenes)

CHAIRPERSON: It is a fixed contract.

MR SILINGA: They have now, the process has now indicated to us
that they ate quite a bit in the past five years but they are willing to
take less.

CHAIRPERSON: All right.

MR SILINGA: So that is the outcome of the process, there is a billion
that we are saving, so it means they were charging us in the last five
years close to 600-million, but they are willing to charge us 400.

20 CHAIRPERSON: Okay, and I think Makano made a point there, the
data costs had come down?

MR SILINGA: Ja, but effectively as we were going to be extending
the contract, they had not (inaudible). She says they have been
charging us 9% more, so the processes have... Well she is being
saying we should have been getting minus four instead of plus nine.

CHAIRPERSON: But can we, and is there any chance of sharpening their pencil more if we were... So... (intervenes)

MR SILINGA: In the one that you have got extended, no. Have we finished negotiating, the nine month extension?

MR THOMAS: So the nine month extension will be working on the key principles, we have not finalised the final prices but we are expecting some form of reduction. But just in terms of a normal tender process, even on the... So the process bidders go through is, they bid a good company price to be able to be shortlisted and then
10 when you go into the final negotiations, you can still achieve a further 10% on the prices, because they do (inaudible) into these transactions. So we do believe that whoever the final bidder is, we should be able to reduce those prices through negotiations and...

CHAIRPERSON: I want to wrap this up unless any... Makano, would you like to respond?

MS MOSIDI: Yes Chair, I just want to make some comments because I think it is important that we transform this environment. If you have given us the mandate that we need to do Chair, to actually reduce the cost because if you read this tender, there are six guided
20 principles, it is to innovate in this environment, we did not have it for seven years, it is to reduce cost. It is there in the tender. We have not reduced cost. The analysis that we have made, it has given us year and year increase, 9% it has increased.

And even now when you are going to sharpen pencils for the nine months, I know that they are going to ask that they will reduce by

4%. It has not, okay, so if (other official language) Chair, you are going to call us, sorry I used Sotho there, you are going to hold us accountable for the cost, those six principles we have not seen any movement in the past seven years. What I did know Chair, is that this tender was to test and to keep T-Systems honest if I had known... (intervenes)

CHAIRPERSON: That is my assumption, I am sorry, it is me.

MS MOSIDI: If I had known, then we would not have taken this energy to make sure that we get the right (inaudible) a competent bidder and just say look, now we have reduced the price and we would have left it to Procurement. I actually thought it was time to refresh, to get new partners inside Transnet so that we can actually achieve the innovation that we would like to achieve. You want to have a competent partner and I am confident that in the context that we have that we have recommended to the Board, we will actually achieve those. I am very confident about that. However... (intervenes)

CHAIRPERSON: I have got (indistinct), sorry, finish.

MS MOSIDI: Yes, yes Chair, so just in summary I am saying the six guiding principles of this tender, we have not achieved for the past seven years. I would not want to be here, I am ambitious, I might be soft but I am quite ambitious, I would like to win and if they have not done so for the past seven years, these six principles, I do not know why I think they will be for the next seven years, but had they won the tender, probably we will take something and see what we can do with

it.

CHAIRPERSON: Can I say to you then if the Board (inaudible) you which we would be prepared to admit to, we need to say to you look, and at an operational level you have got to go and keep the softer rear and get them into gear and we will help you to do that, because if they are not delivering, we are just saying that at a macro level to go and make these kind of changes and the kind of risk factors that we are carrying, soft risk factors but also the hard risk factors, he has got (inaudible) issues at the moment.

10 Anything that is going to risk us shutting the systems down, is going to be such that we as a Board, we are going to be crucified and we just, that is our overriding principle. We are risk averse, I sit every day and my wife asks me, are you going to be in the newspaper again? When are you going to be in the newspaper so that I can avoid all our social arrangements. I am sure that you... (intervenes)

FEMALE SPEAKER: Tell me please, they have not put your face?

CHAIRPERSON: Exactly, so we are at super risk of this and we are super sensitive to the fact that we are now looking to give you all the GCE a job to do that we do not (inaudible) what you do. We accept
20 that. My perception was that Maria created a perception that this Aviara transaction was going to last, excuse my Latin, it is not great, *ad infinitum*, that was the perception that I had about that dealer originally and I might be wrong but Eskom and Transnet both gave those kind of undertakings at the time.

Maybe they are not relevant anymore, but we just from a risk

point of view are very nervous of it and it is not to headstream you guys and it is not, it is to say look, we have got this (inaudible) wagon, if we need to improve it, if we need to buy it new tyres and pull it harder and kick its donkeys more, whatever we have got to do, we are happy to support you in it but I do not think that you know, any sharp movements at the moment we are going to wind up cutting ourselves.

MALE SPEAKER: Chair, can I just make sure we are correct in terms of the objectives of taking the process? I mean I do not think
10 anybody in Transnet ever believed that the contract must carry on for infinity. The fact from a process point of view it is always about the market, testing the market and I think it boils down to fairness, equity, transparency, cost effectiveness and (inaudible). I think going out in the market and by getting R1-billion, one, and another saving and another, shows that you are ticking the box around competitors, you keep everything (inaudible).

Then from a process point of view, risk had been identified. You know, the governance had been (inaudible) and I look at paragraph 37, it talks about use of objective criteria was (inaudible) in
20 the RFP as a standard clause in section 1, paragraph 10. It is a disclaim of our RFP, so from a few risk (inaudible) processes, we highlighted the risks and then management believed that and the process must believe that the risks can be mitigated, the extent to which we can mitigate then is still objective criteria. If we believe that the risks are too high, obviously the Board can make the decision on

this. The one part that I just also want to highlight though, is from a transformation point of view. I do not want the Board to get the idea that we have done no transformation over the last seven years... (intervenes)

CHAIRPERSON: No, we do not.

MALE SPEAKER: As well from my point of view, my understanding is that they have met all these (inaudible) development on. We have not penalised anybody and in fact, there has been black owned businesses coming into the industry and I know that Mr (Inaudible) you had asked us that previously when we presented that, so I do not want to give you an impression that there is no supply being put it. All I am saying is, from a process point of view we have followed the process.

If there is risk that is still sitting in the Board's mind, we can obviously make a call and we have come to this conclusion based on these various steps. I must admit though the contract management has been (inaudible) for us and we cannot just (inaudible) in the ICT area, I do not want to say that Makano's area is especially better than contract management. That is not the case, I think it is a pervasive risk across Transnet which is something we need to, GCE you and I need to be pushing hard on to make sure that we fix it. So Chair, I just wanted to make those points and also you know, from a risk point of view, the pricing risk is always going to be there.

We can mitigate, we can get the suppliers that will tell us that there is no risk. Pricing is always going to be there. I can remember

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a contract that we discussed the other day over Imperial with the fleet. When we went and entered into the contract, they were significantly lower than everyone else and now they have got and cancelled the contract. There is always pricing risk there, whatever contract you are looking at. So we can mitigate it up to a point but they also can come to you and say that they will (inaudible) to cancel.

CHAIRPERSON: No, I think that the Imperial contract is a very good point because we did this deal with Imperial, we gave it to the lowest bidder, not nice guys either by the way, the truth it sound like I they
10 do not like anybody, maybe I do not but they have cancelled us and we had no, what-do-you-call it, a recourse. They said look guys, you are right, we did not quote you that price, now that we have looked at it, actually we are not going to make any money out of it and we want out. I think that the other mitigation here from leaving these mongrels versus the new mongrels is that they make nice money out of us, that is what that more or less admit that it sounds like.

It sounds like if we can manage them and they have made money already, the lower price may actually work for these five years in our favour. So you know...

20 **MS MABASO:** (Inaudible) how about the (inaudible) taking?

MR SILINGA: Ja, in terms of the SD, I think they have two numbers, 46% on one and another one... (intervenes)

CHAIRPERSON: 57.

MR SILINGA: On 53 or 57, ja. That is 53. Eddie, can you check because we always try and... (intervenes)

CHAIRPERSON: Paragraph 77,

MR PITA: 77.

CHAIRPERSON: Paragraph 77.

MR THOMAS: Chair yes, just in terms of that, Gijima's SD offer is 46% and T-Systems is 57%. Now we do have the situation you know, whereas the GCFO mentioned on the Incumbent, they have SD obligations and part of their SD obligations is, they have actually predated a black owned data centre owner, so we do have a South African black owned company who is a data centre owner with
10 equipment, *et cetera*, that are on the Gijima side.

They have got big International OEMs, they have got IBM and they have got Vodafone and neither of them actually have the black ownership of a data centre within the South African environment and I think that might be the differential in terms of percentages coming through on the office from the percentages on their contracts.

We have not gone into the details of their SD plans, because that we will engage with prior to the finalisation of the final contract.

CHAIRPERSON: Does anybody have anything to add? Otherwise then I want to try and wrap this up because we have run a bit over it
20 and I am going to go around GCE. Anything that you want to add?

MR GAMA: No, I think you will see my annotation was around...
(Intervenes)

CHAIRPERSON: SD.

MR GAMA: Supply and development, because I think it is an important aspect.

MS MABASO: Ja.

CHAIRPERSON: But Chair?

MS MABASO: No, I am (indistinct).

CHAIRPERSON: Mr Nagdee?

MR NAGDEE: I have (indistinct), no I am fine (indistinct) Chair.

CHAIRPERSON: No, I am going to wrap it up now. Would you like any other responses, comments, anybody? I do not want anyone to accuse to not have had their say.

MS MOSIDI: Can I?

10 CHAIRPERSON: Yes.

MS MOSIDI: Just for the last time.

CHAIRPERSON: Ja.

MS MOSIDI: I know you are very averse to newspapers and I...
(intervenes)

CHAIRPERSON: You have got no idea, you cannot imagine.
[Laughs].

MS MOSIDI: I am as well Chair and I can just imagine this headline that says Transnet award the biggest contract to the most expensive, not necessarily black owned organisation. It is just a line that I see as
20 we speak... (intervenes)

CHAIRPERSON: I doubt that, ja.

MS MOSIDI: Whilst Gijima is a home (inaudible) company which is (inaudible) and it was cheaper and it won and it could not. It is just a comment to say I am also so averse to these comments because I think they do not stand well in terms of their intention of us as a

community for our country.

MS MABASO: I think Makano, I hear you but we have been in the media, you do not know, you do not understand how it is. Even your child, you look at him, you are just wondering what is he thinking about you, you understand? So you come to the Board meeting and you are looking at other Board members who have not been on the media just wondering what are they thinking about you, you understand?

What I am trying to say, we have gone through all those
10 emotions, but at the end of the day it is not about the most expensive or the cheapest, it is about the risk that is being imposed and for me really, I am not comfortable with Gijima, I really am not. I really am not. Thank you.

CHAIRPERSON: I think that you are right there, I think that that headline is going to come but I think the worst headline is to say that we our IT system fell over. The incompetent Transnet, now its IT system fell over and I mean that is the worst headline in saying that we awarded a contract. I think that all of our contract awarding
20 processes are questionable anyway, that is the implication, that was the implication of the newspaper articles, so I suppose it is versus changing and making a major change.

I want to say one last thing, that procedurally we are going to take this recommendation to the Board, we as the ADC are going to recommend against remaining with the incumbent. Colleagues, is that correct?

MS MABASO: Say it again.

CHAIRPERSON: We are going to recommend remaining with the incumbent.

MALE SPEAKER: Yes.

MS MABASO: Yes.

CHAIRPERSON: We are going to say that management's recommendation per the submission, was to go with Gijima and we are going to ask the Board to confirm more or... Is that procedurally where we are up to?

10 MS MABASO: Ja.

CHAIRPERSON: Garry, GCE, do we have the right? We do not have the right to authorise this on our own or we do?

MR PITA: No, you need to recommend it to the main Board.

