

THE “RELOCATION” OF TWO OEMs TO DURBAN

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MNS

MNCEDISI NDLOVU & SEDUMEDI
ATTORNEYS

LEGAL
EXPERTISE
IN **YOUR**
CORNER

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MNS

CHAPTER 1:

Background

- 1.1 During July 2015, a year and four months after the conclusion of the locomotives Locomotive Supply Agreements ("LSAs"), Transnet approved the "relocation" costs of BT and CNR amounting to R618, 457 125.00, and R647, 181 494.00, respectively.
- 1.2 Issues relating to "relocation" have been the subject of intense debate within Transnet and in the media. There have been allegations of corruption associated with it. The questions that require consideration are:
 - 1.2.1 what is "relocation" and whether there was indeed "relocation"?
 - 1.2.2 whether "relocation" was envisaged in the business case?
 - 1.2.3 when and by whom was the decision on "relocation" taken?
 - 1.2.4 whether or not there was any commercial rationale provided for the "relocation" of the two OEMs? and
 - 1.2.5 whether or not the total costs of "relocation" were justifiable?

What is relocation?

- 1.3 The Oxford dictionary defines relocation as:

"The action of moving to a new place and establishing one's home or business there."

What is clear from this definition, is that relocation proceeds from the premise that there is move from one place to another.
- 1.4 MNS was advised during an interview with the 1064 locomotives Project Engineer, Mr Frikkie Harris ("Mr F Harris")¹ that no OEM moved from one place to Durban. Mr Harris advised that BT and CNR had not set up any jigs nor had they established site at Koedespoort. Thus, the request from Transnet, for the two OEMs to be based in Durban, was not a "relocation" per se.
- 1.5 Our view is that the use of the word "relocation" is a misnomer in the context of the 1064 locomotives transaction. Put differently, we have found that there was no "relocation" of either BT or CNR.

¹ Appendix 1 – Transcript of interview with Mr F Harris.

Was “relocation” envisaged in the business case?

- 1.6 It is common cause that the business case is the document that broadly presented among others, the line items that would make up the costs associated with the 1064 locomotives transaction. The approved business case of 25 April 2013 did envisage TE participating in the maintenance aspects of the locomotives. However, the approved business case did not envisage the “relocation” of any OEM. The net effect of this fact is that “relocation” was not budgeted for.

When and by whom was the decision to “relocate” BT and CNR taken?

- 1.7 In a memorandum addressed to the then Transnet Group Chief Executive on 16 May 2014², Mr Richard Vallihu (the then Chief Executive of Transnet Engineering), states that BT and CNR were first informed of the decision to “relocate” the two OEMs by Mr Anoj Singh, during the February contract negotiations.
- 1.8 The contention in the memorandum of 16 May 2014 is consistent with the fact that on 11 March 2014, CNR addressed a proposal to Ms Mdletshe and Mr Gary Pita, in which the total costs of “relocation” was estimated at an amount of R4 million.³
- 1.9 Furthermore, correspondence from BT addressed to Transnet on 6 June 2014⁴ refers to a letter that was addressed to them by Mr B Molefe on 26 May 2014, recording the decision to “relocate” BT and CNR. In our interviews with different Transnet personnel, only Mr Thami Jiyane⁵ was able to clarify that “relocation” was first discussed with the two OEMs during the post tender negotiations and that it was largely based on the conclusions of the PWC Report. The PWC Report⁶ is covered in greater detail below.

What was the commercial rationale communicated for the decision to “relocate” BT and CNR?

- 1.10 During February 2014, PWC was instructed by Transnet to conduct a review of TE’s operational readiness to deliver on, *inter alia*, the assembly requirements of locomotives at Koedoespoort and Durban.
- 1.11 Notably, the PWC report concluded that it was a risk to consider setting up more than two assembly lines at Koedoespoort. Accordingly, in order to mitigate the risk to production, PWC recommended that two of the four production lines be set up at TE’s facility in Durban. In motivating for the use of TE’s Durban facility, PWC recorded different pros and cons which presented a balanced view that demonstrated a possible development for Transnet’s rail manufacturing facilities and also a growth for the rail industry.

² Appendix 2 – Memorandum addressed to Mr B Molefe dated 16 May 2014.

³ Appendix 3 – Proposal to Ms L Mdletshe and Mr G Pita by CNR in relation to total costs of relocation dated 11 March 2014.

⁴ Appendix 4 – Correspondence addressed to Transnet from BT on 6 June 2014.

⁵ Appendix 5 – Transcripts of interview with Mr Jiyane.

⁶ Appendix 6 – PWC Report: February 2014.

- 1.12 Furthermore, PWC recommended that in order to protect the intellectual property and other trade secrets of the OEMs, it would be best to mix the OEMs in each facility. In this regard, the PWC report also advised Transnet that as a result of GE and CSR already having production lines at Koedoespoort, (the two OEMs had manufactured locomotives for Transnet prior to the 1064 locomotives transaction) keeping them at Koedoespoort would result in shorter start-up periods.
- 1.13 The correspondence from BT addressed to Transnet on 6 June 2014 states that a letter received from Mr B Molefe recorded that the reason for "relocation" was to:
 "Widen the railway industry hub from Gauteng to other regions of South Africa..."
- 1.14 With regards to where the manufacturing facilities ought to have been located, the PWC report summarized the "pros and cons" as follows:

Pros and Cons of BT and CNR lines located in DBN

Pros		Cons	
1.	The existence of Good heavy manufacturing supplier base in the area.	1.	BT would not be able to easily leverage on supply chain from previous Gauteng production.
2.	Lower wages in KZN than in Gauteng which should reflect in lower cost of goods and services.	2.	The more difficult task of setting up a new assembly line for an OEM will be delivered by a regional site, away from TE's expertise and experience in Koedoespoort.
3.	Spreading the economic activity away from Gauteng.	3.	Requires duplication of sub assembly lines in DBN or incur transport costs.
		4.	DBN has no experience in assembly of locomotives (only Loco overhauls and upgrades)

The mitigation recommendations are made to address the medium and high-risks

1.	Delays due to more than two assembly lines located in Koedespoort	1.	Spread delivery risk through assembling locomotives across several location and/or other suppliers who have an assembly facility.
		2.	Limit assembly lines at KDS to two lines TE can provide a detailed plan of where and by when a third or fourth line would be set-up at Koedespoort.
2.	Production interruption due to industrial action	1.	TE to draft employment contract that encourage an open communication and provide a platform for dialog for resolution of potential conflict/unrest.
		2.	TE to consider an agreement and/or incentive measures to deter industrial action.
3.	Locomotives price increase due to OEM required to operate from TE Durban site	1.	TE to locate the OEM with the least established local operations to minimise the impact of this cost.
		2.	TE to develop a negotiation strategy comprising of the cost comparison between Gauteng and Kwazulu Natal to use as leverage to minimise cost.

1.15 The PWC report was well balanced insofar as it presented well-reasoned conclusions. It is our considered finding that there was a commercial rationale behind the separation of the four OEMs. This was primarily necessitated by the splitting of the award, between four OEMs as Koedespoort did not have the capacity to accommodate more than two production lines. Accordingly, whilst the "relocation" was not envisaged in the business case, we have found that there was a reasoned commercial rationale to it, based on the conclusions and advice of PWC.

1.16 What is critical in the advice given by PWC is that Transnet was supposed to:

1.16.1 request OEMs to justify costs incurred as a result of the "relocation"; and

1.16.2 seek alternative assembly locations where additional costs would not be incurred.

1.17 This was not carried through in either the negotiations and proposals.

CHAPTER 2: The Approved Costs Of “Relocation”

CNR

- 2.1 We have not identified a response from Transnet personnel, to the initial relocation cost estimate of R9.7million, provided by CNR on 11 March 2014^{6A}.
- 2.2 During February 2015 CNR presented a proposal⁷ that indicated that the costs were estimated to be more than R100 million. Attached to that proposal was a document entitled “Proposal Estimate Cost” and it estimated the costs to be R318 million. For undisclosed reasons, these estimate and/or proposals were not accepted by Transnet.
- 2.3 This culminated in CNR concluding an agreement with BEX, (two months after its initial proposal) on 25 April 2015⁸ in terms of which BEX conducted detailed research and an analysis on the costs associated with the project and assist CNR conclude the project at the minimum benchmark cost of R580 million excl Vat in the analysis and computation of its costs. The agreement was based on a risk sharing model which we note to be very suspicious.
- 2.4 During 2017, CNR’s auditors, KPMG addressed correspondence to the Independent Regulatory Board of Auditors, noting that it deemed the agreement between BEX and CNR as a reportable irregularity. We have established that CNR did not expect Transnet to accept the proposal prepared for it by BEX. This is evident from a letter addressed to KPMG by CNR’s attorneys, Hogan Lovells on 4 September 2017⁹. The salient parts of the letter read:

“Our client was of the view at the time that Transnet would not agree to a project cost of R580 million and that the final project cost might be lower than this. Based on our client’s prior business experience, that our client believed that Transnet would require a discount on this amount. Thus, our client believed that the final project cost would be closer to, R580 million. Hence they believed there was very little risk for them in agreeing an “upside” fee arrangement with BEX.”
- 2.5 What is clear from the correspondence of Hogan Lovells is that CNR believed that the proposal by BEX was not only inappropriate but stood to be rejected by Transnet.

^{6A} Appendix 6A – Relocation Cost Estimate dated 11 March 2014.

⁷ Appendix 7 – Durban Locomotive Factory Relocation Proposal V2: February 2015.

⁸ Appendix 8 – Agreement concluded between BEX and CNR on 25 April 2015.

⁹ Appendix 9 – Hogan Lovells correspondence addressed to KPMG dated 4 September 2017.

- 2.6 The table below illustrates the enormous increase between what CNR had presented as an estimate during February 2015 and the figures produced by BEX and subsequently tabled by CNR as its offer to Transnet.

Item	CNR Est	BEX	CNR Report
Labour		54 367 333	54 367 333
Material		178 822 793	223 982 441
Logistics	65 430 000	6 420 941	6 420 941
Technical support	48 600 000	70 000 000	70 000 000
Transportation		79 794 785	94 191 785
Delta to warehouse costs		74 888 245	75 650 745
Other costs		171 557 688	194 474 302
Financial costs for delay	96 000 000		
Supplier site service costs	47 470 000		
Training of staff	31 800 000		
Setup costs & travelling	29 400 000		
no English (only Chinese label)	2 726 851		
Total	321 426 851	635 851 785	719 087 547
Total	318 700 000		
Increase from est.		98%	124%
Increase from BEX			13%

- 2.7 On 19 May 2015, a memorandum compiled by Ms Lindiwe Mdletshe¹⁰ ("Ms L Mdletshe") and addressed to Mr Siyabonga Gama ("Mr S Gama"), the then Acting Group Chief Executive motivated for the approval to negotiate the commercial terms of "relocation", at a cap of R669 million. Notably, Mr S Gama requested clarity on whether the amount of R669 million included both BT and CNR. Mr S Gama approved this request on the basis that R669 million would serve as a cap and the amount would not be surpassed. All of this is clear from the hand-written notes on the memorandum.

¹⁰ Appendix 10 – Memorandum by Ms L Mdletshe dated 19 May 2015.

- 2.8 The Transnet personnel that constituted the “relocation” negotiation team were:
- 2.8.1 Mr Anoj Singh;
 - 2.8.2 Mr G Pita;
 - 2.8.3 Mr N Silinga;
 - 2.8.4 Ms E Molotsane (TIA);
 - 2.8.5 Mr T Jiyane; and
 - 2.8.6 Ms L Mdletshe.
- 2.9 An attendance register we were provided with confirms that “relocation” negotiations commenced on 19 June 2015. There are no minutes for that meeting but we understand from the Transnet Internal Audit (“TIA”) Report that the purpose of the meeting was to request BT and CNR to submit written proposals.
- 2.10 We have read an email from Mr G Pita dated 20 June 2015¹¹, sent to the “relocation” negotiation team and additionally, Mr Yusuf Laher (“Mr Y Laher”). In the email correspondence, Mr G Pita raised numerous concerns surrounding the costs in the proposal submitted by CNR. He then requested Mr Laher to consider some of the financial aspects to the proposal.
- 2.11 Mr Y Laher responded to Mr G Pita’s on 21 June 2015¹². Despite the eighteen (18) areas of concern raised by Mr Laher, no response was provided. Mr Laher addressed a further email to Ms L Mdletshe on 25 June 2015¹³, stating that his views of 21 June 2015 had not been addressed in the further submission by CNR, save for its presentation of a revised offer in relation to the payment terms. The email of 25 June 2015 was copied to all members of the relocation negotiation team.
- 2.12 On 10 July 2015¹⁴, Mr G Pita addressed an email to Ms L Mdletshe and the rest of the “relocation” negotiation team. Mr G Pita *inter alia*, requested that Ms L Mdletshe compile the necessary memoranda to be addressed to the AGCE, in approval of the costs for “relocation” for both BT & CNR and further that if every person copied on the email was comfortable, then a sign-off was to be effected. Notably, Mr Laher was not copied on the email correspondence. Mr Pita also specifically requested Ms Mdletshe to ensure that a sign-off from a TIA representative was included in the memorandum.
- 2.13 The memoranda were indeed prepared by Ms L Mdletshe and approved on 23 July 2015^{15 16}, without the involvement and sign off from TIA. It is not clear as to what had persuaded Mr Pita to accept the proposals as his concerns of 20 June 2015 had not been responded to.

11 Appendix 11 – Email from Mr G Pita dated 20 June 2015 sent to “relocation” negotiation team.

12 Appendix 12 – Email correspondence from Mr Y Laher to Ms Mdletshe dated 21 June 2015.

13 Appendix 13 – Further email from Mr Y Laher to Ms L Mdletshe dated 25 June 2015.

14 Appendix 14 – Email correspondence addressed to Ms L Mdletshe from Mr Pita dated 10 July 2015.

15 Appendix 15 – Memorandum requesting approval for the relocation costs of BT dated 23 July 2015

16 Appendix 16 – Memorandum requesting approval for the relocation costs of CNR dated 23 July 2015

2.14 Further, it is not clear to us as to why Transnet Engineering's ("TE") personnel were not consulted in the negotiations for relocation and/or the assessment of the numerous proposals submitted by the OEMs. As the nominated subcontractor that was primarily responsible for the establishment of the Bayhead site, TE was critical to the assessment of the relocation costs.

2.15 We have determined through an interview conducted with Mr Magan Govender (General Manager: Locomotives Business at TE) that TE notified both OEMs that its quotation and agreed¹⁷ contract would not change as a result of the change in the location of the manufacturing facility.