CHAIRPERSON: Just to be clear, we are going to recommend staying where we are for risk purposes. GCE?

MR GAMA: Ja, but the purpose of having a Board and committees, is because we as management might do things and you are bringing in a different independent perspective. This is beyond the authority of the management, so as a Committee you may overrule the management in terms of what the management comes with and then you can then ask the management to submit to the Board a...
20 (Intervenes)

CHAIRPERSON: A vast.

MR GAMA: A devised, things that you do not need to then go and say to the whole Board, management said this and ADC said this. So

it now, it is a submission that says the ADC recommends the following to the Board.

CHAIRPERSON: I think for good order, thank you for the clarification. For good order I think we should add to this memo then for the Board, so that it says that ADC have overruled management. We are okay with it, we have done it before, we have done it on the NMPP which is just such a disaster, you know this is not the first time we have done it, we have made drastic changes in terms of (inaudible).

ADC has made great changes in terms of, by way of
10 example NMPP and so our recommendation is going to be to remain with the incumbent and we would ask Mr Thomas to update the memo to that effect. Obviously we have got between now and next week if any material changes occur or anything, I would hope that this does not wind up in the press, I suspect that it will and what undertakings, I understand that there was a meeting, a final meeting with Gijima where they arrived with lawyers and recorders and all kinds of things. Is that correct?

MR THOMAS: Chair yes, that was at the last clarification meeting we had. They had their (inaudible) there including their external lawyers
20 as well as some public procurement experts.

CHAIRPERSON: So let me just say one thing for you Mr Thomas, I speak for the Chair and she can add... (intervenes)

MR SILINGA: Did we make any proclamations, like as (inaudible)?

MR THOMAS: No, we did not.

CHAIRPERSON: Ja, but also, just from a procedural point of view,

why on earth would a supplier arrive with external lawyers? What is that about?

MS MABASO: Intimidation.

CHAIRPERSON: Why would they come and get lawyers and why would we entertain their lawyers?

MS MABASO: Yes.

CHAIRPERSON: I would love to bring my lawyer to the ADC meeting, I would love to, it would be fantastic.

MS MABASO: Why? Seriously, why?

10 CHAIRPERSON: Why would I like to? I would like to.

MS MABASO: And is it procedural here at Transnet that when you do such a thing, your lawyers must come and then they do recordings? Is it normal?

MR THOMAS: So it is normal for us from a procurement perspective to record the sessions and... (Intervenes)

CHAIRPERSON: You are recording?

20 MR THOMAS: So we record, we always records all our sessions and then they requested that they can also do a recording and they will bring their recording device with. So there was no, there is no sufficient grounds for us to actually deny them that right.

CHAIRPERSON: And external lawyers?

MR THOMAS: We often find that suppliers do involve their lawyers in a process to assist them during the processes.

CHAIRPERSON: Can I make a suggestion? Can we, we will look at that as a procurement process.

MS MABASO: Ja.

CHAIRPERSON: Because I think that as a Board, we are uncomfortable with people arriving with their lawyers.

MS MABASO: Yes.

CHAIRPERSON: Because to me, it just smells of something that is looking to pick up a fight with you. I love lawyers Mr Silinga, at present companies included, but I think that having, I mean Mr Silinga is just internal counsel for the very reason.

MS MABASO: Yes, it is some sort of an intimidation, né.

10 CHAIRPERSON: I do not know about that, I mean it just gives, it does not give a warm fuzzy feeling to me.

MS MABASO: Ja, it does not.

CHAIRPERSON: And it leaves me to believe that we will have such a headline, but in any event we are to reiterate, this decision is based on risk averseness, it is not, I want to reiterate this one last time, I now need time to can say it, I hate all these consultants, they are all terrible and if it was my life over again, I would have told Ms Ramos not to sell off her IT Department, but that is life. So that is where we are and it is, the risk aversion that this is about and when the press
20 calls us on, it means we will, you know, that is our overriding principle.

MS MABASO: And the other thing Eddle, if you allow this one party to bring their lawyers, the other part will say I love those ones, you understand? So please, I do not know how to, whatever you are going to amend but really, some other parties will also say, you know

what, I want to bring my lawyers because you allowed Gijima to come with their team of lawyers. It is not a standard thing here at Transnet, so we have to do something about it. I do not know whatever you are going to do.

MR GAMA: In future, you cannot tell them not to do it now.

CHAIRPERSON: Ja.

MS MABASO: No, no, not know... (Intervenes)

CHAIRPERSON: We know that.

MS MABASO: I am talking about the future.

10 MR THOMAS: We all definitely will have a look to see what can we do to address that.

CHAIRPERSON: Okay. Everybody, I must say that usually thank you for your energies and your time and to reiterate, it was my personal opinion that the mechanism of putting out the RFP was to keep everybody honest. It is not to say that if somebody would have arrived with half the price we would be able to have the same discussion, but then within a tender of 20% splitting distance and the size of the organisation and the risk that we are carrying, and I am sure that we are not *ad idem*, that happens from time to time. It is the
20 nature of an organisation, it has happened with us before I think on occasion, but we do appreciate everybody's energies and efforts in the process. Are we still going to aim to finish before lunch, madam?

MS MABASO: I think the NMPP people are here, just finish with them and then we go can go on lunch.

CHAIRPERSON: Okay, we are going to do then item 6.4 which the

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NMPP update. Thank you very much. Makano, thank you.

MS MOSIDI: Thank you very much.

MS MABASO: GCE?

MR GAMA: I think we may as well finish everything, there is not much left.

MS MABASO: The other item is the Supply Chain Management item.

FEMALE SPEAKER: Okay.

MS MABASO: Just to...

CHAIRPERSON: That is your, Mr Thomas.

10 MR GAMA: The one for NMPP is for noting, is it not?

FEMALE SPEAKER: Yes, Chair.

CHAIRPERSON: I think just...

MR GAMA: Let me just indicate to the Board members, we are going to have a deep dive I think on the 9 March and we have set aside more than an hour, maybe two hours to deal with the NMPP, so there is not any need for us at this point, because they are not asking for money, it is just their normal report for us to delve into detail, but I must just say that there are skeletons riddling out of the...
(Intervenes)

20 CHAIRPERSON: In the (Inaudible).

MR GAMA: But ja.

MR THOMAS: Chair again, I think the GCE is right, it is something that we want to put up... (Intervenes)

MR GAMA: And we have a Steering Committee with NMPP.

MR THOMAS: Ja, and contract management also seems to be the

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TRANSNET SOC LTD**ACQUISITIONS AND DISPOSALS COMMITTEE MEETING
NUMBER 7-16/17FY****13 FEBRUARY 2017**

FORUM OF ORIGIN	:	Meeting
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➤ Some words/phrases were inaudible due to the following reasons:

1. Unfortunately not all speakers were positioned close enough to the microphones/recording device.
2. Noises caused by persons coughing and paging through documentation drowned out the voices of the speakers.

➤ Transnet is a very large entity; terms/abbreviations/names of employees/projects of which could not be traced via the Internet, were spelled phonetically.

➤ Speakers were not introduced on record. In some instances Mr Chair would mention the following speaker's name/surname, but not at all times and reference was then made to "Female Speaker" or "Male Speaker".


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MEMORANDUM

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To: Transnet Board of Directors (Board)

From: Siyabonga Gama, Group Chief Executive (GCE)

Subject: **RFP No. GSM/15/08/1310 for the Provision of IT Data Services – Request for the Transnet Board of Directors (Board) to approve award of contract on the IT Data Services RFP to T-Systems South Africa (Pty) Ltd as recommended by the Acquisitions and Disposals Committee (ADC)**

PURPOSE OF SUBMISSION:

1. The purpose of this submission is to request the Board of Directors (Board) to:
 - a) Approve the award of a contract to T-Systems South Africa (Pty) Ltd for a period of five (5) years with an option to extend for a further period of two (2) years; and
 - b) Grant authority to the GCE to sign the Letter of Intent (LOI) to the preferred bidder (T-Systems), Letters of Regret (LOR) to the unsuccessful bidders, the contract and all relevant documentation including any subsequent contract amendments.

BACKGROUND:

2. The current five (5) year T-Systems contract for Information Technology (IT) Outsourcing was established through a sale agreement of Arivia.kom to T-Systems in 2009. The contract was extended for two (2) years and it was due to expire on 31 December 2016. Prior to its expiry, the Board recommended a nine (9) months (month to month) extension on the T-Systems Master Services Agreement (MSA) and the National Treasury (NT) approved a contract extension in line with the Supply Chain Management (SCM) Instruction Note 3 of 2016/2017 (Prevention and combating the abuse of the SCM system). The revised T-Systems contract expiry date is 30 September 2017.
3. All Transnet Operating Divisions (ODs) make use of this contract for their IT Data Services requirements and the contract is managed at Group level by Group Information and Communications Technology (GICT).
4. This sourcing strategy was approved by the Board on 27 August 2015.

DISCUSSION:

5. Transnet issued the approved IT Data Services RFP to the market from the 23rd of November 2015 and the tender closed on 26 January 2016. A compulsory briefing session was held on 09 December 2015 and fifty (50) bidders attended the briefing session. Only nine (9) bidders responded to the invitation to submit responses.
6. Two bidders were eliminated during the administrative and substantive responsiveness stages. Seven bidders remained and passed the technical evaluation stages and advanced to stage 4 (commercial and preference evaluation stage) and they were:
 - Bidder 1: Ubuntu Technologies
 - Bidder 2: Wipro Technologies South Africa
 - Bidder 3: MTN
 - Bidder 4: EOH Mthombo
 - Bidder 5: T-Systems South Africa
 - Bidder 6: Business Connexion (BCX)
 - Bidder 7: Gijima Holdings
7. During the evaluation of the commercial aspects of the bids (Stage 4), it was found that the bidders had made numerous assumptions on their initial bids regarding Transnet's requirements. The bidders were then invited to the IT Data Room, where they had a view of Transnet's detailed IT landscape, to get a better understanding of Transnet's environment. Subsequent to the visit to the Data Room, all bidders were invited to a "closing the gap session", which was a session to clear all assumptions, in order to enable bidders to provide Transnet with a revised pricing workbook. The bidders submitted their revised prices on 06 June 2016, after which the second commercial evaluation was concluded.
8. The GCE approved that negotiations and due diligence exercises be conducted with the top two (2) ranked bidders [T-Systems (bidder 5) and Ubuntu Technologies (bidder 7)]. These two bidders scored the highest overall points against their counterparts on price and preference.
 - The first (1st) ranked bidder (T-Systems) achieved a total score of 99% and the second (2nd) ranked bidder (Ubuntu Technologies) achieved a total score of 86.2%.
 - There was a price variance of 12.8% between the first and second ranked bidder. Whilst, the price variance between the first and third ranked bidder was 19.79%.
9. The tender validity period was extended with an additional 120 (one hundred and twenty) business days until 11 January 2017. In December 2016, a further ninety (90) business days' validity period extension was approved by the GCE. The revised IT Data Services RFP validity period expiry date is 24 May 2017. The bidders confirmed in writing that their prices will remain valid for the duration of the extended validity period.
10. On 19 July 2016, Transnet communicated with T-Systems and Ubuntu Technologies that post tender negotiations and due-diligence exercises needs to be undertaken between July