BT

2.16 The proposals received from BT progressed in the manner set out below:

September 2014.	April 2015	July 2015	Accepted offer
R634 316 000.00	R634 316 000.00	R618 457.00	R618 457.00

2.17 BT states that its total "relocation" costs are made up of:

2.17.1 Transportation costs;

2.17.2 Logistics costs; and

2.17.3 Loss of Industrial footprint Synergies.

2.18 There is however no breakdown of the costs in support of the amount(s). This makes it impossible to conclusively interrogate the costs presented and the basis upon which Transnet assessed these costs is unknown.

2.19 Our prima facie view is that the costs appear to be excessive and totally unjustifiable.

¹⁷ Appendix 17 – TE communication of no change in price dated 23 September 2014

CHAPTER 3: The Limited Involvement of TIA

- 3.1 We have had sight of the TIA Report dated 7 June 2017¹⁸, which records that TIA received an invitation for it to be part of the negotiation process for “relocation”. This was part of the HVT processes prescribed by the PPM. However, the TIA report records that it was only a party to a single meeting held on 19 June 2015 and that it was not invited to further engagements relating to the negotiation process.
- 3.2 The TIA Report further records that TIA was not party to any other meeting as had been envisaged and could not therefore provide a formal report on the adequacy or effectiveness of the processes undertaken. TIA records that Ms L Mdletshe failed to obtain TIA approval for the recommendations that were done on the “relocation” costs. This is a requirement in terms of the PPM.

18 Appendix 19 – TIA Report dated 7 June 2017.

COMMENTS

CHAPTER 4:

Variation of Contracts: The Applicable Legal Framework

- 4.1 The commercial negotiations and approval of "relocation" were undertaken after the conclusion of the Locomotive Supply Agreements ("LSA or LSAs") with the OEMs, and as such, these were variations to the LSAs. The LSAs concluded with BT and CNR are identical and provide as follows in relation to variations at clause 33.7.3:

"Neither party shall have the right to vary a Project Document or any part of it except in accordance with the express provisions of Part 6 of Schedule 3 or by an instrument in writing, signed by duly authorized representatives of both parties."

- 4.2 We have been provided with some signed copies of correspondences in which Mr S Gama accepted the variation orders in relation to the "relocation" of BT and CNR. Accordingly, we find that clause 33.7.3 has been complied with as the variation orders have been presented and accepted in writing.

- 4.3 The 2011 National Treasury Instruction Note¹⁹ relating the variations of contracts limits the variation of contracts as follows:

- 4.3.1 20% or R20 million (including all applicable taxes) for construction related goods, works and/or services; and
- 4.3.2 15% or R15 million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount.

- 4.4 This instruction note is however not binding on public entities listed in schedule 2 of the PFMA, such as Transnet.

- 4.5 In relation to contract variations, the PPM states:

"22.7 INDICATIONS OF SUCCESSFUL CONTRACT MANAGEMENT

Successful Contract Management will achieve benefits by:

Evaluation of the specification against contract performance and identification of contract changes or variations

The expected business benefits and value for money are being achieved."

¹⁹ Appendix 20 – National Treasury Instruction Note on Enhancing Compliance Monitoring and Improving Transparency and Accountability in Supply Chain Management, dated 31 May 2011.

- 4.6 Meeting the requirements of the PPM would at the very least have required a proper analysis and interrogation of the costs for "relocation" as presented by the two OEMs. In this regard, there was a blatant failure by the "relocation" negotiation team to ascertain if there was adherence to cost effectiveness.
- 4.7 In assessing whether it was rational and justifiable for any director to approve the costs for "relocation" of the two OEMs, we have identified section 76 (3) of the Companies Act as being relevant in this instance.
- 4.8 The sub section provides:
- "Subject to subsections (4) and (5), a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director-
- (a) in good faith and for a proper purpose;
 - (b) in the best interests of the company; and
 - (c) with the degree of care, skill and diligence that may reasonably be expected of a person-
 - (i) carrying out the same functions in relation to the company as those carried out by that director; and
 - (ii) having the general knowledge, skill and experience of that director."
- 4.9 In subsections 4 and 5 of section 76, the Companies Act states:
- "(4) In respect of any particular matter arising in the exercise of the powers or the performance of the functions of director, a particular director of a company-
- (a) will have satisfied the obligations of subsection (3) (b) and (c) if-
 - (i) the director has taken reasonably diligent steps to become informed about the matter.
 - (b) is entitled to rely on-
 - (i) the performance by any of the persons-
 - (aa) referred to in subsection (5); or
 - (bb) to whom the board may reasonably have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law; and
 - (ii) any information, opinions, recommendations, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (5).
- (5) To the extent contemplated in subsection (4) (b), a director is entitled to rely on-
- (a) one or more employees of the company whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

(b) legal counsel, accountants, or other professional persons retained by the company, the board or a committee as to matters involving skills or expertise that the director reasonably believes are matters-

(i) within the particular person's professional or expert competence; or

(ii) as to which the particular person merits confidence; or

(c) a committee of the board of which the director is not a member, unless the director has reason to believe that the actions of the committee do not merit confidence."

4.10 The approvals of the "relocation" costs by Mr S Gama were done without confirmation of whether or not there had been an assessment or interrogation of the costs by Transnet personnel or a third party. It is relevant to note that Mr Gama proceeded with the approvals even though the handwritten queries he had raised in the earlier memorandum compiled by Mdletshe in May, had not been responded to.

4.11 Mr S Gama stated during our interview²⁰, that he approved the memoranda with the understanding that the "relocation" negotiation team had considered the costs and found them to be reasonable. Put differently, he relied upon then internal officials whom he believed to have been reliable and competent in the execution of their duties.

4.12 The memoranda at the centre of the approvals were compiled by Ms L Mdletshe, a senior SCS official and supported by:

4.12.1 Mr A Singh;

4.12.2 Mr T Jiyane;

4.12.3 Mr G Pita;

4.12.4 Mr N Silinga; and

4.12.5 Mr Ravi Nair.

4.13 However, this is not the end of the inquiry insofar as section 76 of the Companies Act is concerned. The context of the 1064 locomotives transaction is important in testing Mr S Gama's conduct against the provisions of the Companies Act. The approvals of the costs of "relocation" were done when the 1064 locomotives transaction had already been revealed to have cost Transnet more than R10 billion over the initial ETC.

4.14 The PFMA demands of organ of state to act with reasonable care in order to avoid incurring fruitless and wasteful expenditure. As a director, Mr S Gama was required to act with reasonable care in avoiding incurring expenditure in vain.

4.15 Mr S Gama holds a Bachelor of Commerce degree as well as a Master in Business Administration. Between the year 2000 and 2015, Mr S Gama served as the Chief Executive Officer of Transnet's two operating divisions (Transnet National Ports Authority and Transnet Freight Rail).

²⁰ Appendix 20 – Transcript of interview with Mr S Gama.

- 4.16 We have considered Mr S Gama's qualifications, knowledge and experience against his conduct. We conclude that it was not enough for Mr Gama to simply rely on the recommendations in the memoranda.
- 4.17 The PFMA read together with the Companies Act required of Mr S Gama to take reasonably diligent steps to become informed about the costs of "relocation". This would have been reasonably expected of a person in his position and knowledge and experience. Instead, he authorized the expenditure of R1.2 billion without satisfying himself as to the cost benefit analysis that had been conducted.
- 4.18 We also conducted interviews with Mr R Nair and Mr N Silinga who were signatories to the memoranda compiled by Ms L Mdletshe. Below, we briefly scrutinise the conduct of each employee.

Mr R Nair

- 4.19 Mr R Nair stated that when he was requested (by Ms L Mdletshe) to sign the memoranda for the approval of the relocation costs, it was in the presence of all members of the relocation negotiation team, at a Transnet breakaway session.
- 4.20 Mr R Nair stated during his interview that he sought to satisfy himself that the costs had been interrogated and that he was advised that this had been done. The relevant parts of the interview transcript²¹ read as follows:

"So on the 22 July 2015, we were at Kloofzicht. Kloofzicht is a place near Muldersdrift, the Group EXCO had a breakaway if you go check everyone's diaries. At the breakaway Lindiwe Mdletshe 10 from TFR was there in the afternoon, evening, and she brought the memo for all of us to sign and she was assisting Mr Jiyane at the time on the locomotive side...she brought the memo to sign at Kloofzicht and I looked at the memo and I asked them.

Ja, I said colleagues, tell me something, I remember there was a memo that Patrick Dada signed, you guys had a negotiating team. Are you guys happy with the numbers here, because I am not an expert in these numbers because this is a relocation from a TE 20 facility in Pretoria to a TE facility in Durban.

MR NAIR: It has got nothing to do with TFR, I am not an engineer, I would not know whether it would cost R10 to move or R20 to move. Are you guys happy with it? Yes, yes, yes, we are very happy, we have interrogated all the numbers as a team, as approved by the GC. TIA was also present during the negotiations... (intervenes)

MR MZINYATHI: So who is having this conversation with...? You said Lindiwe gave you the memo.

MR NAIR: Lindiwe brought the memo to all of us, that is why... (intervenes)

21 Appendix – 21 Transcript of interview with Mr R Nair.

MR MZINYATHI: With us you mean who?

MR NAIR: Ndiphiwe Silinga, Anoj Singh, Thami Jiyane, Gary Peter, that is why it is no coincidence that we all signed it on the same day.

MR SPRONG: Okay.

MR MZINYATHI: So the question you posed, you posed to the remainder of the people that are on this memo and they said... (intervenes)

MR NAIR: We were all in an informal group after the EXCO and she brought the memo and all I said is, guys, are you guys all happy with this thing here? Have you guys checked the numbers? Yes, we checked the numbers, we verified the numbers. I said okay, you guys are experts. I am signing this only because from a TFR point of view we are managing the agreement. I am not an expert in the relocation cost, I was not involved in the negotiations of these costs, I know 20 nothing that makes up the make-up of it."

4.21 Viewed as against the standard expected (by section 76 of the Companies Act) of him, Mr Nair did not approach the matter with the degree of care, skill and diligence that may reasonably be expected of a person acting as the Chief Executive of the operating Division that owned the LSAs. The implications that flow from a recommendation to make payment of R1,2billion (in aggregate) are patently enormous and ought to be handled with the utmost care and skill.

4.22 Furthermore, whilst Mr R Nair was not part of the relocation negotiation team, once the respective memoranda included his name and made certain representations to Mr Gama, he ought to have adequately satisfied himself as to the interrogation of the costs that had supposedly been undertaken. This would have entailed inter alia, seeking written verification of such interrogation or assessment.

4.23 We find that Mr R Nair's conduct falls short of the standard expected of him in terms of the Companies Act as set out above. This is aggravated by the fact that this took place in an instance where Mr R Nair was not aware of what relocation was or whether there had been any site establishment by either BT or CNR.

Mr N Silinga

4.24 Mr N Silinga was appointed Transnet's Group Executive: Legal, during August 2014. Thus, when Mr N Silinga was appointed as a member of the relocation negotiation team, he was the head of legal and ought to have known what care, skill and diligence was expected of him.

4.25 During our interview²² with him, Mr N Silinga stated that he understood his role to have been limited to commenting on and assisting with the legal aspects arising from the relocation negotiations.

²² Appendix – 22 Transcript of interview with Mr N Silinga.

4.26 To demonstrate this understanding, Mr N Silinga referred us to an email addressed to the relocation negotiation team by M G Pita on 14 July 2015²³. In the email, Mr G Pita requested that Mr Silinga review the legal clauses and caveats in the proposals of BT & CNR:

4.27 On 17 July 2015 Mr Silinga responded to the email of 14 July 2015²⁴. The salient parts of his response read as follows:

Hi Garry

The first and second paragraphs of the BT letter make sense, however the parties need to agree to the revised timelines, taking into account the delays caused by the relocation negotiations and the relocation itself.

Ad paragraph number 1: if R618 457 125 is the agreed price, the proposal is acceptable"

4.28 Firstly, Mr Silinga's response refers to "the relocation itself" as if there was an actual relocation. Secondly, the email demonstrates that Mr Silinga was not aware as to what price had been negotiated and agreed between Transnet and BT.

4.29 We have considered aspects of the PPM related to the variation or amendment of contracts. Clause 12.6 provides:

"12.6 SD IMPLICATIONS FOR CONTRACT AMENDMENTS

Where there is a contract amendment that increases the value or period of a contract, SD must either be introduced (in not in the initial contract) or re-negotiated based on the cumulative value and/or period of the contract."

4.30 There was no compliance with clause 12.6, which would have necessitated a change to SD ("Supplier Development") commitment offered by BT and CNR at bid stage. This is an aspect that ought to have been considered by the legal personnel in the relocation negotiation team. Thus, even on Mr Silinga's understanding of his role, his conduct fell short of what was required of him.

²³ Appendix – 23 Email correspondence addressed to Mr N Silinga dated 14 July 2015.

²⁴ Appendix – 24 Email correspondence addressed to Mr G Pita dated 17 July 2015.

CHAPTER 5:

An Independent Assessment of the Approved Relocation Costs

- 5.1 Arising from our *prima facie* view that the approved relocation costs were excessive and unjustifiable, we contracted the services of Loliwe to conduct an assessment of the approved relocation costs.
- 5.2 The purpose of the due-diligence conducted by Loliwe was to test the soundness of the process followed as well as the amounts approved for the "relocation" of BT and CNR.
- 5.3 In summary, Loliwe²⁵ has concluded that:
 - 5.3.1 there was no relocation of either OEM;
 - 5.3.2 the variation orders were inflated intentionally by the OEMs and inadequately evaluated by Transnet prior to concluding the approval and amendment of the contracts;
 - 5.3.3 there is no justification for either the direct or indirect costs presented by BT and CNR;
 - 5.3.4 it was improper for Transnet to have agreed to lump sums for the relocation;
 - 5.3.5 the approval of the direct and indirect costs was done without the presentation of valid and substantiated documentation; and
 - 5.3.6 the process followed in the approval of the relocation costs was not in accordance with the standard contract management protocol.
- 5.4 Loliwe has found the variation orders to have been flawed in both values and process. In addition, having conducted an inspection of the Bayhead manufacturing facility, Loliwe confirms that neither BT nor CNR have met the targets they had set out to meet in their proposals. The targets referred to in this regard, include inter alia, the deployment and training of additional staff members.

²⁵ Appendix 22 – Findings in Respect of Review of Locomotive Supply Contracts for Transnet-Specifically with respect to the "Relocation Costs" Variations to Contracts China North Rail and Bombardier Transportation-Loliwe Rail Solutions (Pty) Ltd February 2019.