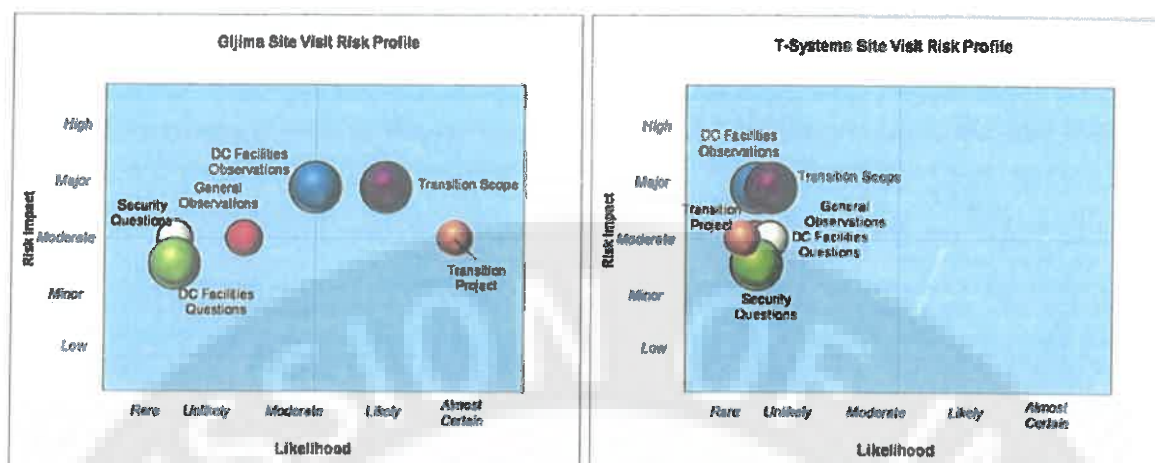


and August 2016. Subsequent to the receipt of the above notification from Transnet, the second (2nd) ranked bidder (Ubuntu Technologies) sent to Transnet their formal letter withdrawing from the bidding process, citing the reason that their strategic partner (Hitachi Data Systems) had indicated that it is not able to keep its prices firm during the extended validity period of 120 business days. Ubuntu Technologies could have opted to amend their prices, as per paragraph 6.2 of the General Bid Conditions (GBC), which allows bidders to amend their prices in line with changes in the market. Ubuntu Technologies instead opted to withdraw from the bidding process without exercising the option to amend their tendered prices.

11. The risk assessment performed through due diligence and post tender negotiations continued as scheduled with T-Systems on 25 and 27 July 2016 respectively. The third (3rd) ranked bidder (Gijima) was added on the shortlist, to replace the second ranked bidder (Ubuntu Technologies) in order to maintain competitiveness in the bidding process. The GCE approved the addition of the third ranked bidder for risk assessment and negotiations on 11 August 2016.
12. The risk assessment and post tender negotiations with Gijima, the third ranked bidder were conducted on 11 and 12 August 2016. After the conclusion of the risk assessment and post tender negotiations with T-Systems and Gijima, the bidders were requested to submit their Best and Final Offers (BAFOs). Gijima provided the lowest priced bid in the BAFO stage, scoring a final score of 99% for price and preference. T-Systems scored a final score of 85.07%.
13. A report was compiled which gave a comprehensive overview of the risk assessment process. The due diligence report gave an overall score of both bidders and the second part of the report is a risk assessment report. The risk report delved deeper into the business, technical and financial risks that were identified by the CFET on both bidders and the overall impact on Transnet.
14. The bidders were informed that a maximum period of six (6) months for the transition period still applied and it was also emphasized during the commercial negotiations that after the six (6) months transition period, Transnet requires to be operating on the full services in line with the RFP in order for operations to be stable with no major ICT transformational activities for at least eighteen (18) months.
15. In the initial submission Gijima had accepted the transition period condition, but on their high level transition plan that was submitted with their BAFO on 17 August 2016, it stated the following: *"Gijima understands the complexity of a transition project. It is therefore imperative that we transition the AS-IS (CMO) environment during the proposed 6 months. Enhancements and improvements (CMO+) will be done after the transition and stabilisation period"*. This was assumed to mean that Gijima will continue providing Transnet with the Current Mode of Operation (CMO) services as currently delivered by the incumbent after the six (6) months transition period. The requirement was for Transnet to operate at full services as per the RFP requirements after the six (6) months transition period has been finalised. The above statement by Gijima, projected probable significant business and financial risks to Transnet.

RISK ASSESSMENT:

16. The risk assessment was performed by Gartner and the technical members of the CFET through the usage of a risk assessment template, site visits and interviews with the shortlisted bidders' key personnel. The risk assessment template was compiled by Gartner. Gartner is the world's leading information technology research and advisory company. Gartner Consultants who compiled the risk assessment template were contracted by Transnet to provide technical support and advice on the IT Data Services project.
17. The key areas that were assessed during the risk assessment of the two (2) shortlisted bidders were amongst other things the following:
- Scope and contract;
 - Transition Scope;
 - Transition Project;
 - Quality and Performance; and
 - Relationship Management.
18. The high level summary of the risk assessment conducted on both shortlisted bidders are as follows:
- Bidder 5 (T-Systems)**
- No major risks were identified on this bidder.
- Bidder 7 (Gijima)**
- Risks were identified relating to:
 - Data Centre not being complete and ready
 - Security risk
 - A major transition risk in the transition period to reach the required level of services as per the RFP
 - Pricing risk of paying for RFP required services but receiving other service levels
 - Risk of Transnet and Gijima being able to commit the required number of skilled resources in order to be able to execute the transition period and to manage the contract and the supplier.
19. Gartner and the CFET did a detailed analysis of the above identified risks by conducting a detailed analysis of the type of risk, risk impact rating and likelihood rating. The assessment provides a likelihood rating which ranges from one (1) to five (5) as follows; "Rare", "Unlikely", "Moderate", "Likely" and "Almost Certain".

Table 3: Site Visit Risk Assessment*Gijima site visit risk profile**T-Systems site visit risk profile*

20. The First ranked bidder was found to have three items with a risk impact of moderate to high with a likelihood of moderate, likely and almost certain. The second ranked bidder (T-Systems) was found to have all six (6) items between "rare" and "unlikely" which translated into minimal risk to Transnet.
21. Gijima was given the opportunity to advise Transnet on how they will address the identified risks. In the letter, clarity was requested on the IT Data Centre Facilities, Business Requirement-Transition Scope, Scope and Contract as well as Transition project and Contract Delivery. The letter was very explicit on the points that needed clarity from the bidder. Gijima's response did not adequately address the risks that were addressed and as a result, the CFET requested that Group Legal provide counsel on the way forward.

ISCM GOVERNANCE, GROUP LEGAL AND GROUP RISK OPINION:

22. Integrated Supply Chain Management (ISCM) Governance's counsel was also sought on the requirements of using objective criteria to recommend the second ranked bidder (T-Systems) as the preferred bidder, due to the major risks that were identified on the first ranked bidder (Gijima). The use of objective criteria was allowed in the IT Data Services RFP as a standard clause, in Section 1, at Paragraph 10 (Disclaimers) of the RFP.
23. Governance recommended that clarification be obtained from Gijima, the clarification failed to address the risks and Governance concurred that Transnet may award the tender to the second ranked bidder, only where it is lawful, reasonable and procedurally fair to do so. Furthermore the risks that were identified must be material in order to justify the use of objective criteria.
24. The conditions stated by Governance, satisfied the need to apply objective criteria in the award of the contract to T-Systems as Gijima had already been provided with an opportunity to make representations on the identified risks and they failed to adequately address the identified risks.

25. This was further supported by Group Legal's opinion regarding the identified business risks. Group Legal's opinion was that the use of objective criteria by the CFST to recommend award to the second ranked bidder was allowed as the process that was followed in arriving at the recommendation was lawful, procedurally fair and administratively fair.
26. Group Legal indicated to the IT Data Services CFET that it was justifiable to select the second ranked bidder based on the material risks which were identified on the first ranked bidder and that this decision can be legally defended in the court of law as "Transnet acted in a manner that was lawful, reasonable and procedurally fair".
27. "Group Risk and Compliance supports the view by the IT Data Services CFST that the risks raised in the report are high. Should business decide to accept the above business risks, they will be required to provide the necessary mitigating actions and accept the accountability thereof should such risks materialise. Consequences of materialisation of the risk could unnecessary increase the cost of doing business. The overall risk rating of Level II would require a formal risk acceptance by business should the contract be awarded to Gijima".
28. Group Risk and Compliance further concluded that they support the view of the IT Data Services CFET that the risks raised in the Gartner report are high and should business decide to accept these risks, a risk acceptance process should be followed and accountability established.

HIGH VALUE TENDER (HVT) PROCESS:

29. Transnet Internal Audit (TIA) was part of the IT Data Services RFP evaluation process including risk assessment and negotiations and they issued satisfactory audit reports for HVT Gateway 3 and 4.

THE CROSS FUNCTIONAL EVALUATION TEAM RECOMMENDATION:

30. Based on the business risks that were highlighted by the risk assessment performed through the Due Diligence, the assessment by Group Risk and Compliance and by the advice provided by ISCM Governance and Group Legal, the CFET recommended that Gijima not be recommended for award. The risks that were considered by the CFET in making a recommendation for award to the second ranked bidder (T-Systems) based on objective criteria of risk.
31. The CFET's view in this regard was further supported by Group Legal's opinion and the Group Risk and Compliance's report.

THE GROUP CHIEF INFORMATION OFFICER'S RECOMMENDATION:

32. The CFET recommendation for award to T-Systems based on objective criteria as a result of the business risks that were highlighted above, was submitted to the Group Chief Information Officer (GCIO) for recommendation to the GCE in December 2016. The GCIO did not support the CFET recommendation as the GCIO's view was that the risks that were

highlighted in both the Gartner and the Group Risk and Compliance reports needed to be fully tested as they did not emerge during the RFP evaluation process.

33. TThe GCE recommended that the GCIO needs to engage the first ranked bidder (Gijima) to clarify and assess the identified business risks and assess their response and to confirm together with Supply Chain Management that the pricing that was submitted by the first ranked bidder (Gijima) on their BAFO submission constituted a valid bid which could be compared with other bidders on a "like for like" basis and was compliant with the Transnet RFP requirements.

CLARIFICATIONS SESSION WITH THE FIRST RANKED BIDDER (GIJIMA):

34. Group Strategic Sourcing (GSS) in consultation with the Office of the GCIO and GCSCO drafted the clarification questions that were sent to the first ranked bidder (Gijima) on 19 January 2017. The first ranked bidder (Gijima) was also invited to a clarifications meeting which was held at Transnet offices on 23 January 2017. The clarifications meeting was facilitated by the GCSCO, GCIO and attended by representatives from EIMS (Group ICT), GSS, ISCM Governance, TIA and various representatives from Gijima including their legal counsel and public procurement experts.
35. During the clarifications session, the first ranked bidder (Gijima) was requested to provide clarity on the questions that were asked by Transnet on its clarifications request letter dated 19 January 2017. The first ranked bidder (Gijima) provided the required clarity which confirmed among others the following:
- The first ranked bidder confirmed their commitment to the six (6) months transition period and that they have the required skills and capacity to transition all the required services within the stipulated RFP timelines and service levels;
 - The data centre equipment will be received for installation within a 4 week period;
 - That they have contingency plans identified to ensure that Transnet continues to receive the required services after the six (6) months transition period. These contingency plans has not yet been formalised;
 - The 'CMO' terminology relates to the services as required by Transnet;
 - That their tendered pricing is fixed and firm for the entire duration of the contract and includes all required services and service levels in line with the RFP;
 - That the "CMO+" referred to in their BAFO response refers to continuous improvement initiatives over and above the RFP scope;
 - That the R560m (31%) pricing reduction in their BAFO was made possible by their improved understanding of the Transnet requirements after due diligence and negotiations, equipment preferential pricing from their sub-contractor (IBM), reduction of their input costs and appointment of experienced employees with Transnet domain knowledge;
 - That the early termination fee amounts that were indicated in their BAFO pricing workbook only applies to termination for convenience;
 - Gijima also confirmed that their BAFO pricing is profitable for them and their technology partner (IBM) and that they are confident that they will be able to sustain their tendered pricing for the duration of the contract (5 years).