[illegible]

CHAPTER 6:

The Treatment of the Relocation Variation Orders: A Legal Analysis

- 6.1 A consideration of the relocation variation orders and Transnet's possible remedies would be incomplete without the perspective of the findings of irregularity in the procurement of the 1064 locomotives.
- 6.2 The manner in which Transnet treats the relocation variation orders depends on the legal ramifications for the LSAs. This is because pursuant to findings of irregularity in the procurement process that culminated in the award and conclusion of the LSAs, there is an adverse impact on the LSAs.
- 6.3 It is now trite in our law that contracts concluded pursuant to an irregularity may be set aside. In this regard, the court in **Lorvaniso (Pty) Ltd vs SABC SoC Ltd** held:

"At any rate, on the common cause facts, Lornavision has failed to demonstrate that its processes have addressed the audit concerns of the Auditor-General or that its appointment was in accordance with the peremptory nature of the SABC's procurement policy. It follows, therefore, that Lornavision's appointment as a service provider was illegal, and this renders the contract concluded between Lornavision and the SABC susceptible to judicial review on the principle of legality²⁶."
- 6.4 It has also been settled in the jurisprudence of procurement law that an unlawful administrative decision remains valid until it is declared invalid and unlawful by a court of law²⁷.
- 6.5 If Transnet institutes a judicial review application for a declaration that the process followed in the procurement of the 1064 was irregular in that it did not conform to the principles of section 217 (1)²⁸ of the Constitution, then the LSAs resulting from such process will be declared invalid.
- 6.6 It must be borne in mind that the variation orders emanate from the LSAs. Accordingly, a declaration of invalidity of the LSAs, would mean the variation orders would also be invalid. What would then follow is the question of an appropriate order.

²⁶ *Lornavision (Pty) Ltd v South African Broadcasting Corporation SOC Limited* (19502/17) [2017] ZAGPIHC 208 (1 August 2017). See also, *State Information Technology Agency SOC Limited v Gijima Holdings (Pty) Limited* 2018 (2) SA 23 (CC)

²⁷ This is a principle established in the judgment of *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* [2004] ZASCA 48; 2004 (6) SA 222 (SCA) (Oudekraal).

²⁸ The section provides: "When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective."

- 6.7 In this regard, section 172 of the Constitution²⁹ confers upon the courts a discretion on what is a just and equitable order following a declaration of an invalid administrative decision.
- 6.8 What is to be gleaned from the analysis set out above is that Transnet will be able to approach the court seeking an order that BT and CNR reimburse Transnet the relocation costs paid to date. This request by Transnet will be even more compelling if Transnet is able to demonstrate that BT and CNR were complicit in the irregularities that affected the procurement process of the 1064 locomotives acquisition and/or that both OEMs fraudulently misrepresented the relocation costs in their proposals to Transnet.

²⁹ The relevant portion of the section provides: When deciding a constitutional matter within its power, a court—
 (a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and
 (b) may make any order that is just and equitable, including—
 (i) an order limiting the retrospective effect of the declaration of invalidity; and
 (ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.

CHAPTER 7: Conclusion and Recommendations

- 7.1 We have concluded that the costs for "relocation" were excessive, taking into consideration the initial proposal by CNR dated 11 March 2014. Further, having considered the agreement between BEX and CNR, it is clear that the method implemented began with an amount that had to be "justified" through certain line items. All of the line items charged for in the proposal by both OEMs are unsubstantiated. It is not only noticeable but extremely suspicious that BT's accepted financial proposal is so close to that of CNR. Our conclusions are supported by the independent assessment conducted by Loliwe.
- 7.2 Transnet's failure to implement the strategy that was advised by PWC in relation to the management and negotiation of the financial aspects of "relocation", may have led to the incurrence of fruitless and wasteful expenditure.
- 7.3 We have found that the negotiations for the relocation of the two OEMs were not handled with the transparency and care required by the HVTP methodology: clause 15.3.2 of the PPPM, version 3 June, 2015.
- 7.4 Ms L Mdletshe failed to have regard to Transnet's best interests by effectively ignoring Mr Y Laher in relation to the concerns he raised on 21 and 25 June 2015. At the very least, Ms L Mdletshe as the lead interface (and the person to whom Laher addressed his concerns) ought to have made room for the clarities to be provided.
- 7.5 As a SCS official and the lead interface for the negotiations, Ms L Mdletshe failed to adequately involve TIA, who were critical for assurance and gateway reviews. This failure was aggravated in our view, by Ms L Mdletshe having disregarded the requirement for TIA to sign off the recommendations as per the memoranda dated 22 July 2015, notwithstanding the clear request for her to do so, from Mr G Pita.
- 7.6 The conduct of both Messrs Nair and Silinga falls short of what is expected of senior officials in their respective positions.
- 7.7 We have found Mr S Gama's approval of relocation costs without apprising himself of the circumstances surrounding the amount, may have caused Transnet to incur fruitless and wasteful expenditure.

-
- 7.8 We recommend that BT and CNR be directed to provide a statement and debatement of the funds paid in relation to "relocation". Furthermore, we recommend that Transnet request an opinion from Senior Counsel to advise on whether, viewed in the context of our findings and the Loliwe Report, the variation orders of the two LSAs were contrary to public policy and whether as a result can be declared unlawful and be set aside.
- 7.9 Unless Transnet can demonstrate that there was fraud committed by either OEM in the negotiations for relocation and/or that the variation orders should be declared unlawful for being contrary to public policy, it will be difficult to recover the funds already paid in respect of relocation. This is because the payments made were effected pursuant to valid variations of the LSAs.
- 7.10 We also recommend that when the judicial review application is instituted, Transnet seek a just and equitable order that includes a recovery of the relocation costs paid to date.
- 7.11 As a measure to limit its further exposure, we advise that Transnet should immediately cease all payments related to "relocation".
-

COMMENTS



Mncedisi Ndlovu & Sedumedi Attorneys.
2nd Floor, 16 Fricker Road
Illovo, Sandton, 2196
South Africa

APPENDIX 1

Appendix 1

TRANSNET 1064 LOCOMOTIVES INVESTIGATION

INTERVIEW WITH MR FRIKKIE HARRIS

HELD AT JOHANNESBURG

DATE: 2018-09-11

Transnet Freight Rail Offices
Inyanda House
PARKTOWN

ATTENDEES:

- | | | | |
|----|-----------------|-----|--------------------------------|
| 1. | Silas Dziike | MNS | Chairperson |
| 2. | Thamsanqa Khosa | MNS | |
| 3. | Ziyanda Nyanda | MNS | |
| 4. | Frikkie Harris | | Transnet Freight Rail Employee |

VERBIS TYPING & TRANSCRIPTION SERVICES
25 GRUNG ROAD, SELECTION PARK
SPRINGS 1559

TEL: (011) 812-2226 FAX: 086 5112359 CELL: 083 5665750

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SOUND FILE : Frikkie Harris part 1(1)

CHAIRPERSON: ...meetings, where some e-mails I think that was sent to you by Thobane, there were e-mails that were sent to you by...

MR HARRIS: Thami.

CHAIRPERSON: I am not sure if Thami sent them to you or it was sent on his behalf, so basically is just ja, to just go through those questions and then also myself and Ziyanda will then make some follow-ups on the previous discussions we have had particularly in
10 relation to the delayed locomotives and penalties and also the delivery schedules, if there have been any changes to that since the last time we met... (intervenes)

MR HARRIS: The 1064.

CHAIRPERSON: And we have spoken, ja.

MR HARRIS: Unfortunately some of those you will have to talk to SCS, as you know they are the contract managers who deal with the penalty, *et cetera*.

CHAIRPERSON: Ja.

[Knock on door].

20 FEMALE SPEAKER: Good morning.

CHAIRPERSON: Fine and yourself?

MR HARRIS: It is my boss.

MS NYANDA: Uhm?

MR HARRIS: It is my boss.

MS NYANDA: Ja, we have met her before at the last meeting.

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MR HARRIS: Ja, ja, so no problem, but I will answer as best as I can.

CHAIRPERSON: Okay, so I am not sure if you have got all the letters, ja, so maybe we can start.

MR HARRIS: Okay, basically this is the one that we are dealing with, okay?

CHAIRPERSON: Yes, let us start with that one. What date is that one?

MR HARRIS: It was last week sometime, I think 5 September.

CHAIRPERSON: A letter of 5 September?

10 MR HARRIS: Uhm, that says basically your questions on the 20, 21E, the 100.

CHAIRPERSON: For the 100 locos?

MR HARRIS: Yes, and then there were some questions on the 1064.

CHAIRPERSON: I think that is your letter, hey?

MR KHOSA: Yes.

MR HARRIS: Yes, ja.

CHAIRPERSON: So you can, maybe we can start by responding to the letters and then if there is any...

MR HARRIS: Ja, firstly just, I think you have in your possession all
20 the documents that I have, so I am not going to give you any additional documents.

MR KHOSA: Okay.

MR HARRIS: I mean my computer was scanned and everything and that was on your request, so you have got everything that is there, except the one thing that I do not think you have got access to, that is

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our technical server, but it contains proprietary information from OEMs and there is a confidentiality clause. I am not sure what the stance is but I cannot give that to you, you will have to ask permission if required. You will see what it is, it is not a big deal.

FEMALE SPEAKER: Okay, (inaudible) thank you so much.

MR HARRIS: Dankie Venisha.

MR KHOSA: So in relation to this particular transaction of 100 locomotives... (intervenes)

CHAIRPERSON: Sorry Thami, before you come through, I just
10 wanted to address that point, you said we have all the... (intervenes)

MR HARRIS: Ja, you have got everything.

CHAIRPERSON: Ja you see, because the issue that we have is remember, we are doing the investigation and there are people who are assisting us with the computer eventually... (intervenes)

MR HARRIS: That is your problem.

CHAIRPERSON: No, no, I am saying for example, when staff, when your (inaudible) image for example, it does not automatically just come to us... (intervenes)

MR HARRIS: You have got it.

20 CHAIRPERSON: From a forensic investigation perspective, there is a process that information has to go through before it reaches us for the purposes of the investigation.

MR HARRIS: Ja, but I am not going to duplicate, please. That is, you guys requested that, I had to take the tower across, they have downloaded everything I have so from my point of view you have got

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everything, but I will help you, do not stress.

MS NYANDA: Ja.

MR HARRIS: It is all right. So if we can return to this letter?

CHAIRPERSON: Ja.

MR KHOSA: Okay.

MR HARRIS: So all right, the first thing is actually point 3:

“During the interview we will seek clarity on the following issues regarding the 100 locomotives tender.”

You call it modifications made to the 20E in order to give four
10 set locomotives the capability of a class 19E. So and now I am going to give you handouts because it is very important that you have a look.

MS NYANDA: Ja.

MR HARRIS: My handouts, it is all here but my prints of these, okay so the first thing I want you to see is that one, the graph and I am not asking you to understand but that is the graph of the tractive effort against the speed of the thing as well as the electric braking capability.

MS NYANDA: Sjoe.

20 MR HARRIS: All right, do not stress, it is just how strong the locomotive is.

MS NYANDA: [Laughs]. Oh, okay.

MR HARRIS: Can I get between you?

MS NYANDA: Yes, please.

MR HARRIS: And you must now reverse.

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MR KHOSA: It is fine, I can see.

MR HARRIS: All right, so this line, this is called the tractive effort curve and this is the 20E, which is this locomotive. Now if you look at the pictures, immediately you will see they look the same, but if you look at the 22 you will see it is the same. If you look at the 10E or a 19E, they are all more or less the same but the important thing is, if you look at this thing, that is the 20E curve and what this animal is, is that one.

MR KHOSA: 21?

10 MR HARRIS: 21E.

MR KHOSA: Okay.

MR HARRIS: So that one right at the beginning when we started, let us call the.. Because by a lack of a name at that stage we just said it is a 20E series 1, but that is actually the issue here, that portion. So this locomotive, the 20E and the critical thing is that, it is a tractive effort, 270 kilonewtons at 40 kilometres per hour. Now what we call that is the point on the graph where this thing goes into constant power, so from this point onwards, that is 40 kilometres per hour as to 70 kilometres. From this point onwards this thing has 3 megawatt of
20 power, regardless of the speed.

This portion here is where you pick up the load, so you can immediately see the starting tractive effort and this is what this refers to, it is different. This one is 320, that one is 380, all right. And this one, sorry, the 21E and this is the whole thing where the 19E equivalence comes in, 311 kilonewton at 34 kilometres per hour, is

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that point. So in order to achieve this, because for a traction engineer your so-called lowering profile of the track, that is the determination of what you can do on the track and in order to achieve that 311, we had to make this thing heavier than the 20E.

If you go through the sheet, you will see that in terms of equipment, dimension, maximum of speed *et cetera*, almost everything is the same except look there, that is the actual maths so for a single axle, this is that one, 25 500. So for that increase the overall weight of the loco is 88 tons for the 22E, ag the 20E and for
10 this one it is 104, I think. So in order to get that additional 16 tons in, this was not just a modification, so there were two areas where basically the increasing weight happened and it is here.

If you look at the mass, this is the 20E, everything else is the same except for that, that body fully equipped, 54 tons and the bogie 15.9. This one, the body is 67 and the bogie is 17. So just for that additional weight in order to effect that.

CHAIRPERSON: Okay.

MR HARRIS: All right.

CHAIRPERSON: So the modification was to move... (intervenes)

20 MR HARRIS: It is not the modification, let us just get that clear because your letter almost and I understand why you call it modification, no problem, but it is not, we took this loco and we clearly had a look here, we can tweak that, tweak there and there is the locomotive.

CHAIRPERSON: Okay.

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MR HARRIS: It is not as easy as that.

CHAIRPERSON: So what do you call this process whereby you improve the 20E to have these capabilities, what it (inaudible)... (intervenes)

MR HARRIS: It is actually a new locomotive.

CHAIRPERSON: Okay.

MR HARRIS: Because you just use this as a base.

CHAIRPERSON: Okay.

MR HARRIS: And what we realised here is that many of the
10 equipment on this thing is actually so rated that you can actually stretch it to reach the 21E.

CHAIRPERSON: Okay.

MR HARRIS: So the simple thing is, it is not just the modification, it is a redesign and what it is, I do not know how familiar you are with the locomotive but this top piece of course is the body, but what is important of that thing, it is a so-called monocop(?) design. So when you have couplers at the end with forces, it goes through that entire body. It is not just the underframe that is doing the work. In the case of a diesel, that is what you find, that you work on the underframe.

20 So the issue was, what do we do with this body to get it stronger and then if you look at the bottom here where the four wheels are, that thing that contains the two wheel pairs, it is called a bogie and this was exactly the two areas where we worked on. So we needed to make that heavier in order to achieve the 16 tons that we required to get to the 311.

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CHAIRPERSON: Okay.

MR HARRIS: The other difference is if you look, where is the coupler... There.

CHAIRPERSON: Sorry, are we going to take these copies with us?

MR HARRIS: Ja, you can take.

CHAIRPERSON: Or we are going to make some... (intervenes)

MR HARRIS: No, no, you can take it, it is fine. Here is the other one, a coupler type on this one is an E-type, that is the thing that sits there right at the front where you hook the wagons on. This is a F-type.

10 MR KHOSA: Okay.

MR HARRIS: The difference between the two is this thing's maximum capacity is a 1 200 kilonewton and this one is a 1 600 kilonewton. So this loco was prepared for heavy haul operation. This is the 20E which is a GEP locomotive. Now at this point I must move you to my table.

CHAIRPERSON: Okay.

MR HARRIS: Because I want to show you what was done and how we achieved that.

CHAIRPERSON: Okay.

20 MR HARRIS: Just to have a sense. I am not a specialist in the area of mechanical engineering.

MR KHOSA: The (inaudible) and all of that.

MR HARRIS: Ja, I am not. Everyone has got it, do not worry. So this is (inaudible) the 22E and we can immediately see the difference, it has got three axles per bough and it is much, much heavier than the

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21 we have got. How many times... I am reminded every half an hour that this is... All right, it has to do with the design reviews and where the reports were submitted on the strength to the bogie and the body. So for bogie you can see all the reports, that is the design that the guys went through but the important one and this is, sorry it is 12 megabytes, that is one of the reasons why I cannot really give you the 21E.

Just to give you an idea of what the guys did in order to achieve the strength, so it is not the simple modification that you just
10 did.

CHAIRPERSON: It was a redesign?

MR HARRIS: That is what this is because once you start to the (inaudible) element model, that is you break the bogie up in small little pieces and with that additional force you then see if the thing complies or not and it touches many areas. I am just going to scroll down, it starts off just as a description and then I cannot zoom this thing but all these funny little lines, they make it bigger now, you will see that all around that little blot, for each and every little area that they do a physical calculation to see if the bogie strength is strong
20 enough, it is not you do it quickly in the morning and then it is off, [laughs], you (inaudible).

All right, so this is just the basic calculation loads that they perform on the thing, so what they do is they will twist it, they will push it together, they will pull it, *et cetera*. And then there are certain limitations but this is the report of this and I can see here for instance,

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this is a vertical load, left-side being, right-side being the physical force calculation that they do and then the limits that they are working on.

MR KHOSA: Okay. Mr Harris, what I would like to understand, you are saying it is a redesign.

MR HARRIS: Ja.

MR KHOSA: And not a modification, so that means it would have taken more time to actually design?

MR HARRIS: Yes, sir.

10 MR KHOSA: Can you please give me the period of the time that they took designing this?

MR HARRIS: The contract was signed 17 March and we had the design... Okay, just to finish up this, I will give you that answer now. This is the typical thing for how many pages, almost 43 here, but they call this a stretch cloud diagram so they would twist it in a certain area and depending on the colour of the thing, the brighter it gets, the weak points, there is for instance reds, yellows, that is the critical points. So they did that for the bogies after of course they added the differential weight, *et cetera*.

20 Right and the other one I want to show you, the car body as I said, the same thing. There is the static calculation report, the same type of thing. You do static cases on the entire body and there is a lot of things that they do but basically the same type of exercise that they go through. There is a 117 pages, I would not bore you with all the detail because I do not understand half of it, but the same principle.

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So they take the entire body, break it down in small little bits, then they apply the forces, do the calculations and then say all right, the thing is within limits.

Okay, now just that you a 100% understand that this is not a mere modification, you cannot just wake up and say okay, we are going to do this thing quickly.

MR KHOSA: Okay.

MR HARRIS: Okay, your question, design freeze... Let us just find...

MS NYANDA: They are killing my heels.

10 MR HARRIS: All right, you ladies with your high heels.

MS NYANDA: My feet are sore now.

MR HARRIS: I want to find the date, it is somewhere in July. I will give you the date, I thought it was on that mail, let me just see here if I have got it. Design freeze, this was the physical date. No, this is just a register. It was July/August 2014.

MS NYANDA: That is how long it took?

MR HARRIS: Ja, from... (intervenes)

MS NYANDA: Three months?

MR HARRIS: From March to there, but now I am... (intervenes)

20 MR KHOSA: You are saying it is July or August?

MR HARRIS: Ja, it is July/August and you can... (intervenes)

CHAIRPERSON: From March to August 2014?

MR HARRIS: Ja, I cannot see the specific date here now, but it is documents that we submitted to Finance when they had to make the down payment.

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MR KHOSA: Okay, so if they procured from (inaudible) or if they had procured the exact... (intervenes)

MR HARRIS: Do it a bit longer?

MR KHOSA: The exact 20E from SCR, then there will be no cost of design, because you are just buying what they already have given you, they have got everything, a design and everything.

MR HARRIS: Ja, repeat that?

MR KHOSA: I am saying if they had just bought the exact... (intervenes)

10 MR HARRIS: 19E?

MR KHOSA: No, no, the 20E that CSR had previously procured, there would be no time spent on design and normally... (intervenes)

MR HARRIS: No, because... (intervenes)

MS NYANDA: It is there.

MR HARRIS: It would simply have been an additional order.

MR KHOSA: So my question then is, do you know how much was spent on the design (inaudible)... (intervenes)

MR HARRIS: No, that is the other question here within, because you said how much for the modification. Again as I said there, I am
20 implementing. We work on the technical side, the deal they struck, that is a question that you must ask the people that did the negotiations.

MR KHOSA: So you are not in a position to speak of... (intervenes)

MR HARRIS: It is not broken and to say, okay for the bodywork this is what it cost and that, I do not have that. I offered my

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understanding, here is the 100 at this unit price, that is what I did.

CHAIRPERSON: But who negotiated and agreed to the specifications?

MR HARRIS: SCS. The specifications came from technology management.

MR KHOSA: Yourself?

MR HARRIS: No, no, no, no.

MR KHOSA: Okay.

MR HARRIS: It is Mr Graham Paverd who was the Head of
10 Technology Management at the time, but it basically comes from the
GFB spec. Look, we have got a general freight locomotive
specification, the one that the 20E was born from, but it is a generic
type of specification. Then the one for this one, where we said where
are the areas, what additions do we want on this locomotive in order
to get to this 311, so there is a specification that was prepared for this
locomotive, it has technology (inaudible).

MR KHOSA: Okay.

MR HARRIS: Okay, you can see it is not that thicker.

MR KHOSA: Okay, so... (intervenes)

20 CHAIRPERSON: Okay, what he is trying to get at if I can assist and
obviously I think you are saying that you have got it... (intervenes)

MR HARRIS: Can we back to (inaudible).

MR KHOSA: Sure.

MR HARRIS: Then at least you know your...

[End of recording]

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MR HARRIS: You want some coffee?

MS NYANDA: No, thank you.

MR HARRIS: All right, so you were saying?

CHAIRPERSON: Okay, so I think what Thami straight asked is, the obvious problem, maybe you are saying you are not the right person to answer that question, is that previously when the business case was done for the 100 confinement, it was confined to Matsui. Number one... (intervenes)

10 MR HARRIS: Are you telling me because I did not know that, you are giving a secret away.

CHAIRPERSON: [Laughs]. No, no, we are not giving you a secret, we are just stating the facts, so that... (intervenes)

MR HARRIS: I will have to find that out... (intervenes)

CHAIRPERSON: So that we can build up to what we want to, get some clarity on. So it was confined to Matsui and one of the reasons why it was confined to Matsui was because they had previously produced a similar loco.

MR HARRIS: The 19E.

20 CHAIRPERSON: And as you have said, it would have just been a matter of placing an order, you would not expect... (intervenes)

MR HARRIS: You can place an order.

CHAIRPERSON: Uhm.

MS NYANDA: 20E.

MR HARRIS: However, the production line of that locomotive at that

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stage was almost at the end, so you could have placed the order but the urgency of the supply, that was a different thing. They cannot tell you here Matsui had USW, would have been able to rig up that line in such a short period as to simply (inaudible), because at that point in time I think we must have been midway or ja, midway through the supply of the 15 new locomotives, meaning they still had (inaudible) built in the same facility.

So yes, you could have placed an additional order but the timing was another factor that you may or may not be aware of. Are

10 you aware of the urgency of the purchase?

MR KHOSA: This batch that we are trying to procure?

MR HARRIS: Ja.

MR KHOSA: I am aware of that, of that stance of urgency, but the point that I am trying to make here was that put aside the urgency and everything, let us just focus on the design. If you were buying an identical locomotive to what you previously purchased, then there would be no need for design because it already exists.

MR HARRIS: Ja.

MR KHOSA: So what I was trying to get to is, would you be in a
20 position to know what the cost would be that goes towards the time spent redesigning this new locomotive?

MR HARRIS: No, I still would not know.

MR KHOSA: Okay no, it is fine.

MR HARRIS: I only know the difference between the unit price of the 20E, the 19E and the 21E. [Laughs].

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MR KHOSA: Can you give us those prices?

MR HARRIS: The 19E and you will have to check this, but the last thing I had was at 36-million apiece.

MR KHOSA: Okay, 36.

MR HARRIS: The training if I remember correctly, was roundabout 28-million apiece.

MR KHOSA: Training, 28 okay.

MR HARRIS: And this one, I must now not get confused, I think it is 44-million, 4.8-billion divided by a 100, ja it was 44 because it was 4.4

10 and then there was an additional I think 400-million.

CHAIRPERSON: That is the 21E?

MR HARRIS: That is the 21E, 44.

CHAIRPERSON: 44-million?

MR HARRIS: Ja.

CHAIRPERSON: So the 19... (intervenes)

MR HARRIS: So the 36 for the 19E, that deal was struck in 2006 if I recall, ja.

MR KHOSA: For the 19E?

MR HARRIS: Ja.

20 MR KHOSA: For 36-million?

MR HARRIS: Ja.

MR KHOSA: And then for the 28-million?

MR HARRIS: That was for the 20E and that was, when was that contract signed, in 95 I think. No, it was not 2014, that was 2011.

MS NYANDA: Oh for the 95, 2012?

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MR HARRIS: Ja.

MR KHOSA: And then the 21E?

MS NYANDA: It is 2014.

MR HARRIS: 44, that was in 2014.

MR KHOSA: Ja, if you read this locomotive supply agreement, it speaks of a 20E, it does not say it is 21E, so I then wonder on what basis would the contract speak of a 20E and then we end up getting 21E?

MR HARRIS: Where does it speak of the 20E?

10 MR KHOSA: The contract, it says 20E.

CHAIRPERSON: For the 100?

MR KHOSA: Yes, for the 100.

MR HARRIS: A 19E equivalent. The only reason that it said that and it should have read 20E series 1, because at the time we did not name the loco yet.

MR KHOSA: Okay.

MR HARRIS: You do not assign a class, you know that comes a little bit later but at that point in time the only reference we had to work from was the 20.

20 MR KHOSA: Okay.

MR HARRIS: And you must understand something else and that is why I said to you are you aware of the urgency of the purchase, now from a technical point of view there was on the one hand with the 1064, there was still the assessment done by I think McKenzie in terms of the business case that took I do not know, was it 16 months

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or I cannot even remember, because when they planned all these things, there were certain general freight locomotives operating on the co-line.

Remember you can operate a lighter axle locomotive on heavier infrastructure but not the other way around. So when the guys and that is what was told to us, so that the 1064 was not starting when they planned to start it.

MR KHOSA: Yes.

MR HARRIS: Of course there was now a delay, but at the same time
10 they required GFB locomotives, because there was no inflow they said but we require additional locomotives on the co-line so in order to set free those locos that they used from GFB on the co-line. So they said that the purchase is actually urgent from that point of view, you could not get inflow of new and now you sat in a situation where additional locomotives were required to fulfil the requirements of the co-line.

MR KHOSA: Okay.

MR HARRIS: So the 19E was an obvious choice for various reasons, from a technical point of view it would have meant you could
20 standardise the fleet. However, the 19E from a technical point of view again is a bogie controlled locomotive, so not as advanced as the 21E, because these locos we all know these are axle control. I think in my first interview with you guys I explained it is not really the same, but the same difference between a 4x2 and a 4x4. That is actually what you are talking about.

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MR KHOSA: Ja, I want to just get clarity on that thing you are mentioning of us stopping locomotives between the co-line and TFR. So what happened, did they firstly move the 125 from the co-line to TFR and then when... (intervenes)

MR HARRIS: To GFB.

MR KHOSA: To GFB, then when the 100 fleets came then it went to co-line or did they wait to firstly receive the 100 and then you move... (intervenes)

MR HARRIS: You have to... (intervenes)

10 MR KHOSA: The 125 to the co-line? What happened?

MR HARRIS: To the GFB site. No, you had to wait for the inflow, you could not release because remember the operation had to go on. So you needed additional locomotive or what we call motive power on that line, so that is where this whole thing came from and remember again, I am talking from the implementation side. So we were asked what could be done, the obvious thing as I said, yes you can order 16Es more, but then they had to consider all right, on the production line at that stage it was close to the end of the 19E as it were, we were still delivering 15Es.

20 So there was perhaps an opportunity, but from a future point of view, we actually compiled a wish list, you may have seen that. I do not even know if I have got a copy of it, but one of the things that we said, can we not have axle control on the 19E? Now for that to happen, of course the Japanese would have had to make significant changes on the power conversion portion of that, of the 19E, meaning

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to get it to axle control you cannot simply take this locomotive and just cut the bogie in half or something, it means that you have to have an inverter per each axle whereas the current design of the 19E is an inverter for every two axles. So that is a significant change.

However, in the end you could just have ordered 19E and then stay with us old design if we wanted to.

MR KHOSA: Okay.

MR HARRIS: But the urgency I think was that then I actually, Frikkie Harris, I made a suggestion, why do we not have a look at the 20E
10 based on the capabilities of the machinery, can we not just increase the weight? Because what the weight does, is the weight gives you the maximum allowable component of force in the direction of movement depending on your revision requirements, *et cetera* and the profile of the infrastructure.

So we then asked and can it be done. Our engineers had a look at it and then I think you saw a summary like this. I liked your English words on your letter, a proforma of this thing.

MS NYANDA: [Laughs].

MR HARRIS: And there is the other thing. You would see even on
20 that one it is called a 20E. And this one... (intervenes)

MR KHOSA: So I want to go back... (intervenes)

MR HARRIS: No, no, hang on, there is the requirements under the signature of Mr Graham Paverd, the specification that I spoke of. There is an Excel document containing about a 1 600 clauses, that is one that you are maybe familiar with, with different chapters from

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section A601 to I think that one at 21 that deals with various pieces of equipment on the locomotive. This is just for you to take note that is the areas if you compare the 20, 21E, if you could see where we effected or worked on and you will find that most of as I have indicated to you, is on the bodies and the bogies.

MR KHOSA: Okay.

MR HARRIS: But coming back to it, it was my suggestion, have a look, can we not make this thing heavier? And the reason was, we were busy with a 20E. I would not say we were familiar a 100%, but
10 we have seen the capabilities of the supplier.

MR KHOSA: Yes.

MR HARRIS: So it made sense if you could make the loco heavier, that there was a possibility of bringing it in quicker and that is the end of it. The commercial part thereof, that was a discussion between that negotiation team and the supplier.