36. Any residual risks that were remaining could be mitigated through robust contract management and stringent Service Level Agreements to could be negotiated and signed with Gijima. The Gijima residual risks and their proposed mitigations are set out in the table below:

Table 4: Residual risks and mitigating actions

No.	Residual Risks	Mitigating actions
1.	<p>Pricing risk:</p> <p>Besides the bidder's assurances and written confirmation that their BAFO pricing will be sustainable for the duration of the contract, there is still a possibility that they might be "low balling" to get the contract and will only realise afterwards that their pricing cannot be sustained for the five (5) year contractual period.</p> <p>Gijima did not satisfactorily respond to the request for a rational justification of the material reduction in price. This residual risk is caused by the following factors:</p> <ul style="list-style-type: none"> Gijima's revised pricing increased by R63,570,579.60 from R1,835,378,865.76 to R1,898,949,445.36 after the Data Room and clarification sessions. Technical and commercial evaluations subsequently took place and thereafter risk assessment and negotiations were conducted with the shortlisted bidder in Stage 5 of the evaluations process. Despite Transnet's technical requirements staying the same after the Data Room and clarification sessions, Gijima's pricing was reduced by R560,835,121.32 from R1,898.949,445.36 to R1,338,114,324.04 in their BAFO submission. The justification provided by Gijima for this significant reduction (31%) was that they have been offered preferential pricing by their OEM subcontractor (IBM) on the Data Centre equipment, that they introduced some efficiencies in their contact centre operations and that they also gained additional knowledge of Transnet's requirements through their subsequent employment of technical resources with Transnet's domain knowledge. 	<p>Contractual clauses to be included in the contract which indicates the measures to be taken for mitigating these risks.</p> <p>Contract Management Plan to be drafted and implemented.</p> <p>Continuous Contract Management and key milestone management.</p>
2.	Early Termination Risk	Contract to include express undertakings from

	In the event of Transnet cancelling the contract as a result of Gijima's breach, Gijima claims their "sunk costs" for example, hardware and software costs of Data Centre and any other set up costs. This risk may produce a ripple effect for Supplier Development and local black owned companies in the Data Centre industries.	Gijima that in the event that Transnet cancels the contract as a result of Gijima's breach, Gijima waives any claim for its start-up costs and costs incurred in trying to meet the deliverable under the contract.
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37. In addition, Gijima identified some internal risk management controls such as establishing its own Project Committees, Board Risk Committees, Project Management tools and Executive Management support during the clarification session. The effectiveness of these controls could only be realised once the contract was underway

MANAGEMENT RECOMMENDATION FOR CONTRACT AWARD:

38. Based on the above clarifications meeting and after having perused the clarifications response letter from the first ranked bidder (Gijima),
- the Group Chief Information Officer (GCIO) indicated that she was satisfied that all the previously identified risks have been adequately mitigated.
 - Supply Chain Management perused Gijima's clarification response letter and did not find any grounds for non-responsiveness based on the first ranked bidder (Gijima) not having priced for the full scope of services as required in the RFP.
 - Group Risk and Compliance also reviewed Gijima's clarifications request letter and their response letter and indicated that they are satisfied that the risks that were highlighted in their Risk Report have been adequately addressed.
39. It was based on the above background and based on the GCIO's satisfaction as requested by the GCE that the risks had been adequately mitigated that the first ranked bidder (Gijima) was recommended for award of contract as the preferred bidder by management, in line with the PPM principle of 90/10.



THE ACQUISITIONS AND DISPOSALS COMMITTEE (ADC) RECOMMENDATION:

40. The management recommendation for award to the first ranked bidder (Gijima) based on the 90/10 principle (Pricing and B-BBEE) after clarifications with Gijima, was submitted to the ADC on 13 February 2017 for consideration and recommendation to the Board for approval.
41. The ADC did not support the management recommendation for award of contract to the first ranked bidder (Gijima) based on the risks that have been identified on the first ranked bidder. The ADC raised among others the following concerns:
 - The ADC indicated that the Board and its sub-committees have a very prudent approach in not accepting unnecessary risk for the organisation.
 - Gijima was the third ranked bidder at the shortlisting stage which indicated that they were not in the running at the first shortlisting stage.
 - There was a material pricing gap (R342m) between Gijima and T-Systems, with T-Systems being lower priced, before the BAFO submissions;
 - The pricing provided by Gijima was after they had access to the specific details from the Data Room and from the closing the gap session and should have represented the price that they believed would get them shortlisted and to move to the next stage but they were 20% more expensive than the bid received from T-Systems.
 - Gijima reduced their pricing by R560m in their BAFO submission without any verifiable justification for such a significant drop, which changed their evaluation ranking from being the third ranked bidder before BAFO submissions to being the first ranked bidder after BAFO submissions.
 - The price difference between the final offers of Gijima and T-Systems, which equates to approximately R40 million per year over the 5 year period does not justify acceptance of any risk by accepting the lower price of Gijima.
 - There are also supplier development objectives to take into account and there is a 10% difference between Gijima and T-Systems with the T-Systems SD % 10% higher than that of Gijima.
 - The termination risk will still remain and the risk that Transnet may terminate in terms of breach could still lead to claims against Transnet for the recovery of capital and setup costs.
 - The risks representation, from the risk assessment supported by Gartner, as set out in paragraph 32 and 33 above show a material difference in risk between Gijima and T-Systems and these are deemed material by the Committee
 - Further to that the Committee indicated that there are serious concerns with the organisation ability to manage the enhanced risks, with its poor contract and supplier management process in ICT as evidenced by the current performance of managing service providers in the ICT environment which has been raised the Board and its sub-committee on numerous occasions without any visible improvement.
42. After careful consideration of all the risks, the ADC recommends that the Board award of contract to T-Systems (the second ranked bidder) due to the risks associated with Gijima (the first ranked bidder). This recommendation is made in terms of Paragraph 10.4 of the RFP document which allows for Transnet not to accept the lowest price proposal and in terms of Paragraph 18.7.3 of the PPM which states that the award of contract can be done

to another bidder other than the highest scoring bidder, if there is objective criteria justifying the award to an alternative bidder. The objective criteria regarding the material risks as described above meet the criteria of Paragraph 18.7.3 of the PPM.

43. The ADC further recommended that the Board should delegate authority to the GCE to sign the Letter of Intent (LOI) to the preferred bidder (T-Systems), Letters of Regret (LOR) to the unsuccessful bidders, the contract and all relevant documentation including any subsequent contract amendments.

SUPPLIER DEVELOPMENT:

44. The recommended bidder (T-Systems) has committed to spend 57.31% of the IT Data Services contract value on Supplier Development (SD) initiatives. The first ranked bidder (Gijima) committed to spend 46% of the IT Data Services contract spend on SD initiatives. The requested minimum SD commitment on the IT Data Services RFP was 40%.
45. During contract negotiations, a possible increase in the current SD commitment of 57.31% will be negotiated with the recommended bidder.

APPROVALS AND DELEGATION:

46. As per the Board resolution passed on 27 August 2015, the GCE was delegated with the authority to approve the RFP for issue, negotiate and sign-off all the relevant documentation in line with the approved sourcing strategy excluding contract award. The Acquisitions and Disposals Committee (ADC) has already recommended the award of contract to the second ranked bidder (T-Systems) and the recommendation for contract award on the IT Data Services RFP is accordingly submitted to the Board for approval in line with the Board resolution dated 27 August 2015.

FINANCIAL IMPLICATIONS:

47. The final tendered pricing for the recommended bidder (T-Systems) over a period of five (5) years is R1, 545,181,620.76.
48. The estimated actual savings over a period of five (5) years on this contract based on the current five-year contract spend of R2,5 billion is R954,818,379.24 which is equivalent to a monthly saving of R15,913,639,65.
49. The CFET will negotiate further cost savings and SD obligations with the preferred bidder during contract negotiations, after issuing of the Letter of Intent (LOI) and before signature of the contract.

BUDGET IMPLICATIONS:


50. All Transnet Operating Divisions (ODs) have budgets available for their respective IT Data Services requirements.

RECOMMENDATION:

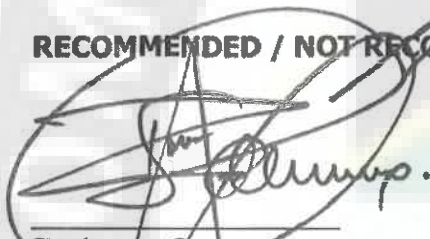
51. It is recommended that the Transnet Board of Directors (Board):

- a) Approve the award of contract to T-Systems South Africa (Pty) Ltd for a period of five (5) years with an option to extend for a further period of two (2) years; and
- b) Grant authority to the GCE to sign the Letter of Intent (LOI) to the preferred bidder (T-Systems), Letters of Regret (LOR) to the unsuccessful bidders, the contract and all relevant documentation including any subsequent contract amendments.

RECOMMENDED / NOT RECOMMENDED


 Garry Pita
 Group Chief Financial Officer (GCFO)
 Date: 14/2/17

RECOMMENDED / NOT RECOMMENDED


 Siyabonga Gama
 Group Chief Executive (GCE)
 Date: 2017.02.15

Annexure MMAM12



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MINUTES OF THE SPECIAL BOARD OF DIRECTORS MEETING NO. 5-17/18FY HELD AT 15:00 ON 27 SEPTEMBER 2017 AT THE PLATINUM BOARDROOM, GROUND FLOOR, CSIR BUILDING 21, MEIRING NAUDE ROAD, BRUMMERIA, PRETORIA

Resolution No/
For Attention

CONSTITUTION OF MEETING AND APOLOGIES

.1

Present

Ms LC Mabaso	Chairperson
Ms Y Forbes	Non-Executive Director (<i>video conference</i>)
Mr SI Gama	Group Chief Executive
Mr GJ Mahlalela	Non-Executive Director
Ms PEB Mathekga	Non-Executive Director
Mr ZA Nagdee	Non-Executive Director
Mr VM Nkonyane	Non-Executive Director
Mr GJ Pita	Chief Financial Officer

1.2

In attendance

Ms R Lepule	Acting Chief Operating Officer
Mr N Silinga	Chief Legal Counsel
Mr KL Mosia	Company Secretary
Ms B Ndlovu	Acting Group Company Secretary

1.3

Partial attendance

Ms M Mthembu	External Legal Counsel: <i>Mncedisi, Ndlovu & Sedumedi Attorneys</i>
Ms K Seate	External Legal Counsel: <i>Mncedisi, Ndlovu & Sedumedi Attorneys</i>
Mr T Sedumedi	External Legal Counsel: <i>Mncedisi, Ndlovu & Sedumedi Attorneys</i>
Mr E Thomas	Chief Supply Chain Officer
Mr P Volmink	Executive Manager: Governance, ISCM

1.4

Apologies

1.4.1

Mr BG Stagman	Non-Executive Director
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1.5

Welcome

1.5.1

The Chairperson welcomed all Members and Attendees present. Having observed quorum, she declared the meeting duly constituted. Apologies were noted from Mr Stagman. The Attendance Register was circulated for signature.

1.5

The Chairperson indicated that the main purpose of the Special Meeting was to deliberate on the IT Data Services matter, pursuant to the in-principle resolution at the previous Special Meeting held on 24 August 2017.

1.6

Adoption of Agenda

1.6.1

The Agenda was adopted as tabled.

2

SAFETY BRIEFING AND EVACUATION PROCEDURE

2.1

The safety and evacuation procedure for the Platinum Boardroom, Ground Floor, was presented by Ms N Mukhovha.

DECLARATION OF INTERESTS

2.1

The Declaration of Interests Register was circulated to all members and attendees for signature.

.1

IT Data Services

Mses Mthembu, Seate and Messrs Sedumedi, Thomas and Volmink joined the meeting at 15:05.