MR KHOSA: We have dealt with the design and it was finished around July/August 2014.

MR HARRIS: Yes.

MR KHOSA: Now the next step from the design, I would think it will
20 be...

MR HARRIS: Your starting (inaudible)?

MR KHOSA: Ja, prototype. So how much time did you...
(intervenes)

MR HARRIS: There are no prototypes. Let me get that also clear.

MR KHOSA: Okay.

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MR HARRIS: People talk about prototypes, we do not do that.

MR KHOSA: Okay.

MR HARRIS: And that is one of the risks in new locomotives, the way we apply it. You are expected to do a design freeze where you get to a point where I would say you are about 90% sure that no physical changes would change, because you can imagine trying to construct a thing like that and then maybe a month after you decide no, I do not like the shape of that top part of the cab, I want the inbend here. We You cannot do that.

10 MR KHOSA: Okay.

MR HARRIS: Once you have done this, that is where you must be a 100% sure and you are reasonably sure of the equipment that you are going to use, then it is a matter of arranging it inside this body. That is actually what it is designed for, you must have that confidence to tell them okay, now you can start to build. So all right, then they started to build, okay.

MR KHOSA: From which period?

MR HARRIS: It was soon after that, soon after this design freeze, so it must have been say August/September roundabout there.

20 MR KHOSA: 2014?

MR HARRIS: Ja, 2014. So the first 40 as you know by now was fully imported and again the reason being the urgency of this purchase. That is what we were told, so I think I have explained to you the previous time that they have got a facility in Zhuzhou that they call a rolling rig. It is a stationary testing station where the locomotive can

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actually run at full speed but in a static condition and you can load it and with the different supply voltages in backwards, forwards, but it is standing still and the other... [Laughs]. I see you look confused.

MS NYANDA: No, I am not. Is that how they test the locomotive?

MR HARRIS: No, that is the facility that they have that actually was an advantage for us to be able to do pre-tests even before the locos got here.

MS NYANDA: Yes, okay.

MR HARRIS: What they do is, they have got an arrangement, there
10 is a track with motors, you know wheel-pairs sitting underneath the rails that is coupled to motors that resist rotation, so they park this locomotive on top of those other motors, so it is a round wheel on top of another round wheel. The one holds back and this one is pushing, so again they clamp the locomotive and full blast the rollers.

So you can test the control system, you can almost do hit runs on the traction motors *et cetera*, at that facility which gave us additional confidence that the loco could work, because with any other locomotive you will find that with the BT one specifically, you put it down on the track, you could have assessed everything technical
20 beforehand that you could have, but once it starts to run, that is the first time you see actually the (inaudible).

MR KHOSA: Okay.

MR HARRIS: So just from that perspective, so basically I think it was roundabout September they started to build and then the supply, there is the schedule.

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MR KHOSA: The question that I would have is, they started building in August or September. When did they finish the first locomotives?

MR HARRIS: Well look at when they supplied the first one and there is the entire register from number 1, here you could see which ones were imported, when they arrived in Durban and they were all of them basically delivered within six months. It is a back-to-back print Ms Nyanda.

MS NYANDA: Ja.

MR HARRIS: Up to a 100. You can see the exact date when they
10 were delivered, so the first 40 came in in batches depending on ship size, typically batches of 11. Do not ask me why it was 11 at the time, but that is how they came in.

MS NYANDA: Ja.

MR HARRIS: Then we had a problem with the RSR, because this chap after we have now done the testing, they suddenly started to ask money being what do you call this institution, 9 or what they call it?

CHAIRPERSON: Chapter 9 Institution.

MR HARRIS: Yes, they are supposed to be a gatekeeper, to do their job. They decided no, no, no, they are very important, they are now
20 going to charge us money for this exercise which I thought that is the reason why we are paying tax, but nevertheless, R7.5-million went towards them, but there was a huge fight because at the time when they... Actually you submit the documentation, that is all the test reports that we had to do, you know based on the test that was done and then they are supposed to give you a notice of no objection.

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What it means, you can put it into service and they start to operate. They withheld that because they said no, you must first pay the 7.5-million fee for us to do the assessments which was never the case. At that time my understanding was, it was not yet promulgated in terms of the *Government Gazette*, so it was not law. It is still a problem, you can have a chat with Legal about that, Doctor Petra Bouwer. You know Mr Gert Boshoff, Petra is working for him.

It was a huge thing, so eventually we got it and I think the first ones went into service in August 2015, because remember the
10 RSR approval is not the precondition for us to accept the locomotive. That is very important, in none of these cases because you have got a set of tests that you agreed on, that is the acceptance type test and once they comply with that, you have no other reason not to accept the locomotive because it complies, that is displayed to you that they can. So whilst doing the test, you can be on track but we had to notify the RSR. For that they do not require money. Yes?

MR KHOSA: Mr Harris... (intervenes)

MR HARRIS: Thami, my name is Frikkie, I do not wear a tie. You do, but I am going to call you Mr Khosa.

20 MR KHOSA: Ja. Frikkie, you see with the reports that I am drafting, I will need this information to come through to me in the form of a sequence, so I would like us to just deal with this step by step, because I am trying to track the events that happened and the time within which things happened. So right now I know about the design, I... (intervenes)

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MR HARRIS: Ja, just make sure then if you want to do it like that, the design freeze, check with Finance because when they had to do the payment we submitted the documents. I will try in the meantime, I will see if I can see when the exact date was.

MR KHOSA: So I want us to then confirm when the first locomotive, when they finished building it... (intervenes)

MS NYANDA: Ja.

MR HARRIS: You have got that already.

MS NYANDA: Yes.

10 MR HARRIS: No there is that, look at the register that it was the first... (intervenes)

MS NYANDA: It was (inaudible), 30 June 2015.

MR HARRIS: Ja, it was roundabout... Is that the area that is not sorted?

MR KHOSA: There are so many words, May... (intervenes)

MR HARRIS: Ja, there were earlier ones.

MS NYANDA: (Inaudible) let us see. Ja, this is the last, this is the first?

MR HARRIS: Look at the first one.

20 MS NYANDA: It is the commissioning... (intervenes)

MR HARRIS: Okay, there is the acceptance date.

MS NYANDA: Yes, 30 June 2015.

MR HARRIS: Ja, the arrival... (intervenes)

MS NYANDA: The handover date.

MR HARRIS: No, no, just here, look at the arrival date because

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remember they bring it in... (intervenes)

MR KHOSA: That was for the deposit.

MR HARRIS: And then you must start to test, so those tests on the railing rig... (intervenes)

MS NYANDA: 11 December when, the previous year?

MR HARRIS: It is 2014, ja.

MS NYANDA: 2014?

MR HARRIS: Ja.

MS NYANDA: So they arrived and then it was only accepted,
10 obviously it was accepted the next...?

MR HARRIS: Yes and that six months or whatever it took, one of the reasons was the delay with the RSR.

MR KHOSA: Okay, so we are agreeing on May 2015 or June 2015?

MS NYANDA: No, December 2014... (intervenes)

MR HARRIS: There are the dates, you can look it up yourself.

MR KHOSA: When it arrived here.

MS NYANDA: In Durban.

MR KHOSA: I want the time it actually began running.

MS NYANDA: Oh, when it began running... (intervenes)

20 MR HARRIS: That is the acceptance date.

MS NYANDA: That is the acceptance date, so that would be the 30 June 2015.

MR HARRIS: Yes.

MS NYANDA: That is when all the certificates were issued, it was accepted, they received it, the acceptance certificates. B1, you want

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to know when the last one was? The last one... (intervenes)

MR HARRIS: What I will do is, I will send you that register by mail, you can sort the dates but now the acceptance date, remember the holdup with the no objection notice.

MS NYANDA: Ja.

MR HARRIS: If my memory serves me correct, the first one started to run in August.

MR KHOSA: 2015?

MR HARRIS: Yes, for the reason being as I explained to you, the
10 RSR is not a prerequisite for us accepting the loco, but if you accept it, you cannot simply start to operate, the RSR will kill you, they will tell you stop your operation. So many of these locomotives went to Ermelo and they were stationed there in the yard until we have got the no objection notice and then we could put them into service.

MR KHOSA: What does RSR stand for?

MR HARRIS: Railway Safety Regulator, you are a lawyer, I mean come on, Act 16 of 19 something.

CHAIRPERSON: [Laughs].

MR HARRIS: Hey, you are legal. You do not know RSR?

20 MR KHOSA: No, I am not familiar.

MR HARRIS: Hey meneer, that is the Railway Safety Regulator, so all our projects that we do, you have to notify them what your intention is or what you are going to buy and then they will either tell you ja we take note or we have got a problem with this, depending.

CHAIRPERSON: So in this case they had to run their own tests and

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that is why you... (intervenes)

MR HARRIS: No-no, no-no, they do not test.

MS NYANDA: They do the approval.

MR HARRIS: Yes.

MS NYANDA: You need approval from them.

MR HARRIS: What we do, firstly the acceptance type test is the test of the OEM, we witness, then they produce reports after we said yes, we agree with your findings, your measurements or what. All those reports get submitted to the RSR. They go through it because if you
10 look at Schedule 3 Part 8, the testing in the contract, it describes there, I think it is a list of about 26 systems or subsystems.

MS NYANDA: Yes.

MR HARRIS: Which is not a complete list but we said at least this is our intention that must be tested. That is what you tell the OEM and based on that very same thing you then submit all those test reports to the RSR.

MR KHOSA: So what RSR does... (intervenes)

MS NYANDA: It was you guys, I thought it was them that do the commissioning tests and then the loco is brought to you and then you
20 did the... (intervenes)

MR HARRIS: The OEM? Ja no, let us not get confused, I thought you were talking RSR.

MS NYANDA: Okay.

MR KHOSA: Ja, ja.

MR HARRIS: OEM, they are doing the test, we provide the test

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coach for the acceptance type test.

MS NYANDA: Type tests, yes okay.

MR HARRIS: Yes, it is important.

MS NYANDA: Yes, okay no, I remember that, the acceptance type test is a different test from the one where the locomotive arrives and then you run the acceptance test yourself.

MR HARRIS: Ja.

MS NYANDA: Okay.

MR HARRIS: So it is only on the production run.

10 MS NYANDA: Yes.

MR HARRIS: So that is every loco typically from number 7 onwards.

MS NYANDA: Yes.

MR HARRIS: Where they still do the commissioning and the works test because it is factory test, then they hand over and then we have got the 21 days where we run the fault through, and similarly whilst we do that, the contract says they can come and look.

MS NYANDA: I am not going to, I am going to ask questions regarding that, that is what Thami needs to know.

MR HARRIS: Okay.

20 MS NYANDA: I am going to give Thami his (inaudible).

MR HARRIS: Okay, are you now working (inaudible)... (intervenes)

MS NYANDA: I think he is working on the flow and it is just...

MR KHOSA: Now what I want to actually get is, you are saying the RSI... (intervenes)

MR HARRIS: The RSR.

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MR KHOSA: The RSR stopped you from using the trains when they were ready.

MR HARRIS: Yes.

MR KHOSA: When were they ready to be used?

MR HARRIS: When the acceptance type test, that is the acceptance date, ja. So sorry, I will send that to you electronically, then you can just sort on the date column.

MR KHOSA: So the 7.5-million, what is it that what they needed it for?

10 MR HARRIS: It is a fee that you pay to the RSR for them to look at your report.

MR KHOSA: Oh just to look at your report?

MR HARRIS: Yes.

MR KHOSA: Because I thought you say with the others you simply...
(intervenes)

MR HARRIS: No, no, no... (intervenes)

MR KHOSA: You capture the reports but you did not pay and...
(intervenes)

MR HARRIS: Ja, ja, ja, until the 20 still. There you submitted the
20 reports and they get their job... (intervenes)

MR KHOSA: They give the certificate of objection... (intervenes)

MR HARRIS: And they gave you a no objection after going through the reports and if there were any requirements, they will tell you.

MR KHOSA: But this time they are saying no, we are going to look at your reports... (intervenes)

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MR HARRIS: Ja, next time there were trouble, they suddenly wanted money. Now it did not only impact locomotives, it happened industry wide, you know guys on the infrastructure, they started to encounter the exact same problem. So they have got this table with sliding scales, the duration, the complexity and I do not know what nonsense. Eventually all of these loco projects, they of course qualified top notch, you pay R7.5-million. [Laughs]. All right, that is the story of the RSR. Eventually once we got the okay, I think Thami, it was August when we put the thing first... (intervenes)

10 CHAIRPERSON: In August 2015.

MR HARRIS: And by November you will notice that all of these, end of November, 30 November all of these locos were actually here.

MR KHOSA: In November 2015?

MR HARRIS: Ja, so they were basically delivered in six months and how it was achieved, the first 40 was all imported completely and the 60 came in in the form of knockdown kits, in other words... (intervenes)

MR KHOSA: Knockdown?

CHAIRPERSON: Ja.

20 MR HARRIS: Knockdown kits, Lego blocks.

CHAIRPERSON: Ja, ja, they just assemble here.

MR HARRIS: They assemble it here then.

MR KHOSA: So they brought all the parts in and assembled them?

MR HARRIS: Ja, assembled them *et cetera*, and then they did the work test and the commissioning test here at Koedoespoort and then

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they dispatched to Ermelo, all of them.

MR KHOSA: The design was done here or in China?

MR HARRIS: Here and in China, and their setup, they have got a design centre where I think it is close on 400 design engineers work. So to do a physical design review, I think I have explained it to you in the first, it is very difficult with these guys because of the language, so we made use of interpreters but it is a tedious exercise, I am telling you very frustrating because for the simplest of clause you have to repeat, draw pictures. Eventually the guys understood, so that pain to
10 a large extent we experienced with the 20E because that was the first one.

So by that time it was slightly easier because we knew the faces at least working on these things and they are very shy, initially some of them claimed that they cannot speak a word of English and you know, after getting to know them slowly they came out. So towards the end or through the process, yes the interpreters were still present but not all the time. But yes, design reviews were mainly done there firstly because of the language issue, secondly because of the imports I mean like with BTs it is a different story, you could
20 actually visit the factory here to see what they are physically busy with.

With them we could not, we had to go and see there and of course the opportunity that we had to do some testing there already with their rolling rig facility.

MR KHOSA: Ja, so you are saying the first designs and the first...

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MR HARRIS: The design review, the second design, all of it was done there, so we had to take the team.

MR KHOSA: It happened in China?

MR HARRIS: Ja, in (inaudible), ja. So there were a lost count but I think inclusive of the 95, 21E and all the rest, overseas trips might have been in the order of 25 or more, because you start off with any design, it is the clause by clause discussion firstly to get the understanding, then they would start to do documentation called design reviews, so the next time we come there was now the
10 understanding. The next time you come then they have prepared on each subsystem, they give you a presentation and say okay, this is what the design entails, this is what is included, this is what exists.

So again we go through that, then we make changes if necessary or we say okay, depending on the outcome there will be a third (inaudible) until we are satisfied that from where we sit, we made sure that the thing is designed. That is actually where the design freeze then comes, at that point. You say all right, I am happy with this.

So coming to the 21E, that was actually the other opportunity
20 because we have gone through the pain with the 20E, it was easier because the design happened from a point of view that you were by then at least familiar with the type of wheels they use, the type of traction motors, *et cetera*, so we did not have to spend a lot of time on that. The basic focus was on the frame and that.

MR KHOSA: Okay. You have mentioned that the first 40 batch came

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straight from China?

MR HARRIS: Yes.

MR KHOSA: And then from then on it is what you called knockdown fleet?

MR HARRIS: Knockdown fleet, yes.

MR KHOSA: So my question then is, which component of the locomotives were supplied locally or did everything come from China as a point of (inaudible)... (intervenes)

MR HARRIS: No, it was actually a huge operation. No it did not, but
10 things like brake resistors, the air-conditioners, the brake system, *et cetera*... (intervenes)

MR KHOSA: Brake resistors, air-conditioner?

MR HARRIS: Ja, it is a few systems at the beginning that was exported from here there, they fitted it, then we imported the complete locomotive for the first 40.

MR KHOSA: Sorry, please repeat that part because where I am trying to get to is, when they justified procuring from CSR, they emphasised on supply development obligations, so that is why I am trying...

20 MR HARRIS: Can I kindly...?

MR KHOSA: Yes.

MR HARRIS: You talk that subject, you talk to SCS. We were told right at the beginning, ST is not your kettle of fish from an engineer, that was SCS. You will also find I think if you look at the contract at the time, it did not contain anything about ST at that point. I am not

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sure, you are... (intervenes)

MS NYANDA: Contract, the 2014 contract?

MR HARRIS: Ja, the 2014, there were open schedules because they were still developing that (inaudible)... (intervenes)

MS NYANDA: Oh yes, ja that was not... (intervenes)

MR HARRIS: Yes, that is what I mean.

MS NYANDA: Ja.

MR HARRIS: But anything to do with ST and localisation to this... (intervenes)

- 10 MR KHOSA: No, no, I fully understand that that part we must discuss with Supply Chain Services, but since you are dealing with the mechanic parts, you will know if some parts were procured from South Africa, then that is going to (inaudible), then I will know for example if you say to me all components of the locomotives came from China... (intervenes)

MR HARRIS: Adversity... (intervenes)

MR KHOSA: Then I am going to go to SCS and say then tell us about the locations and supply development.

MR HARRIS: Ja.

- 20 MR KHOSA: So I am just purely asking you on which components came (inaudible)... (intervenes)

MR HARRIS: The ones that I know of by heart is the brake system, the brake resistors... (intervenes)

CHAIRPERSON: Air-con.

MR HARRIS: The air-conditioning that is a local supply and then

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there may have been small items like on the windows we have got these grids that you put. I cannot remember clearly who made the first ones there, but that eventually became local supply from Syamba(?). Syamba is actually the supplier over there... (intervenes)

MS NYANDA: Yes. [Laughs].

MR HARRIS: I know they pay. I think the master controller if you look, that is from Rotech, so there are some items but the funny part about that was, that they actually exported some things from here to China in order to build the first 40 and then imported all the way back.

10 MS NYANDA: They took, same parts were taken from here, exported to China and then they built the locomotive, then they came with that locomotive... (intervenes)

MR HARRIS: Completely (inaudible)... (intervenes)

MS NYANDA: Which they imported with the exported parts and it was imported back?

MR HARRIS: Ja.

MR KHOSA: So at whose cost was that done?

MR HARRIS: No that was theirs, that was inclusive, we did not pay an additional fee for that.

20 MR KHOSA: Okay.

MR HARRIS: But that is the price, for part of the price I guess you pay.

MR KHOSA: Okay.

MR HARRIS: Because the request was, just for one moment you are talking of a supply within six months, so I am just going to make a

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comment. Now if you look at supply development and localisation, you know what the typical time framework is from the DPO, whoever compiled that stupid thing, from a time perspective there are certain percentages that you should reach within three and a half years and then certain in five years. I think I have given you my answer.

MR KHOSA: Okay.

MR HARRIS: You cannot do it, not from the beginning.

MR KHOSA: Not within six months' period?

MR HARRIS: No and that is why I have got a problem because when
10 you look at all of these suppliers, you must look at right from the beginning, from the 20. That according to me is part of the whole implementation of ST, but they unfortunately did and the reason being there is no plan from the government. I am sorry to say, I think you can talk with taxpayers, there are actually very little plans but it is definitely a criticism that I have.

They come to you and they say okay, for supply development you have some pillars, they call it pillars with streams and they will tell you yes, you must develop local suppliers to eventually become part of your supply chain, to even using projects
20 wherever they supply locomotives or you develop new ones or you develop local ones, so the supply development component and then the contract says other developmental initiative. Put up a welding school, supply motorbike parts to a whoever, build a school, that is others, but the point is there is no plan.

The government do not come along and tell you listen, we

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think there is a huge shortage of work in that specific area, please give us initiatives that we can apply there. They give to you an open plate, then it is like a child that cries I am hungry, so you give him a piece of bread, he says no, I am not that hungry, I actually wanted what is that (inaudible) eggs?

MS NYANDA: Fish fingers, uhm?

MR HARRIS: No, no, not fish fingers man.

MS NYANDA: Caviar?

MR HARRIS: Caviar, yes. I am hungry for caviar.

10 MS NYANDA: [Laughs].

MR HARRIS: It is perhaps a ridiculous example but that is the point. So they come with an open cheque, these guys come along... (intervenes)

MR KHOSA: They pick (inaudible)... (intervenes)

MR HARRIS: No, no, they tell you okay, this is what we do, then we receive it, then we say no, we are not happy. How can you do that? You remember in that first interview you asked a question about the 19E, the accusation that Mitsui or whoever, Mitsui ja, did not do any was it BEE initiative... (intervenes)

20 MR KHOSA: Supply development.

MR HARRIS: You remember?

MR KHOSA: Yes.

MR HARRIS: And I said to you go and look at that contract, where is it written? It was not even on the books that time, so whoever said those guys did not make a contribution, was talking utter nonsense.

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There was UCW, a locally established production line, they had a welding school there. I do not know you know, how many welding schools we previously had but again it is not a clear plan to say listen Mitsui, we need a welding school in Nelspruit.

No, they just rig it up, but the fact of the matter is Mitsui did quite a lot in terms of that. But the point I am trying to make here is, ST number one, you cannot expect six months' delivery period and then come with nonsense like three and a half years. It does not fit, so you must read this ST in my mind from the 20E towards the 22E
10 and on.

MR KHOSA: Okay.

MR HARRIS: All right Thami, sorry I interrupted you.

MR KHOSA: I have just got two last questions... (intervenes)

MR HARRIS: No, no, no, I... (intervenes)

MR KHOSA: Then we close.

MR HARRIS: Ja, but I am not done with the design yet.

MR KHOSA: Okay, continue.

MR HARRIS: There is one thing to make this thing heavier and on that graph, that little difference that I showed you, now the biggest
20 enemy of any piece of equipment is heat because if you generate more juice the thing gets hotter, so if you look carefully now, now you are going down to component level, we had to make sure that the blower motor capacity of this locomotive was sufficient to actually deal with that additional heat.

That is the smaller parts, you will see on that register that I

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gave you, it indicates all the changes, that it talks there of increasing the speed of airflow, the pressures *et cetera* if I am not mistaken, then there is another thing on the cooling towers themselves, we had to increase slightly, I think it was the flow of the cooler. On the brake resistor, the same thing, your brake resistor blowers and I think it was a different propeller with a different pitch to be able to cool this thing down and that was the other challenge on this locomotive.

So it is one thing to put it on, you have got the structures and weight and everything, but then it needs to get rid of the weight. So
10 you move on to the 22E, you recall that I said to you in the beginning with the first 55, we had an issue with the traction motor blower, it is exactly this. So this one, the 21E, we started to test, well they did the test, we had to do that heat run as it were from the beginning again, so what it means is that point on the graph there where it makes the hangover, I said you have constant power, you push the locomotive to that point and then for two hours in each direction and each power supply, you run the locomotive and you measure the temperature of the traction motors.

And the temperature must stabilise at the point where it does
20 not increase, and we talk about a class 200 insulation factor, so what it means, it is 200 degrees kelvin on top of room temperature or an ambient temperature, the line must stabilise that. Now to achieve that was quite a challenge in terms of getting rid of the heat on the 22Es. This one we were very lucky, because the first time they have done it, they actually succeeded to display that.

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And now with hindsight I can tell you right now the one thing that is brilliant on the 20 and 21 here and I have no doubt it is going to be the same on the 22E, the guys that worked on the co-line said they never ever from the existence of the thing, experienced a phenomenon called hollowware on wheels on locomotives before this too came.

Now what hollowware, you know the wheel has got that flange and then that portion that touches the rail. What you normally get on this co-line, is that the flange is wearing or you get a case
10 where you have wear on the edges of the wheel, but never in the middle. In the middle means it is almost like driving on a road, you would simply wear down and that is where you get hollowware, but what the implication is, the steerability of this locomotive is the best that we have ever had because now we after, what is it now, three years in operational mode, we start to get the phenomenal hollow wheel, no flangs whatsoever.

It is unbelievable. These wheels will probably last for 20 years, it is something that we have never seen before.

MR KHOSA: On our last interview you mentioned there were some
20 defects with these locomotives and they eventually (inaudible)...
(intervenes)

MR HARRIS: 22E.

MR KHOSA: Actually 21.

MR HARRIS: 21E, we had the (inaudible)... (intervenes)

CHAIRPERSON: (Inaudible) 22E.

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MR HARRIS: Ja, on each. Remember as I said when you do the design review even with the initial running period and whatever, you would not necessarily see anything wrong.

MR KHOSA: Yes.

MR HARRIS: But then after a time something surface which there is no way that you could have known before.

MR KHOSA: Okay.

MR HARRIS: So on this specific locomotive, 20 and 21E, we declared the compressor of that loco as in a defect.

- 10 MS NYANDA: Can I ask something? When you for a fleet defect or for a defect, did you issue a notice with regards to that? It is not a rejection notice but it is just a...

MR HARRIS: Ja no, you had that question before and I think the letter before this one you actually asked me for info on the fleet defects... (intervenes)

MS NYANDA: Yes, okay... (intervenes)

MR HARRIS: On the 22Es.

MS NYANDA: Yes.

MR HARRIS: And we have given you the letter.

- 20 MS NYANDA: Okay, so it is just a letter that says?

MR HARRIS: Ja, it is a letter. However, there is a story before that because you, and again this is now, you know there are people that works on alibis and the best alibi that I have seen in the business today is once you have declared a fleet defect, because then the people go into a mode of this, saying it is your fault, that you do what

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you do. So if you look in the contract, there is a careful definition of what a defect is. It is a loss of tractive effort or braking effort for a half an hour in the long run.

That is very important, so even with the compressor, you can run the locomotive because remember there is more than loco in the (inaudible), so the other compressors might still be working, so it is not necessarily going to give you a loss of tractive or braking effort, but then there is a component defect side, but it builds up to a point depending on which component you talk about, but in general I think
10 once it reaches 10% failures of the same component, then it becomes a potential defect.

MS NYANDA: Yes.

MR HARRIS: And what you do then typically, you warn the guy and tell him listen, we have discovered... Let me just quickly have a look, maybe I have got something here. No, this is print to file, do not worry. You warn the guy and you actually give them an opportunity to say okay, we have noticed this, you know do you agree that there is a potential defect and the best thing at that point that they can actually do, is if they start implement immediately, because you avoid a fleet
20 defect at what cost.

Fleet defect is a nice thing to have, but it also unfortunately creates an alibi once you start to run the locomotives. It is people hide behind it.

MR KHOSA: So how was this issue resolved? Did they fix it?

MR HARRIS: Ja no, they would fix it. You will notice, I think some of

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the things that you may referred to, you would have seen on the 21E specifically on the acceptance notice, it was the first number of locos where we added something with the ECP, ja incidentally that is the other big difference between this, the 20E has got RDP, radio distributed power equipment on it and this one has got ECP, electronically controlled pneumatic braking and wide distributed power on it.

Sorry Thami, now I derailed myself, where was I?

MR KHOSA: The (inaudible).

10 MR HARRIS: Oh, how did we fix it?

MR KHOSA: Yes.

MR HARRIS: Ja, so the acceptance certificate, you would notice there we said the loco is fit for service, can go into service but there were two issues, the ECP has got two portions, your ECP functionality you can run head-end trains, but the WDP, wire distributed power portion we said we have not tested that because it was not implemented. It is not the OEM's fault.

We made a note about that, so by when the time comes that portion must work and then the other one was, this loco being a dual
20 voltage locomotive has got some sensors sitting right in front of the nose on either side, so when it traverses a track, say on the alternating current side, you are not aware or familiar with three-phase or single-phase... (intervenes)

CHAIRPERSON: Of electricity?

MR HARRIS: Ja.

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CHAIRPERSON: The one that we have at my house?

MR HARRIS: Yes, you have got... (intervenes)

CHAIRPERSON: I have got a three-phase.

MR HARRIS: You are lucky. Are you sure you have?

CHAIRPERSON: Yes.

MR HARRIS: On the supply side?

CHAIRPERSON: Uhm.

MR HARRIS: Are you living on a small holding?

CHAIRPERSON: Well it is a stand-alone, ja.

10 MR HARRIS: Oh, normal...

CHAIRPERSON: It is large enough.

MR HARRIS: Large enough?

CHAIRPERSON: Uhm.

MR HARRIS: Okay, I have got two-phases.

CHAIRPERSON: I have got three-phase.

MR HARRIS: All right but brilliant. What it is all about, any transformer if you look at it, they transmit your power with three wires and it is called phases because in space you look at three waves, a 120 degrees separated from one another, but on a locomotive you
20 just have a single pantograph, so when you start to feed a line, you cannot feed just from a single-phase of the transformer.

So they would feed say 45 kilometres from one phase, then there is a gap, a neutral section and the next 45 kilometres will be the second phase and so they go until the end so to have a balance, because when Eskom do the generation, they generate by generating

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three-phase. So that little pick-up, it senses when you get to the neutral section, it will tell the locomotive listen, you must prepare yourself, there might be either DC or AC coming, then it does all sorts of switching in that portion of wire where there is no supply and as soon as it senses the AC again, it will tell the loco okay it is fine, close your VCB again and you carry on.