.1.1

Management took the Board through the submission as contained in the meeting pack. The submission was taken as read. The purpose of the submission was to request the Board to:

- Consider the representations received from *T-Systems PTY Ltd ("T-Systems")*;

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- Note the External Legal opinion regarding *T Systems*' representations;
- Approve the rescission of the IT Data Services contract award to *T-Systems*;
- Approve the contract award to *Gijima Holdings PTY Ltd* ("*Gijima*") subject to approaching the court to seek a declaratory order to permit the Company to withdraw the award of the bid to *T-Systems* and to award to *Gijima*; and
- Delegate authority to the Group Chief Executive to sign all relevant documents relating to the rescission of the IT Data Services contract award to *T-Systems* and to sign a Letter of Intent to *Gijima*, including all communication and all relevant documentation including the Master Services Agreement and any subsequent contract amendments.

Mr Nkonyane joined the meeting at 15:07.

4.1.2 Management indicated that on 22 February 2017, the Board approved the award of the IT Data Services contract to *T-Systems* (a second ranked bidder) for a period of 5 years with an option to extend for a further 2 years, due to the risks associated with the first ranked bidder (*Gijima*). The recommendation was purportedly made in terms of Paragraph 18.7.3 of the Procurement Procedures Manual ("PPM") which states that the award of contract can be done to another bidder other than the highest scoring bidder, if there are objective criteria justifying the award to an alternative bidder.

4.1.3 Management indicated that subsequent to issuing the letter of regret to the unsuccessful bidders, *Gijima* lodged a complaint with the Company's Procurement Ombudsman, regarding the outcome of the IT Data Services RFP, which was awarded to *T-Systems*. The Ombudsman complaint was subsequently forwarded to National Treasury for investigation in accordance to its SCM instruction 3 of 2016/17FY on Preventing and Combating Abuse in the supply chain system. National Treasury concluded its review on 18 July 2017 and instructed the Company to award the bid to *Gijima* being the highest ranked bidder, as the RFP did not prescribe business risks as an objective criterion. As a result, the Company has an obligation to award the bid in terms of the PPPFA Regulation 6 (5), which states that the contract must be awarded to the highest ranked bidder.

4.1.4 On 24 August 2017, the Board considered the National Treasury findings and resolved, "in principle", to rescind the award of the contract to *T-Systems*, award the contract to *Gijima* and to inform the affected parties of the proposed decision and to follow a procedurally fair process. In terms of Section 3(1) of the *Promotion of Administrative Justice Act 3 of 2000* ("PAJA"), an organ of state is required to follow a procedurally fair process if it takes a decision that materially and adversely affects the rights or legitimate expectations of any person.

4.1.5 Management indicated that pursuant to the Special Board Meeting of 24 August 2017, a letter, dated 8 September 2017, was submitted to National Treasury seeking a month-to-month contract extension with *T-Systems*, over a maximum period of 12 months. National Treasury, however, granted a month-to-month up to a maximum of 8 months contract extension to allow for the related negotiations and a 6-month transitional period. The response from National Treasury forms part of the submission (*Annexure D*).

Management indicated that *T-Systems* submitted their representations for the Company's consideration on 13 September 2017, where they indicated that, as a matter of law, it was inadmissible for Transnet to rescind its decision to award it the IT Data Services contract. Transnet sought a legal opinion from External Legal Counsel regarding *T-Systems*' representations in order to advise the Board accordingly in making a final decision on the matter.

1.1.6 Mr Sedumedi took the Board through the presentation highlighting the query raised by *T-Systems* and a summary response, as follows:

- **Request to make representations on National Treasury's decision:** the initial request for representations was made by Management and not the Board as the date for the Board meeting was unknown at that stage.

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- **Reneged on affording representation on National Treasury's decision:** the Company made it clear that the Board will afford *T-Systems* the right to make representations prior to making a final decision and the Company has not reneged on the decision.
- **Board took in-principle decision without considering *T-Systems*' representation:** *T-Systems*' right to make representations only arose after the in-principle decision of the Board on 24 August 2017.
- **Incomplete and redacted information provided:** the Promotion of Access to Information Act 2 of 2000 binds the Company ("PAIA") on provision of information. The information provided was adequate and the comprehensive nature of the representation bears testimony to that.
- **Short time-frames:** Time frames are deemed adequate to allow *T-Systems* to make representations.
- **Transnet is "functus officio" (a principle in terms of which decisions of officials are deemed to be final and binding once they are made):** *Functus Officio* requires finality of a decision made and the decision can only be revoked if an empowering provision allows for that. The selection of *T-Systems* as the preferred bidder does not make the Company *functus officio* as paragraph 20.6 of the Company's PPM states that a preferred bidder is still subject to successful negotiations and entering into the Master Services Agreement.
- **Transnet award to *T-Systems* is binding unless set aside by a court:** The Company's Ombudsman Terms of Reference allow the Company to withdraw its award of a tender based on the recommendations of the Ombudsman and all bidders sign a declaration agreeing to be bound by the Ombudsman Terms of Reference. *Gijima* and *T-Systems* each claim to have a legitimate right to be awarded the bid. The Company plans to approach the Court on its own volition to seek a declaratory order, in accordance with section 21(1) (c) of the Superior Courts Act, of 2013, as amended, alternatively, counter any action that might be brought by either of the parties.
- **Assumption is that National Treasury's decision is the basis for Transnet's about-turn:** *T-Systems* is incorrect that National Treasury's decision was the only basis for the Company's in-principle decision.
- **The Company must still apply its mind:** All circumstances surrounding the tender award, including the National Treasury decision, informed the in-principle decision.
- **National Treasury decision not automatically binding on Transnet:** The SCM Instruction Note is couched in mandatory terms i.e. "*Transnet must...*", thus it is binding unless set aside by a court of law.
- **National Treasury is incorrect on the application of objective criteria:** The Company does not dispute this assumption. However, the Board's in-principle decision is grounded on different reasons to that of National Treasury and is therefore not invalidated by National Treasury's error in law.
- **Risk can be an objective criteria.**
- **Identified the risks and issues that weighed heavily against *Gijima* (including, amongst others, the Gartner report, and insufficient reference Letters):** The Company evaluated all issues in a fair manner and considered *Gijima* to have mitigated all of these factors.
- **These issues ought to have been considered by National Treasury:** Risks were adequately mitigated as confirmed by Transnet subject matter Experts.
- **Failure to do so renders National Treasury's decision susceptible to challenge:** the Company erroneously ignored *Gijima*'s mitigation of these risks.
- **The Best and Final Offer ("BAFO") process was unfair:** PPM (par 17.4.3) makes provision for communicating with bidders to seek clarification on various issues.
- ***Gijima* given 2nd opportunity to revise its submissions:** *Gijima* engagements were in the PPM context, namely seeking clarity on the risks that had been identified. There was no *mala fide* intention to grant *Gijima* an edge over *T-Systems*, which is supported by *Gijima*'s non-appointment despite those engagements.

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4.1.7 The Board noted the conclusion of the External Legal Counsel as set out in the presentation as follows:

- There was no procedural unfairness in the manner in which the representation process was handled by the Company.
- The Company is not *functus officio* and therefore can rescind its earlier decision to award the IT Data Services contract to *T-Systems*.
- The Company has the option to:
 - On its own accord apply to the Court to seek a declaratory order to confirm its right to rescind the *T-Systems* award (this indicates the *bona fides* of an organ of state); or
 - Await a court challenge from either *T-Systems* or *Gijima* and thereafter bring its own counter-application to determine its rights.
- National Treasury's remedial action are mandatory. The Company has in any event applied its mind and considered relevant circumstances prior to taking its decision.
- There was no preferential treatment given to *Gijima* during the BAFO process.

4.1.8 A Board Member sought clarity on whether the Company's awarding of the IT Data Services contract to *Gijima* will be shared pre or post the Court's declaration and whether the Company was afforded an opportunity to respond to National Treasury on its findings. Management confirmed that the Company was afforded an opportunity to respond to National Treasury's findings and indicated that the recommendation presented to the Board is subject to the court's ruling due to the contestation from both companies. The Board held a lengthy discussion on the pros and cons of the options available on the matter, whether the decision taken should be communicated to the parties before the Court declaration, including the different approaches and possible scenarios, citing the risks related to the possibility of the decision reaching either of the contenders and related possible reaction which could result to a lengthy legal process.

4.1.9 Management provided clarity to the Board on the "joinder of parties" principle in law which would permit any of the parties, (*T-Systems* or *Gijima*) to join all interested parties in the court application against the Company.

4.1.10 A Board Member sought clarity on the duration of the court proceedings in seeking the declarator, taking cognisance of the resultant impact on the business and the Company's ability to manage the risks and related costs. Furthermore, clarity was sought on the Company's readiness in the event that the court's declaration is not in the affirmative. Management indicated that the impact on business would be minimal due to National Treasury's granting of the 8 month extension of the *T-Systems* contract. There is an opportunity to revert to National Treasury for a further extension if the Court proceedings take longer than anticipated. Management further confirmed that the Court's declaration, either way, will provide finality and accordingly be executed by the Company.

4.1.11 A Board Member was concerned about the risks related to systems and network sabotage due to an unfavourable outcome to the existing service provider, and sought clarity on the Company's risk management processes. Management assured the Board that there are existing processes to mitigate such risk exposures which have been used previously, as and when new service providers are appointed, including the 6-month transition period. Furthermore, the likelihood of sabotage was minimal due to the far reaching consequences of reputational damage and possible blacklisting. Management will however ensure that mitigation measures are enhanced. Management will further hold *T-Systems* accountable and ensure implementation of penalties for non-adherence to the agreed service level agreement.

4.1.12 The Board **agreed** that whilst it might be ideal from a timing perspective to act on an in-principle decision, it is prudent and in the best interest of the Company, to await the court's declaration prior to making a final decision to rescind the contract award or issuing the Letter of Intent. External Legal Counsel, advised that the parties could be informed of the Company's decision as the intention to approach the Court was not due to uncertainty or to seek judicial guidance on the Tender award, but to obtain a declaration of the Company's right to rescind the tender award.

CONFIDENTIAL

5

Resolution No/
For Attention

- 4.1.13 Management clarified that the date of 30 October 2017, set by *National Treasury* as part of its conditions, was for the submission of timelines reached between the Company and *Gijima* on the award negotiations and transitional period, amongst others. External Legal Counsel further advised that whilst the Company was following a narrow approach on the matter, there were possibilities that the matter could be broadened by either of the parties.

RESOLVED that the Board, having carefully considered the representations received from *T-Systems (Pty) Ltd* as well as having received external legal advice:

- Took an in-principle decision to rescind the award of IT Data tender GSM 15/08/1310 to *T-Systems (Pty) Ltd* and award the IT Data tender GSM 15/08/1310 to *Gijima Holdings (Pty) Ltd*, **SUBJECT** to Transnet obtaining a declaratory order from a court of law to assert Transnet's right to give effect to the resolution.
- Noted the delegated authority to the Group Chief Executive to sign all relevant documents relating to the rescission of the IT Data Services contract award to *T-Systems (Pty) Ltd* and to sign a Letter of Intent to *Gijima Holdings (Pty) Ltd*, including all communication and all relevant documentation and the Master Services Agreement and any subsequent contract amendments, as approved on 24 August 2017.

5-17/18FY/1

Mses Mthembu, Seate and Messrs Sedumedi, Thomas and Volmink were excused from the meeting at 16:15.

4.2 EY Risk Assessment Report

- 4.2.1 Management presented an overview of the *Ernst & Young* Risk Assessment Report developed in preparation for the operationalisation of Transnet International Holdings SOC focussing on New Country Entry and Exit model. Management apologised that the presentation was erroneously omitted, and undertook to upload it on the Board Portal immediately, for the Board's information. The submission was on the basis of the request by the Board at its Board Strategy Session held on 13 September 2017.

- 4.2.2 Management indicated that the Report was developed in anticipation of the Company's entry and exit model in the preferred countries. The assessment considered the various risks associated with the different Countries and the respective mitigation plans. The Report covered 17 Countries that the Company can operate in within the African Continent.

- 4.2.3 Management confirmed that the presentation was duly uploaded on the Board portal for the information purposes.

The Board noted the update.

5 CLOSING

- 5.1 The Chairperson thanked the Board of Directors for their participation and valuable contributions in the meeting. There being no further business to conduct, she declared the meeting closed at 16:20.



CHAIRPERSON

DATE: 26/10/2017



ACTING GROUP COMPANY SECRETARY

DATE: 26/10/2017

Annexure MMAM13



From: Makano Mosidi Transnet Corporate Johannesburg
<Makano.Mosidi@transnet.net> on behalf of Makano Mosidi Transnet Corporate Johannesburg <Makano.Mosidi@transnet.net> <Makano.Mosidi@transnet.net>
Sent: Friday, 27 April 2018 04:47
To: Siyabonga Gama Transnet Corporate JHB
Subject: Re: Letters btw Transnet & T-Systems

Noted thanks SG 🙏

Sent from my iPhone

On 26 Apr 2018, at 22:04, Siyabonga Gama Transnet Corporate JHB
<Siyabonga.Gama@Transnet.net<mailto:Siyabonga.Gama@Transnet.net>> wrote:

U can't write these on email , let's discuss

Siyabonga Gama

GCE: Transnet

+27113082313

Sent from my iPhone

'If you can't explain it simply, you don't understand it well enough'- Albert Einstein

On 26 Apr 2018, at 17:55, Makano Mosidi Transnet Corporate Johannesburg
<Makano.Mosidi@transnet.net<mailto:Makano.Mosidi@transnet.net>> wrote:

Dear Siya and Ndiphiwe,

1. Both Gijima and TSSA's have put down their willingness to settle
2. They both have deal breakers i.e.
 - a. TSSA – does not want to subcontract to Gijima and they still want to see the end of the affidavits process by mid May
 - b. Gijima – does not want MSA split but do not have a problem to sub-contract TSSA in so far as it assists Transnet to transition.
3. The middle ground is an offer as articulated in the settlement letter attached. The second letter is in case the settlement letter is not accepted by TSSA, then Transnet will exercise its right to invoke disengagement to be completed no longer than six months. Please read the part on affidavits etc
4. Either way, we have to give our intention formally not to extend beyond May to TSSA and issue an LOI to GIJIMA

I needed counsel from you both in terms of the contents and how we wrote the letters.

Regards,

Makano

Option 2 also assumes that the court case will endure until completed and all parties have appealed etc – and no more legal avenues are left.

The premise here is that the transition of Services is to Transnet (not Gijima), but that Gijima provides all of these services to Transnet as an independent contractor, because Transnet does not have the required skills or capacity. It needs to be run past Transnet Legal to validate that the foundation of the argument is sound – and that Gijima can be nominated as an independent contractor. It needs to be run past Gijima to confirm that they would be prepared to be the independent contractor (I have taken the liberty of testing their appetite for the above – and am awaiting their answer) – as stated above Gijima are the only party in a position to take over these services in the timeframe we have to work with.

The only party at risk here is Gijima – in that if the court case finds in favour of T-Systems, then services will have to be re-transitioned from Gijima back to T-Systems, but this could take years.

We could go directly to the second scenario, but the idea is that we try to encourage T-Systems to settle – and therefore avoid the continuation of the court case – and the potential of having to go through two transitions in a “short” space of time.

From: Talente Mthembu Transnet Corporate JHB

Sent: 26 April 2018 05:10 PM

To: Makano Mosidi Transnet Corporate Johannesburg

<Makano.Mosidi@transnet.net<mailto:Makano.Mosidi@transnet.net>>

Subject: Letters btw Transnet & T-Systems

Dear Makano,

Attached please find the requested letters.

<T-Systems letter_ 26 April 001.doc>

Talente Mthembu

Office of the Chief Information Officer

<image002.png> 011 308 1020

<image003.png> 060 539 6599

<image004.png> 011 308 1260

<image005.png> Talente.Mthembu@transnet.net<mailto:Talente.Mthembu@transnet.net>

<image006.png> www.transnet.net<http://www.transnet.net/>

“I Can do all things through Christ who Strengthens me” Phillipians 4 ver 13 <image007.png>

<image008.gif><image009.png>

<T-Systems letter_ 26 April 002.doc>

<T-Systems letter_ 26 April 002.doc>

<Transnet Litigation 25 Apr 18.pdf>

<Gijima Submission to Transnet 25042018 V1.1.pdf>

From: Makano Mosidi Transnet Corporate Johannesburg
<Makano.Mosidi@transnet.net> on behalf of Makano Mosidi Transnet Corporate Johannesburg <Makano.Mosidi@transnet.net> <Makano.Mosidi@transnet.net>
Sent: Thursday, 26 April 2018 17:56
To: Siyabonga Gama Transnet Corporate JHB; Ndiphiwe Silinga Transnet Corporate JHB
Subject: FW: Letters btw Transnet & T-Systems
Attachments: T-Systems letter_ 26 April 002.doc; T-Systems letter_ 26 April 002.doc; Transnet Litigation 25 Apr 18.pdf; Gijima Submission to Transnet 25042018 V1.1.pdf

Dear Siya and Ndiphiwe,

1. Both Gijima and TSSA's have put down their willingness to settle
2. They both have deal breakers i.e.
 - a. TSSA - does not want to subcontract to Gijima and they still want to see the end of the affidavits process by mid May
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We could go directly to the second scenario, but the idea is that we try to encourage T-Systems to settle - and therefore avoid the continuation of the court case - and the potential of having to go through two transitions in a "short" space of time.

From: Talente Mthembu Transnet Corporate JHB
Sent: 26 April 2018 05:10 PM
To: Makano Mosidi Transnet Corporate Johannesburg <Makano.Mosidi@transnet.net>
Subject: Letters btw Transnet & T-Systems

Dear Makano,

Attached please find the requested letters.

[cid:image018.png@01D2FFAE.BA6FD7D0]

Talente Mthembu

Office of the Chief Information Officer

[cid:image001.png@01CF27D6.460856F0] 011 308 1020

[cid:image002.png@01CF27D6.460856F0] 060 539 6599

[cid:image003.png@01CF27D6.460856F0] 011 308 1260

[cid:image004.png@01CF27D6.460856F0]

Talente.Mthembu@transnet.net<mailto:Talente.Mthembu@transnet.net>

[cid:image005.png@01CF27D6.460856F0] www.transnet.net<http://www.transnet.net/>

"I Can do all things through Christ who Strengthens me" Phillipians 4 ver 13

[cid:image024.png@01D2FFAE.BA6FD7D0]

[Description: clip_image001][cid:image026.png@01D2FFAE.BA6FD7D0]

Annexure MMAM14



File 468 Box 0073

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO: 40361/17

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
17/10/2015 <i>Klaighley</i>	
DATE	SIGNATURE

In the matter between:

TRANSNET SOC LTD

Applicant

and

T-SYSTEMS (PTY) LTD

1st Respondent

GIJIMA HOLDINGS (PTY) LTD

2nd Respondent

UBUNTU TECHNOLOGY

3rd Respondent

WIPRO TECHNOLOGIES SOUTH AFRICA (PTY) LTD

4th Respondent

BUSINESS CONNEXION (PTY) LTD

5th Respondent

EOH MTHOMBOLO (PTY) LTD

6th Respondent

MOBILE TELEPHONE NETWORKS (PTY) LTD T/A

7th Respondent

MTN

NATIONAL TREASURY

8th Respondent

JUDGMENT

KEIGHTLEY J.***Introduction***

1. Between November 2015 and February 2017 Transnet Soc Ltd ("Transnet") conducted a tender process for the provision to it of IT data services ("the tender"). At the final stage of the tender process only two bidders remained in contention. These were the first respondent, T-Systems South Africa (Pty) Ltd ("T-Systems"), and the second respondent, Gijima Holdings (Pty) Ltd ("Gijima"). After some internal to-ing and fro-ing, on 22 February 2017, Transnet's Board decided to award the tender to T-Systems. A letter of intent was duly dispatched to this effect to T-Systems on 2 March 2017, and shortly thereafter a letter of regret was dispatched to Gijima. It is important to record at the outset that the tender was awarded to T-Systems despite the fact that Gijima was the highest-scoring bidder.
2. Gijima took issue with the award of the tender to T-Systems, and initiated a complaint with Transnet's Procurement Ombudsman. This resulted in the involvement of National Treasury ("Treasury"). Treasury expressed the view that the award of the tender to T-Systems was not in accordance with Transnet's legal obligations under the Preferential Procurement Policy Framework Act¹ ("the PPPFA"). This was because under that Act it was obliged to award the tender to the highest-scoring bidder. Treasury's view was that the deviation from this basic obligation was not justified on the grounds advanced by Transnet.

¹ Act 5 of 2000

3. Although Transnet initially took issue with Treasury's stance, it ultimately accepted that it had acted incorrectly in awarding the tender to T-Systems. The Board took an "in-principle" decision to rescind the award to T-Systems, subject to T-Systems being invited to make representations as to why the in-principle decision should not be made final. T-Systems delivered its representations to Transnet and they were considered by the Board. On 27 September 2017 Transnet's Board decided that it would rescind its award of the tender to T-Systems, and would award the tender to Gijima, subject to a declaratory order being granted as to its entitlement to do so.

4. Consequent on this decision, Transnet instituted the present application. In its Notice of Motion it sought an order in the following terms:

- (a) Declaring its decision to award the tender to T-Systems to be invalid and unlawful;
- (b) Alternatively, declaring that Transnet had a right to rescind its decision to award the tender to T-Systems on the basis that that decision was invalid and unlawful;
- (c) The review and setting aside of the tender to T-Systems;
- (d) A direction that the tender be awarded to Gijima "in terms of the remedial action recommended by (Treasury) as set out in paragraph 7 of its letter dated 18 July 2017"

5. All of the bidders who had successfully participated in the early rounds of the tender process were joined in the application. Save for T-Systems and Gijima, they elected not to participate in the proceedings. Treasury was also joined. It did not oppose the application, but filed an explanatory affidavit for the assistance of the court. Initially T-

Systems opposed the application, and instituted a counter-application regarding the Board's later decision to award the tender to Gijima. Gijima, in turn, opposed the counter-application and instituted one of its own. Despite the early deeply contested status of the application, as things transpired, on 31 October 2018 T-Systems withdrew its opposition and recorded that it would abide the decision of the court. Gijima subsequently took the same route. Consequently, Transnet's application now stands unopposed.

6. There are two issues I wish to raise about the relief sought by Transnet in its notice of motion. The first relates to its relief for a declarator to the effect that it had a right to rescind its initial decision to award the tender to T-Systems. The second relates to the prayer that the court should direct Transnet to give effect to the remedial action recommended by Treasury in ordering that the tender be awarded to Gijima.

Can the court declare that Transnet has a right to rescind its award to T-Systems?

7. This is the question that arises from the first of the two issues I have identified, viz. the declarator that Transnet is entitled to rescind its original award. Part of its motivation for seeking this relief rested on the contention made in the founding affidavit that it was not *functus officio* when it made the decision to award the tender to T-Systems. When the matter came before me for hearing, counsel for Transnet advised the court that it did not pursue this relief, nor did it rely on its earlier contention that it was not *functus officio*. Instead, it sought simply to review and set aside its own decision on the basis that it was unlawful and invalid, and to seek an order confirming the award of the tender to Gijima.
8. Transnet acted properly in abandoning this as an alternative form of relief. The Constitutional Court held, in *MEC for Health, Eastern Cape v Kirland Investments (Pty)*

*Ltd t/a Eye and Lazer Institute*² that an organ of state cannot withdraw its own decisions even in circumstances where those decisions have no lawful basis. Once the decision is made, the organ of state is *functus officio*. It is bound, in those circumstances, to approach the court to exercise its powers of judicial review, and to set the impugned decision aside. Until it has done so, the decision, even if unlawful, has legal effect. This being the case, Transnet's contention that it was not *functus officio*, and its assumption that it could thus rescind its own decision was clearly incorrect. It would not have been appropriate for this court to consider making an order recognizing Transnet's right to rescind its order, as Transnet simply has no right to do so. The proper remedy is one of review, and the order sought from the court should follow the remedies available on review.