So from a three-phase you actually work on one-phase but you have to alternative it to keep the load balance. Now unfortunately on the DC side where you of course do not have that, this locomotive, 10 the 21E during the first trips that they did, for some or other reason this pick-up was triggered on the DC side which should not happen, but what the problem there was apparently, is on the track, the same thing, when you supply the power you must return the power with the rail side, so it is like a wire.

It is a battery, when you couple a battery to a little glow, you need to have two wires fixed otherwise the globe would not burn. The same thing here, you are supplying the overhead and you return through the locomotive by the track. So these tracks because they come in certain lengths, at certain points you couple them together 20 with what we call bonds. It is a connection, a physical wire connection we are doing track, but because of vandalism because it is made of copper, the guys steal those things.

So if you come along with a locomotive where there is a gap in the track, you have a what we call a voltage step, a drop or a rise and when it hits that portion, there is like an interference and that

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triggers that magnet. So we had to tell them listen, functional wise loco is fine, however you need to put in like a patch in the software so that if the current of the locomotive is higher than 300 amps, you disable, you will pick when you are on the DC side. That is some of the things that we did.

MR KHOSA: Yes.

MR HARRIS: Coming to when we declared the fleet defect with once you reach that level and then you talk about 15% failure, then they must supply you with a plan as to how they are going to implement, 10 what investigative test or whatever there, and then just simply monitor the implementation plan.

MS NYANDA: And also a master controller defect, fleet defect, is a defect on (inaudible).

MR HARRIS: That we declared, one, I think it might have been, it is a drift of the thing.

MS NYANDA: A drift?

MR HARRIS: Ja, so you have got powering percentages on these locomotives, normally ten steps. So you have got 10%, 20%, 30% powering and in the head of this master controller, that is basically a 20 throttle, there is a little potentiometer and this thing drifts. With drift, when it gets hot, the calibration goes out, so if you give 10% powering, the control system perhaps interpret it as 8%. It is not that the loco cannot work but you need to recalibrate.

MS NYANDA: Okay.

MR HARRIS: So they had to replace that portion, bringing a

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calibration facility. All right you know, your ordinary car that you drive these days, I am not, you must be driving what, Bentleys and being lawyers, you know Bentleys or Austin Martin... (intervenes)

MS NYANDA: I do not drive, I do not (indistinct). [Laughs].

MR HARRIS: But okay, in the old days your car throttle worked with a cable on the carburettor, these days you have got an electronic throttle, so it is wireless, but even that thing can go out. So there is a, when you take it in for service they normally set it to default setting, a factory setting, so they refresh it because potentiometer over time, it
10 starts to interpret your actions, so if you do not accelerate very hard or the day come you want hard acceleration, your potentiometer will think no, you are crazy, I increase the (inaudible). That is basically what it is, so it is a small thing.

MR KHOSA: So in causing this topic you are saying all the defects that came out where fixed and all the locomotives are functioning as we speak?

MR HARRIS: They are functioning there, and there it was a fleet of a 100, eight are not functioning because of derailments and accidents.

MS NYANDA: Do you know something about the safe costs just for
20 when you... Because of obviously the number of times that when there is a defect that it will be taken back, rectified, taken back, rectified? It is obviously a dead cost when it is... (intervenes)

MR HARRIS: Ja it is dead (inaudible) but normally we do not do that, it depends on what it is, like for the master... (intervenes)

MS NYANDA: So how many times would you take a locomotive back,

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it has got a defect and then you (inaudible)... (intervenes)

CHAIRPERSON: When do you decide to reject?

MR HARRIS: Until... No, you cannot reject it.

MS NYANDA: Yes.

MR HARRIS: I remember the previous question, if you look at the contract you can only reject the locomotive before you accept it.

MS NYANDA: Yes.

MR HARRIS: We have never done that.

MS NYANDA: Yes, that is (inaudible)... (intervenes)

10 MR HARRIS: The reason being, is the acceptance type test on the first six, that is actually your chance where you need to discover that.

MS NYANDA: Okay.

MR KHOSA: Okay.

MR HARRIS: Because and that is also the reason for that one clause on the acceptance certificates that it says, I had the question on Friday, the SIU was here and when she opened her document I said you want to know about this clause. It reads that this certificate only says that this loco on this particular day complied to everything it was supposed to comply and it works. It does not denote that at any time

20 after the, that they cannot be... (intervenes)

CHAIRPERSON: When they have a problem.

MR HARRIS: (Inaudible) and the reason being is the story about voetstoets.

CHAIRPERSON: Yes.

MR HARRIS: Our understanding that Webber Wentzel, that is what

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they included to cover for that because if you just left it at that, it means that your warranty regime actually cannot be activated because you would actually take it voetstoots. So you make it clear, it is fit for purpose but after that something can go wrong. That is what then is covered with your warranty and that is how we deal with it.

MR KHOSA: So since then class 21E locomotives were new locomotives, then that means you could not meet the need to have a fleet that is standardised and my question would be, did you then
10 have to secure new batch for spares and also (inaudible) your drivers how to (inaudible) locomotive, because now you are dealing with a totally different locomotive?

MR HARRIS: Ja, the standardisation, when we talk of 19Es it would have been ideal to have 19Es, but when you look at the operation, you had 19Es on your plan, you had 11Es, you had 7Es, you had 10Es series 2s, you had 10Es, 10Es series 1s all on the same line. I do not know, that is eight classes, okay. If you had 19Es in, you would have taken out the 7Es, the 10Es and the 10E 1 series 1 and 2 and whatever they have got there. So from a space perspective,
20 definitely standardisation.

You would have remained with 11E, 11Es purpose build locomotive, it can run only AC side and axle weight 30 tons per axle, you cannot use it anywhere else, it is an old locomotive and it applies to whether you had 21Es or what. 21E, yes it is an additional class but you still got rid of the others, the 7Es, 10Es.

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MR KHOSA: You got rid of them?

MR HARRIS: Rid in the sense that you can move them somewhere else.

CHAIRPERSON: But then you will have to upskill them.

MR HARRIS: Ja, I know the upskilling is still, you know you have got new technology but the standardisation portion where you previously dealt with five, six classes plus on the same line, it now comes down to two. So you did not achieve 100% the goal of just having 19Es which is nice, but it is not always practical to have in this line. And
10 remember in this whole argument, remember the urgency. Now again I am on the implementation side, I cannot tell you the urgency, whether that was true or not, that was the situation. So at least you came down to two.

The same thing, I think you asked me that also the first time and if you really wanted to standardise why did you not give the 599 to one supplier and the 465 to one supplier? Because obviously it is very nice. From a risk point of view, not so nice because and it is exactly what now happens, you have got the CSR guys supplying 22E but we have got trouble with the 23, not trouble, they are coming in, I
20 saw this morning that they are busy with like a 25 preparing it for fault trips, so at least it starts to flow, but imagine we gave all 599 to BT in this case, 20 locomotives, it would not have been nice.

CHAIRPERSON: But they would not have gone to Durban for example.

MR HARRIS: I do not know.

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CHAIRPERSON: They would not. Ja, let us start from that premise to say... (intervenes)

MR HARRIS: No, no, but that, I am just trying to explain to you (inaudible)... (intervenes)

CHAIRPERSON: Yes, yes, I do but I am just, I was just trying to counter your problem to say one of the reasons why they are running behind is not because they are not capable of, but there were other factors that were outside of them, one of which was the relocation to Durban where there were no... (intervenes)

10 MR HARRIS: And it would still have been the same, even if they were the only one, the reason being at that point the 20 and 21E had been built at Koedoespoort and the 43D on the G-line, there was no physical space there, you have another one.

CHAIRPERSON: So they would have had to go to Durban anyway.

MR HARRIS: They have had to relocate or locate or you know, the fancy term.

MS NYANDA: Is there a production line in KZN?

MR HARRIS: Ja, at Bayhead in Durban.

CHAIRPERSON: At Bayhead, ja.

20 MR HARRIS: BT rigged it up themselves.

MS NYANDA: Okay.

MR HARRIS: You must perhaps visit them, try and arrange that you can see how it looks.

MS NYANDA: Yes, we are.

MR HARRIS: They, no honestly, they, it is very modern and because

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it is really modern equipment that they use on the BT line, similarly CNR to a lesser extent there we have got skill shortages I believe as it is on the BT line, but from a jigs and fixture perspective, BT is very modern.

MS NYANDA: Can you speak to the TE part of the contract?

MR HARRIS: [Laughs].

MS NYANDA: Can you? I just want to understand the testing, because... (intervenes)

MR HARRIS: I can.

10 MS NYANDA: I mean they do, there are also tests there and acceptance tests and commissioning tests and now I am just not, I am trying to understand because I am just...

MR HARRIS: I saw that question and this morning I thought what am I going to answer you because you, I was accused in the past of working for CNR because I was cross with TB and what, and not moving fast enough. It is unacceptable to me that an issue about jigs and fixtures is still not being resolved between them and CNR.

MS NYANDA: Ja.

MR HARRIS: Four years, we had the same staring point. If you look
20 at these design reviews that was done, it was a hell of a stiff thing to achieve, but we did it. I do not understand why they could not solve that. Then I said all right, but if I tell you that all four suppliers complains about the very same thing and you will be surprised to hear it, it is not only Bayhead, it is Koedoespoort as well. Now when one guy starts to tell you listen, TE is this bad, they are doing this and

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that, you say you know, perhaps its individuals not getting along and it is a thing you can solve on your own.

Then the second one comes along and they tell you almost the exact same story, this is happening, you still think all right, maybe it is a Koedoespoort thing. Then the third one comes along and they tell you the very same thing. I had a boss years ago who said one bee out of the hole is okay, two bees coming out of the hole it is fine, the third bee, there is a nest. So the fourth one came along and they told us exactly the same, not getting along with the people.

10 I do not believe for instance, you talk about the stupid thing like Steering Committee, I can tell you right now if you go and ask them where are their appointment letters for the Steering Committee members, I do not believe they have appointed members. You cannot make an appointment for a meeting, you fly guys at their cost from Durban up here and when they arrive here you tell them no sorry, there is disputes by the Group CEE and CE, I cannot have the meeting and you just let them go. Is that fair?

I am not saying with this, that some of the OEMs are not guilty as well... (intervenes)

20 MS NYANDA: Ja.

MR HARRIS: But I am not happy with this performance, but that is a personal view. What happened in Durban, on the BT line my understanding is they take some seven weeks for testing. Now remember the OEM/TE is an OEM in my eyes.

MS NYANDA: Yes.

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MR HARRIS: Because they are a subcontractor.

MS NYANDA: Yes.

MR HARRIS: They have to do factory work, tests and commissioning tests, that is their job as per the LSA.

MS NYANDA: Ja.

MR HARRIS: So there is nothing wrong, but not seven weeks, come on. And what apparently the problem is, because of the shortage of personnel there, they keep on rotating them. That is the feedback I had from my guys. TE will definitely tell you a different story, they will
10 for instance on the BT side they are going to tell you we did a serious wrong thing, we have got 16 prototypes in service, not 16 of the same class locomotive. The reason being is that when you do the body part of a locomotive, of course there are tolerances, so the air-cons, the PCCs that you fit, you need to level these things by means of shims.

As long as those things are intolerant, it is still the same locomotive. The fact that you had to make it to fit, that is part of the exercise but my guys' feedback was, they take so long because they rotate personnel, so every time they rotate, BT must train them from the beginning again. That is one of the reasons.

20 MS NYANDA: Sjoe.

MR HARRIS: Now what happens in Koedoespoort now...
(intervenes)

MR KHOSA: When you say rotating people, you mean there is a...
(intervenes)

MR HARRIS: Yes, safe... (intervenes)

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MR KHOSA: Turnover of people?

MR HARRIS: Yes, not turnover, it is really a shortage that they have in the whole plant, so my assessment is say for instance for some or other reason the production line is not moving fast enough, so they do not have a next locomotive to test which is fairly reasonable, you do not want to have those guys standing around... (intervenes)

MR KHOSA: I agree.

MR HARRIS: You use them.

MR KHOSA: Take them somewhere.

10 MR HARRIS: Ja, but then you would reasonably expect by the time that that loco is now ready for tests, bring those guys back.

MR KHOSA: Ja.

MS NYANDA: Ja.

MR HARRIS: They do not, they are pushing new ones so these guys have to train again. That is one of the problems. On CNR side I do not even want to go there, they are just fighting. They accused me because the 21st class 45Bs, of course also important, so the type test on those locos was done here on number 1 and 2, the rest of the locos we tried our best.

20 During our visits there, they have got a ring road in excess of five kilometres where you can actually do tests, so all the factory tests and commissioning tests as far as possible under production run, that is from loco 7 onwards to 20, we tried to finish them, but as an additional thing we said man, when the locos land up here, at least do a weight test and a profile test and we also wanted to do a water test

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on that before it goes for the 21-day. So initially it went well, I think it was the second batch.

Now remember they import to Durban but we test at the reef, so we had an arrangement with the new product development team because their engineers are actually the guys in charge of the test, we do not have diesel specialists in TFR. We arranged with them, the locos to come to Koedoespoort to weight them on the weighing machine here to do the structure test. The locos got here, they said to us no sorry, we are not allowed to do it here, you must take your
10 locos back to Durban. We said come on, you cannot do that.

So I made a call as an engineer, I said I take those locos, you can give me the handover, the weighing that was done in China, my guys witnessed it, I am fine with it. Now I get accused by TE, they are saying no, you have not tested these locos, they want to retest. But it is locos, you know we had the case with those three engines where they blew a valve plug. I am going to talk a bit about defect Ziyanda, three engines threw all the water within the sump, so physically you had to exchange the engines.

They did that, those are accepted locos, now they are being
20 held back, TE said no, they want to retest them. They have been busy now for four months with this. That is nonsense. I am sharing this with you... (intervenes)

MS NYANDA: By the time that TE gives the loco back to, no by the time that I know in terms of this contract now they, the OEM does the acceptance from the OEM themselves.

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MR HARRIS: Uhm-uhm, Uhm-uhm.

MS NYANDA: TE does the acceptance.

MR HARRIS: No, no, the... (intervenes)

MS NYANDA: In terms of the subcontract there is also commissioning and acceptance tests there.

MR HARRIS: Ja-ja, ja-ja... (intervenes)

CHAIRPERSON: But it is for the components.

MR HARRIS: It is the same test.

MS NYANDA: Ja.

- 10 MR HARRIS: Because the factory test, say for instance you take the air-conditioner as an example, that is now coming from Booyco but the factory flow, they would fire up the air-con and say okay, this thing is functional. We do not have to go through all the functions again, that is the type test. You switch it on and say okay, is it cooling *et cetera*, then you can start to fit. So TE within their factory, once they fitted some of these things, because you switch it on, (inaudible) is okay the power supply, the cabling was done, that is the test.

MS NYANDA: So now they are fighting to do that test. Is it the same test that they are going to do when you... (intervenes)

- 20 MR HARRIS: No, it is the same test in terms of factory and commissioning test, because the only test that TFR do, is acceptance.