What is the nature and effect of Treasury's recommendation to Transnet?

9. This question arises from the second issue I identified earlier. Transnet wants this court to direct that Transnet must give effect to the remedial action recommended by Treasury. It says that Treasury advised it to award the tender to Gijima.
10. Transnet contends that the direction by Treasury constituted an instruction in terms of section 76(4) of the Public Finance Management Act³ ("the PFMA"), and that in accordance with National Treasury Instruction Note 3 of 2016/2017: Preventing and Combating Abuse in the Supply Chain Management System ("Treasury Instruction Note 3"), Transnet is enjoined to abide by such instruction. In other words, Transnet says that this instruction is peremptory, and thus, it follows as an "*unassailable conclusion*" that this court must direct that the tender be awarded to Gijima.

² 2014 (3) SA 481 (CC) at paras [64], [88] & [89]

³ Act 1 of 1999

11. As I indicated earlier, Treasury became involved in the matter after Gijima had lodged a complaint in terms of Transnet's own Internal Procurement Ombudsman process. On 3 April 2017 the Acting Transnet Procurement Ombudsman requested Treasury to investigate the complaint. In doing so, Transnet was acting in accordance with its obligations under paragraph 3.3 of Treasury Instruction Note 3.

12. In Treasury's first response to the referral of the complaint, it drew Transnet's attention to Regulation 6(5) of the 2011 Regulations under the PFMA, which states that in the procurement process the contract must be awarded to the tenderer who scored the highest points. Regulation 7(1) of the Regulations permits an award to a tenderer who did not score the highest points only where this is based on objective criteria. Treasury advised Transnet that it had not stipulated what objective criteria would be used in the tender documents. For this reason, Transnet had breached its obligation to award the contract to the highest bidder.

13. Transnet responded, taking issue with Treasury's interpretation of the relevant provisions, and asserting that it had correctly taken into account objective criteria based on a risk assessment carried out at the award stage of the tender process. Its view was that this was in accordance with Regulation 7(1), that it had acted properly in making the award to the second-highest bidder, and that it had not breached the procurement rules.

14. Treasury's final letter at this stage was dated 18 July 2017. In it, Treasury reiterated that the Regulations and section 2(1)(f) of the PPPFA require that a tender must be awarded to the tenderer that scores the highest points, unless objective criteria justify the award to another tenderer. In Treasury's view, risk assessments did not qualify as objective criteria in terms of this section. Any risks identified at the award stage of the process should have been factored into the contract offered to the highest scoring bidder by way

of risk mitigating clauses. Only if the highest scoring bidder refused to accept those clauses could it be disregarded as the successful tenderer.

15. Treasury further advised that the accounting authority of a public entity like Transnet would commit an act of financial mismanagement if it failed to comply with the PFMA by permitting an irregular and wasteful expenditure. Treasury concluded that Transnet had an obligation under section 2(1)(f) of the PPFA, Section 51(1) of the PFMA, and Section 217(1) of the Constitution to award the contract to the highest scoring bidder.

16. It is this letter that Transnet characterises as the peremptory instruction to Transnet to award the tender to Gijima.

17. I have fundamental issues with this characterisation by Transnet, and hence with Transnet's request that this court should make an order giving effect to what it regards as being Transnet's binding instruction. My concern is not with the correctness of Treasury's advice to Transnet as contained in its 18 July 2017 letter. From what appears later in this judgment, I am in agreement with that advice. Instead, my concern flows, firstly, from the fact that Treasury itself disavows Transnet's characterisation of the 18 July 2017 letter as constituting binding remedial action in terms of Treasury Instruction Note 3. In the affidavit filed by Treasury, it made the following important submissions:

- (a) Treasury's mandate in terms of the procurement process of public entities is to monitor and assess compliance.
- (b) It does not usurp the power of public entities, like Transnet, to make tender awards.

- (c) Its letter of 18 July 2017 did not constitute binding remedial action, nor did it amount to an administrative decision (presumably within the meaning of "administrative action" under PAJA).
- (d) Its letter was solely aimed at informing Transnet of the outcome of its investigation.
- (e) Critically, Treasury's mandate was to investigate, and to provide its response to, the conduct of the relevant accounting officer or accounting authority.
- (f) Thus, Treasury did not purport to exercise any power in its letter of 18 July 2017 to take action having any direct effect on the rights of the tenderers concerned.

18. These submissions are consistent with the scheme of investigations set out in Treasury Instruction Note 3. Under paragraph 3.3, where a complaint implicates an accounting officer or authority, it must be reported to the relevant treasury. In this case, the relevant treasury was the National Treasury. It was for this reason that Transnet's Acting Ombudsman referred the complaint to Treasury: it involved the decision by the Board to award the tender to T-Systems, and its delegation to the General Chief Executive Officer to sign the letter of intent to give effect to this decision. In terms of paragraph 4.3 of Treasury Instruction Note 3, Treasury had a duty to inform Transnet of the proposed action flowing from its investigation. It did so in its letter of 18 July 2017.

19. Paragraph 5.1.4 of Treasury Instruction Note 3 refers to the duty of an accounting officer to implement recommended remedial action. Significantly, it specifies that remedial action is taken "against the supplier". It may include rejection of a bid; cancellation of a contract; restriction of a supplier from doing business with the state; or claiming damages from a supplier.

20. It is quite clear that in this case there was no complaint against a supplier that warranted remedial action under Treasury Instruction Note 3. It was a complaint against a decision to empower the accounting authority to enter into a contract with T-Systems through the award of the tender. Accordingly, Treasury was correct in its submission that its 18 July 2017 did not constitute recommended remedial action aimed at affecting the rights of T-Systems or any of the other tenderers. It was plainly aimed at the conduct of the accounting authority. In effect, it advised Transnet's accounting authority that it would be committing an act of financial misconduct if it proceeded with the decision to award the tender to T-Systems in breach of its obligation to award the tender to the highest scoring bidder. In other words, the accounting authority would be answerable to the executive, and would face possible financial misconduct proceedings, if Transnet ignored Treasury's conclusion that the award to T-Systems was in breach of Transnet's obligations under the PPPFA.

21. Seen in its proper context, Transnet is incorrect in characterising the 18 July 2017 letter as placing it under a peremptory obligation to award the tender to Gijima. Of course, to avoid committing an act of financial mismanagement, Transnet would have to act in accordance with Treasury's recommendation. But this does not mean that it must follow, as a necessary consequence, that this court must order Transnet to award the tender to Gijima. To proceed on that assumption is to blur the distinction between the purpose of the relevant statutory instruments regulating Treasury's role in monitoring compliance by public entities with their supply chain management obligations, and the scope and purpose of judicial review by the courts of the exercise of public power.

22. It is this blurring of the lines that gives rise to my second concern about Transnet's prayer for this court to order the award of the tender to Gijima *"in terms of the remedial action recommended"* by Treasury. If this court is to make an order directing that Gijima should

be awarded the tender, this will be because it is an appropriate order for the court to make in the exercise of its powers of review. It will not be because Transnet is bound by a directive to this effect from Treasury.

23. If that were the case, it would imply that that this court is similarly bound to give effect to Treasury's recommendation. This would be constitutionally untenable. Public powers must be exercised in accordance with the Constitution and with the relevant statutory framework regulating those powers. Section 217 (1) of the Constitution obliges organs of state to follow fair, equitable, transparent, competitive and cost-effective procurement processes. In terms of section 172(1)(a) of the Constitution, it is the courts that are ultimately obliged to declare conduct inconsistent with the Constitution to be invalid. In the context of the review of the exercise of public powers, the courts carry out this duty either under the umbrella of the Promotion of Administrative Justice Act,⁴ ("PAJA"), or directly under the Constitution itself, depending on the particular circumstances at hand.

24. My point here is simply that in exercising its powers of review, this court cannot be bound by Treasury's recommendation. Furthermore, Treasury's recommendation is not itself subject to review in the proceedings before me. Accordingly, this court cannot, through its review powers, uphold and give effect to that recommendation. This court is faced solely with the question of whether Transnet's decision to award the tender to T-Systems was invalid and, if so, what appropriate relief might be granted. Whether or not an order should be made directing that Gijima be recognised as the successful tenderer will depend on whether this court considers such relief to be just and equitable. I will revert to this issue later when I consider the question of relief.

The legal basis for review in this case

⁴ Act 3 of 2000

25. Transnet's founding affidavit does not make it clear whether it relies on PAJA as the basis for its review, or directly on the Constitution by way of legality or rationality review. In fact, there is very little said in its founding affidavit about the review at all. At most, the deponent submits that contrary to Transnet's earlier view, Treasury was correct in finding that the risk assessment did not constitute a lawful basis to depart from the fundamental obligation to award the tender to the highest scoring bidder. On this basis, the further submission is made that the decision to award the tender to T-Systems is invalid and unlawful and falls to be reviewed and set aside.

26. There appears to be an assumption in the founding papers that PAJA applies to the review. This can be gleaned from Transnet's application for an extension of the time-limit prescribed in section 7(1) of PAJA for the institution of review proceedings. There is no other reference to PAJA in the founding affidavit or the notice of motion, and no specific sections of PAJA are referred to as providing specific bases for review. In short, the founding papers are not very helpful in this regard.

27. Be that as it may, recent developments in our law have clarified what the proper basis is for a review in circumstances where an organ of state seeks to set aside its own decision on the grounds that it was unlawful. The Constitutional Court confirmed, in *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd*,³ that in these circumstances, the legal basis for review is not PAJA. An organ of state in this position must apply to set aside its own decision on the basis of the founding principle of the rule of law prescribed in section 2 of the Constitution. The court held as follows in this regard:

"The conclusion that PAJA does not apply does not mean that an organ of state cannot apply for the review of its own decision; it simply means that it cannot do so

³ [2017] ZACC 40, hereafter "*SITA*"

under PAJA. In *Fedsure* this Court said that "[i]t seems central to the conception of our constitutional order that the Legislature and Executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law". *Pharmaceutical Manufacturers* tells us that the principle of legality is "an incident of the rule of law", a founding value of our Constitution. In *Affordable Medicines Trust* the principle of legality was referred to as a constitutional control of the exercise of public power. ... What we glean from this is that the exercise of public power which is at variance with the principle of legality is inconsistent with the Constitution itself. In short, it is invalid. That is a consequence of what section 2 of the Constitution stipulates. Relating all this to the matter before us, the award of the DoD agreement was an exercise of public power. The principle of legality may thus be a vehicle for its review. The question is: did the award conform to legal prescripts? If it did, that is the end of the matter. If it did not, it may be reviewed and possibly set aside under legality review."⁴

28. It is on this basis that Transnet's application to set aside its decision to award the tender to T-Systems must be determined.

Was the award of the tender to T-Systems within legal prescripts or does it fail to be set aside under legality review?

29. Transnet submits that it acted unlawfully in deciding to award the tender to T-Systems, which was not the highest scoring bidder. Although this contention is no longer opposed by T-Systems, in exercising my power of review I must apply my own mind to, and make a proper determination on, this issue.

⁴ *SITA*, at paras [38] - [40]

30. The crux of the review is that T-Systems was not the highest scoring bidder. Transnet acted on its own understanding of its authority to act in terms of the proviso to section 2(1)(f), which permits a deviation from the basic principle that the award must be made to the highest scoring bidder. That section provides that once the bids have been scored (at the award stage of the process), the contract:

"must be awarded to the bidder who scored the highest points, unless objective criteria in addition to those contemplated in paragraphs (d) and (e) justify the award to another bidder." (my emphasis)

31. It is not disputed that Gijima was the highest scoring bidder on price and preference, with the remaining bidder, T-Systems, falling below it. This scoring was based on the best and final offers ("BAFO") submitted by both bidders. In terms of the basic principle contained in section 2(1)(f), this ought to have secured the award for Gijima. However, what Transnet proceeded to do was to undertake a further process of risk assessment in respect of both bidders. It commissioned Gartner Consultants ("Gartner") to conduct the assessment. Gartner was tasked with assessing and reporting on the ability of both bidders to render the services contemplated in the tender.

32. In its report, it identified and rated what it considered to be risks associated with each bidder. It found that there were more risks associated with Gijima (it identified 5 risks). Two of these risks were ranked as being "likely" or "almost certain" to materialise. On the other hand, it identified far fewer risks as regards T-Systems, with those not being likely to materialise. Gartner concluded that these identified risks posed material operational and financial risks to Transnet. What then followed was a sequence of memoranda between various internal departments in Transnet, with no clear path forward on whether Gijima or T-Systems should be awarded the tender. In view of the unopposed nature of the application, it is not necessary to set out the details of what transpired. In summary,

Gijima was provided with at least two opportunities to address Transnet on how it proposed to address or mitigate the risks identified by Gartner. It responded, in detail to these invitations, both in writing and in a subsequent meeting between Transnet and Gijima.

33. Following this process, in February 2017, various departments in Transnet, including Group Risk and Compliance, and the Group Chief Information Officer, indicated that they were satisfied that Gijima had adequately addressed the risks identified. In a memorandum of 7 February 2017, Transnet management recommended that Gijima be awarded the tender. Significantly, the memorandum noted (with attendant detail) that Gijima had provided the required clarity requested of it. It further noted that: *"any residual risks that are remaining should be mitigated through robust contract management and stringent Service Level Agreements to be negotiated and signed with Gijima. The residual risks and their proposed mitigation's are set out ... below. ... the Group Chief Information Officer ... indicated that she is satisfied that all the previously identified risks have been adequately mitigated and that the recommendation for award should be made to the first ranked bidder (Gijima) in line with the 90/10 principle."*

34. The recommendations were rejected by Transnet's Acquisitions and Disposals Committee ("ADC"). In a memorandum dated 14 February 2017, the ADC indicated that it did not support the recommendation based on a number of concerns. It is not necessary to list these concerns. Suffice to say that many of them appear not to have been identified in the Gartner report. In addition, the ADC gave as a concern Transnet's ICT department's own inability to manage the envisaged enhanced risks. The ADC recommended that the contract be awarded to T-Systems, as it had a lower risk profile. The ADC was of the view that these concerns amounted to objective criteria warranting an award to the less risky, but lower-scoring bidder.

35. Transnet now contends that it acted unlawfully in using the risk assessment undertaken at the award stage of the procurement process to justify a deviation from the basic requirement that tenders be awarded to the highest scoring bidder. There is merit in Transnet's contentions. In the first place, the procurement process is divided into two main phases, viz. the functionality assessment phase,⁷ and the award phase. The functionality assessment phase occurs first. Only those bidders who are assessed as being able effectively to perform under the envisaged contract qualify to proceed to the next phase.⁸ Thus, risk factors associated with the ability to perform under the envisaged contract ought properly to form part of the functionality phase of the assessment. Transnet says that the risk factors subsequently identified by Gartner were already under consideration in the functionality phase. At the second phase of the process, viz. the award phase, only price and preference points are taken into account. It is at this stage that Transnet is ordinarily required to award the contract to the highest scoring bidder on price and preference. It was on the basis of price and preference that Gijima was the highest scoring bidder.

36. Transnet acted outside of this prescribed procurement framework by using functionality phase risk assessment factors to deviate from the required price and preference assessment at the award phase. This being the case, the risk assessment factors it relied on could never properly be regarded as being "objective criteria" within the meaning of section 2(1)(f) of the PPPFA. Consequently, its award to T-Systems was not lawfully justifiable under that section.

⁷ The 2011 Preferential Procurement Regulations define "functionality" as: "the measurement according to predetermined norms, as set out in the tender documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of the tenderer." (my emphasis)

⁸ Regulation 4 of the 2011 Preferential Procurement Regulations.

37. It is also quite clear from a consideration of the concerns listed by the ADC in recommending the award to T-Systems rather than Gijima that many of them appear to have been based on the ADC's own subjective considerations of risk. The ADC also appears to have completely ignored the fact that the line-managers, who had interacted with Gijima on the actual risks identified by Gartner, were satisfied that they had been addressed, or that they could be mitigated by way of relevant contract provisions.

38. One is left wondering whether the ADC was not being driven by extraneous considerations in its insistence, despite management's satisfaction with Gijima's responses, that the tender should be awarded to the lower-scoring bidder. This is not merely a fleeting fancy. Transnet annexed to its papers a transcript of the meeting of the ADC held in February 2017 shortly before the decision to recommend the award of tender to T-Systems. The transcript reflects the chair of the committee, Mr Shane, making the following comments, among others:

"To go and source to Gijima or anybody else in my opinion, would be tantamount to suicide. That is my perspective on it. That is the newspaper article that I will rather have, with no disrespect to Gijima who are not alien to suing their customers. I will say that again slowly, they are not alien to suing their customers, okay. I am happier with the risk of getting sued by Gijima who did not get the contract than us getting rid of the incumbent we helped to create."

And:

"The last thing I want to do guys, with due respect, is change my mainframe supplier and my data supplier and my IT supplier, the last thing I want to do. I will tell you what my understanding at the time of putting this thing out to tender was that we wanted to keep T-System, honest. That was the actual motivation." (my emphasis)

39. In light of these remarks, the recommendation by the ADC, which was ultimately adopted by the Board and implemented, was not only clearly irrational, but also tainted by bias in favour of the incumbent supplier of IT services, T-Systems. To permit such a tainted decision to stand would be inimical to the constitutional requirement that tender processes should be fair, equitable, transparent, competitive and cost-effective. For this reason too, I am satisfied that Transnet acted unlawfully in deciding to award the tender to T-System.

40. It follows, in my view, that the award must be reviewed and set aside. The question that remains is whether I should go further and direct that the tender should be awarded to Gijima as the highest scoring bidder.

Should Transnet be ordered to award the tender to Gijima?

41. Under the common law, and under PAJA, the prudent and proper course⁹ on review is to remit the matter back to the decision maker for reconsideration. Substitution of the court's decision for that of the decision maker is the exception rather than the rule.¹⁰ However, where, as in this case, the court is concerned with legality review under section 2 of the Constitution, the remedial powers of the court derive directly from the Constitution itself. Section 172(1)(b) provides that when deciding a constitutional matter a court may make any order that is just and equitable. In *Economic Freedom Fighters v Speaker of the National Assembly*¹¹ the Constitutional Court made the point that:

“... this Court's remedial power is not limited to declarations of invalidity. It is much wider. Without any restrictions or conditions, section 172(1)(b) empowers courts to make any order that is just and equitable. ... The power to grant a just and equitable

⁹ *Gauteng Gambling Board v Silverstar Development Ltd* 2005 (4) SA 67 (SCA) at para [29]

¹⁰ Cora Hoexter *Administrative Law in South Africa* (2nd edition) at p552 and the cases cited in s271.

¹¹ 2018 (2) SA 571 (CC) at paras [210] & [211]

order is so wide and flexible that it allows courts to formulate an order that does not follow prayers in the notice of motion or some other pleading. This power enables courts to address the real dispute between the parties by requiring them to take steps aimed at making their conduct to be consistent with the Constitution."

42. The question for me to consider is whether it would be just and equitable to direct that the tender should be awarded to Gijima, or whether it would be just and equitable to remit the matter back to Transnet for a new decision? In my view, it is the former, rather than the latter remedy that accords most properly with justice and equity.

43. As an organ of state, Transnet's operations involve the use of public resources. The present tender process was of long duration. It commenced in November 2015 and was subject to various extensions along the way. Transnet's failure to act lawfully in awarding the tender to T-Systems caused a further delay in its finalisation. Three years down the line the tender process is not yet complete. In the interim, Treasury has, reluctantly it appears, approved the extension of the pre-existing contract with T-Systems on a month-to-month basis. It has advised Transnet that as from 1 June 2018, any expenditure flowing from this extension will be regarded as irregular. Accordingly, from a public resources point of view, it seems to me to be imperative that finality is achieved on the matter as soon as possible. To refer the matter back to Transnet for a new decision undoubtedly would entail further irregular use of public resources and for this reason would be untenable.

44. It is also relevant that T-Systems has elected not to proceed with its opposition to the application. In effect, it has abandoned the submissions it made that Gijima did not properly qualify to be considered in the final phase of the tender process. All the other bidders who were eliminated in the earlier rounds were cited in these proceedings. If they wished to object to Transnet's stated intention to ask this court to direct that the tender be

awarded to Gijima, they had ample opportunity to do so. None of them elected to participate in the proceedings. I must conclude that they have no further interest in the matter. There is thus no reason for this court to query the tender process any further. I must proceed on the basis that Gijima was properly scored as the highest bidder on price and preference. The only obstacle to it being awarded the tender was Transnet's unlawful reliance on the risk factors. As those having fallen away, there would seem to me to be no justifiable reason for this court not to give effect to the outcome of the tender process.

45. For these reasons, I conclude that it is just and equitable to direct that Transnet award the tender to Gijima.

Delay and condonation?

46. In its notice of motion Transnet sought an order that, insofar as it may be necessary, the court should grant an extension of time for the filing of the application under section 9 of PAJA. PAJA specifies a period of 180 days for the filing of an application for review. Of course, we are not dealing here with a PAJA review, and the 180 period does not apply. It is the common law that applies.¹² Under the common law, an application for review must be instituted within a reasonable time, or without unreasonable delay.

47. The impugned decision was made on 22 February 2017, and Transnet instituted the application for review on 23 October 2017. Clearly, this was not a case where Transnet failed to act with reasonable speed to correct its unlawful decision. In the circumstances, there is no need to consider the question of condonation under either PAJA or the common law.

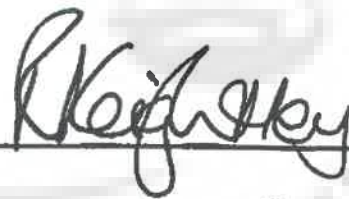
¹² *Sijwambo Rail Leasing v PRASA* (1030/2017) [2018] ZASCA 167 (30 November 2018)

Conclusion and Order

48. For the above reasons, I am satisfied that Transnet's application to review and set aside its decision to award the tender to T-Systems must succeed.

49. I make the following order:

1. The decision by the applicant's board of directors taken on or about 22 February 2017, to award the IT DATA SERVICES TENDER (GSM/15/08/1310) for the provision of DATA SERVICES to the applicant (hereinafter referred to as "the tender"), to the First Respondent, as confirmed in a letter dated 2 March 2017 ("the decision"), is invalid and unlawful.
2. The decision taken by the applicant's board of directors on or about 22 February 2017, to award the tender to the first respondent is reviewed and set aside.
3. The Applicant is directed to award the tender to the second Respondent.
4. There is no order as to costs.



R M, KEIGHTLEY
JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, GAUTENG LOCAL DIVISION, JOHANNESBURG

DATE OF HEARING : 07 DECEMBER 2018

DATE OF JUDGMENT : 12 DECEMBER 2018

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