MR KHOSA: Is acceptance.

MS NYANDA: Acceptance, yes.

MR HARRIS: That is the three-fold (inaudible), but the issue that I

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am trying to explain to you, they have got locos there where the engines were exchanged, so no problem, they have to do a vibration test and of course start the engine, you know as a minimum you do not have to do the entire dynamic commissioning test on that later again, you can release it. They are holding it back. Do not ask me why, I am just telling you that this is going on.

MS NYANDA: How many locos are they holding back?

MR HARRIS: There are seven there. I have got two locomotives, number 21 and 22, that is the first two ones that they had to build and
10 those two ones came as knockdown kits, so they assembled them, then for more than a year they did not touch them. We were busy with the acceptance type test, their own team, the new product development team, that is the engineering leg, they were in charge of the acceptance type test, *et cetera*. Now both these guys turned around and said no, they did not partake in the test.

MS NYANDA: Sorry, this is for which OEM?

MR HARRIS: The CNR, the 45 (inaudible).

MS NYANDA: Those are the seven locos that they are holding back?

MR HARRIS: Yes, ja.

20 MS NYANDA: TE?

MR HARRIS: TE. The issue that I have, number 22 as a case in point, that one they completed. The OEM CNR, did all the necessary tests on those locos. The day that we accepted that loco because what happened was, it was standing at the gate and man, it was literally before they drove off, they did the final walk around, they

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noticed that two of the axles, the wheels got skidded, you know it has got flats on which indicated somewhere in the plant that damage occurred and I knew from the word go that there is no ways that I can accuse the OEM, because the rule is, the OEM is not allowed to move these locos in a TE plant, they do it on those traversers or whatever.

Now TE comes along, they want to tell me no, the Chinese drove those locos around in the plant there and I mean that is pure nonsense. I accepted that loco because I knew this is going to go on
10 for a fight you know, for how long. I am not going to accuse the OEM of something that I know they have not done. Then the cheek is, a month after we almost took possession, then TE's management come along and tells me no, they do not think this loco was tested, so I asked the guy how come a month later now you tell me this?

And in a stream of e-mails and therefore I tell you you have got all my e-mails, the guys admitted there, his team in TE did not, you know (inaudible) did not partake in this test. It is their scope of work. I cannot sit here you know, for me it comes from the OEM. How they do it is their business, but do not a month after the time now
20 suddenly make me aware of this thing... (intervenes)

MS NYANDA: But anyway, I mean it is accepted by TFR...
(intervenes)

MR HARRIS: Exactly.

MS NYANDA: The underlying contractor should have been completed by then, it cannot go back.

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MR HARRIS: Ja, but I am trying to explain to you Ziyanda, a guy looks me in the eye and he tells me no, you are a liar because the weighting for instance of the loco, was not done. So I said but there is the data book. No hang on, before you react now, this is very dangerous ground... (intervenes)

MS NYANDA: No, I am going to react, no I am just reacting because I mean is it not the test, the acceptance tests are done with the OEM and you at that point in time?

MR HARRIS: The acceptance test... (intervenes)

10 MS NYANDA: It is TE... (intervenes)

MR HARRIS: Our test with the OEM that can witness.

MS NYANDA: Yes.

MR HARRIS: But that is the 21 days.

MS NYANDA: Yes.

MR HARRIS: Then they must hand over the latter. I cannot get it out of their gate, they would not sign the roadworthy certificate. So just to add onto that, a very snotty letter comes to my boss where firstly I got accused, now the engine that is on that locomotive cannot cope with the tractive effort in mind, it is not... I cannot recall. Go and read the
20 specification, the only thing that it said is this loco must produce 380 kilonewton at 24 kilometres per hour, that is all it says. The size of the engine is up to the OEM.

I do not care what he puts on there, as long as he does not exceed the weight limitation, that is the clause that we made. SO in the contin... (intervenes)

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MS NYANDA: But can they not, when they raised these defects or...
(intervenes)

MR HARRIS: No, it says... (intervenes)

MS NYANDA: They raised them after, they raised them when you are
due to do the acceptance certificate?

MR HARRIS: No, no, no, this sommer came out of the blue.

MS NYANDA: Out, after the acceptance certificates?

MR HARRIS: Ja, I am sorry that I have to share this with you but I
am just telling you in response to your question, you can see what is
10 going on here. That was the first thing, he said I am not fitting the
right engine but his own people, they were part of the team that
witnessed the type test in Germany.

CHAIRPERSON: They were there?

MR HARRIS: They were there. There is no other engine fitted on
that loco, that is point number one. The second thing was, no, no, no,
no, the weights do not comply, so I took loco 22 and 21, I sent those
results to our specialist again because remember the TFR guy is a
specialist, finding they used the wrong spreadsheet, they forgot to
convert kilograms to kilonewtons and then they sat there in an open
20 meeting and accused me that I am deliberately accepting things
which is not on. The guys confirmed it again.

MR KHOSA: Oh, so these are the TE people who forgot to...?

MR HARRIS: No, no, no, TE accusing me, they tried to make a point
at that, we cannot put these locomotives into operation because we
did not test them.

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MR KHOSA: No, no, I am asking who forgot to change the kilograms to newtons?

MR HARRIS: TE.

MR KHOSA: When he was doing the testing?

MR HARRIS: Whatever their intention was.

MR KHOSA: Okay.

MR HARRIS: Now I am telling you that very same person, he accompanied us to (Inaudible), he was the so-called specialised on the maintenance field.

10 MS NYANDA: Can I just go through, sorry I am (inaudible)... (intervenes)

MR HARRIS: Leave it there.

MS NYANDA: I am going to... So generally it would be the OEM. Now I am going first from the subcontractor agreement... (intervenes)

MR HARRIS: The testing.

MS NYANDA: I want to go underneath the testing, so it would be the OEM does its test, well the subcontractor does the test, he gives it to the OEM who accepts it, or the other way around?

MR HARRIS: I do not know how it works.

20 MS NYANDA: Oh, you do not know how it works there?

MR HARRIS: No, from my perspective... (intervenes)

MS NYANDA: You just get it when you... (intervenes)

MR HARRIS: Ja, but just for your own understanding, as I said the first six locomotives subject to acceptance type test, that test is the long test, in this case the 45D we tested it for almost 429 days, but

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that one is a test conducted by the OEM and with OEM you can include it, because it is a subcontractor. Okay, but the OEM, that is his test. Our obligation is we must supply them with a test code and a test coach specialist.

10 Their guys, we can if we want to witness it, which of course we witnessed because it will be very stupid if you allow him to "gaan aan". Now comes the production run, then you will see in the main clauses of the contract where it talks about testing, there is the works test, the commissioning test, the handover and acceptance test. The works test and commissioning test, that is the OEM with TE. How they do it, it is up to them.

CHAIRPERSON: Ja.

MR HARRIS: Once they completed those tests, they will give me a handover notice and tell me okay, here is the locomotive, we have done the commissioning and acceptance, ag the works test, you can now take the locomotive for your 21 days' fault free trips. That is three trips on revenue earning trained and if there is no obvious faults there that causes the tractive effort of breaking effort loss with 30 minutes and longer, I then issue the acceptance certificate.

20 And that test, tests if you would like to call it, that is out there because it is done with (inaudible). They can come onto locomotive and witness what we do. They are doing it in any case.

CHAIRPERSON: Okay.

MS NYANDA: Can I go, can I ask who, I do not know if you can help, who does the calculation on the delayed penalties?

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MR HARRIS: That is done by Finance together with PwC.

MS NYANDA: PwC?

MR HARRIS: Ja and it is based on the schedules that you have. You asked about the 1064, any changes. On the CSR side, that is the class 22E, no it is still the August 2016 schedule and they did submit a later one where they want the change and we decided no, we are not going to take that. There are indications if you look from the supply point of view, it is better in certain respects, so there is an argument to say yes, we can accept the new one but they still have to

10 pay the penalty.

MS NYANDA: Ja.

MR HARRIS: The penalty however, is a different story.

MR KHOSA: This is for CNR?

MS NYANDA: CSR.

MR HARRIS: SCR.

MR KHOSA: CSR?

MR HARRIS: On the 19 January 2006, the 17, unfortunately a guy from TE got killed on the... (intervenes)

MS NYANDA: The (inaudible) at the plant?

20 MR HARRIS: An impact, 19 locomotives.

MS NYANDA: Yes.

MR HARRIS: Not classified as *force majeure*.

MS NYANDA: Yes.

MR HARRIS: But entirely the scope of TE.

MS NYANDA: Yes.

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MR HARRIS: As STEERCO said no, you will pay the penalty.

MS NYANDA: Yes.

MR HARRIS: I do not agree with it but that is the stance of the STEERCO.

CHAIRPERSON: Sorry, the death affected 19 locomotives?

MS NYANDA: Yes.

MR HARRIS: 19 locomotive, yes.

CHAIRPERSON: And then it was not a... (intervenes)

MR HARRIS: *A force majeure*, even their own lawyer said it was not,
10 but it is entirely the scope of TE. CSR had no supervision whatever
there, I do not know. To me it is unreasonable but that is not my
argument, in a committee one can have a different viewpoint but once
the decision is taken, unfortunately that is the case. Then a second
thing happened, it was in September last year.

MS NYANDA: The closing of the production.

MR HARRIS: No, no, that is still to come.

MS NYANDA: Oh.

MR HARRIS: The knife part, Ziyanda, wait. Some high voltage
cables were stolen.

20 CHAIRPERSON: This is at?

MR HARRIS: At the Koedoespoort out of their store and apparently
and you must ask CSR about it, but they even have delivery notes of
where these cabling got delivered. Impact, 25 locomotives. To make
up a total of 44 that they were behind... (intervenes)

MS NYANDA: Yes.

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MR HARRIS: And you will find... (intervenes)

MS NYANDA: At the meeting there you did say 48 behind, but it was not broken down at (inaudible)... (intervenes)

MR HARRIS: The explanation of the four I will give you now.

MS NYANDA: Okay.

MR HARRIS: That was the 44 and I think that is where the first proforma was issued for penalties and 19 to something like 23-million. Then in order to solve that problem of the cabling, the Chinese decided they will again fly in cables from China but in March they now
10 investigated the whole thing *et cetera*, it was very slow production because of that. I do not know how they investigated but the line did not move, so come end of March I think they were 48 behind.

CHAIRPERSON: March 2014?

MR HARRIS: No, no, 18.

CHAIRPERSON: March 2018?

MR HARRIS: Ja, now. Then I think the penalty rose to something like 25-million and now just take note, the Chinese disputed it. Now if I were them I would do exactly the same. So come end of July, all contract workers were laid off in Koedoespoort. Impact, two to three
20 months on the production line of CSR and it looks like they almost halved their normal capacity. They used to give us eight locos a month, it now dropped to four.

MS NYANDA: Impact, how many locos?

MR HARRIS: I can just tell you that the latest, end of August they were 52 behind the schedule, but... (intervenes)

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MS NYANDA: Okay, why were they laid off, the workers?

MR HARRIS: I think you need to ask TE.

MS NYANDA: Okay.

MR HARRIS: One of the reasons is remember the G-line is almost done, we are waiting for two last locomotives. Indications are end of September they will have them out, so of course I understand, you had to then lay off, but now... (intervenes)

MS NYANDA: These are TE, is CSR involved?

MR HARRIS: Ja, CSR at Koedoespoort now.

10 MS NYANDA: Okay.

MR HARRIS: Ja, so they did not lay off anything and by... It just happened here.

MR KHOSA: It is TE employees which were laid off?

MR HARRIS: Contract workers.

MR KHOSA: TE... (intervenes)

MR HARRIS: Not permanent workers.

MR KHOSA: TE contract workers?

MR HARRIS: Yes, yes, end of July.

MR KHOSA: They had been contracted?

20 MR HARRIS: You know whatever... (intervenes)

MR KHOSA: For a period of time, let us say for example their contract was for six months because they expected these OEMs to be done in six months, so technically their contracts came to an end and they had to be laid off.

MR HARRIS: Yes.

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MR KHOSA: Something like that.

MR HARRIS: Ja, but end of July, but why was it necessary to lay off contract workers that were busy with the CSR locomotives, because they are not yet done? And the impact there... (intervenes)

MS NYANDA: Oh, so you are saying that they laid off contract workers throughout? So CSR, GE and TE?

MR HARRIS: Yes, because the understanding was that they had moved the personnel working on the GE line over to CSR. Understandable, I understand that, but you cannot do such a thing. If
10 it is the assembly line that paints, booth and shot blast, that your main line that actually assembles the loco after you came through the manufacturing side, so the impact right now, they tell us two to three months and possibly only four locos a month, so it is basically half, because you must remember even if you now move GE guys over to the other line, you must retrain.

So CSR's assessment at this point in time says two to three months' impact, so I expect four locos a month for the next three months. That is where the 52 comes. Now what do you tell the OEM now? Do you think they have got reason to complain, thinking about
20 the bees out of the hole? And again I am saying the OEMs are not all innocent, they also did things that you know, a relationship does not go sour due from one party, something else also happened.

And the Chinese specifically I think what happens quite often is guys get irritated because they do not understand, you have to be very patient and listen as to what they say. That is some of the

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irritation and then I believe there was a strike yesterday, someone phoned Temba Gordi(?), who is that chap, Scope... (intervenes)

CHAIRPERSON: Ja, Scoper.

MR HARRIS: Now they say ah, the Chinese is taking over Koedoespoort and I just heard they strike here because of all the Chinese, but who the hell do they expect to do the work? We are waiting for the locomotives. In any case, that happened, so with the GE locos we are waiting for the last two, the same thing, there are two alternators, so these two alternators had non-conformance
10 reports issued on them, they are damaged on brush boxes, on busbar, and the main thing with them was they have got pedestals.

When you mount the alternator and the engine on the loco frame, you have got pedestals and you shim them in order for this thing to get together, because if you pedestals are not even, you cannot physically get the alternator onto the engine. They call it webbing like in web [spelled], that is the term that they use, webbing. So GE sent the thing for repairs and they brought the pedestals within limits and they joined the thing.

Now TE comes along, they said no, they are not accepting
20 these alternators because they have to do an entire retest of the alternator. GE is telling me no, no, no, no, they never changed any electrical parameters on the alternator, the rotor got removed because of the weight, they did the fix on the pedestals and that rotor was put back, the magnet frame, it is a frame holder that they talk about, that was replaced because of elongated holes on the frame.

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So from an electrical point of view you really do not have to do an entire type test again, the parameters should not have changed, you did not do a rewind of the windings or anything.

But they insist, so in the end I told both GE and TE you do an (inaudible), in others words they already coupled the blooming things and that is part of the scope of Transnet Engineering, so if they have to remove that, who is going to pay for it? You test this thing, the parameters is fine, it is wasteful expenditure. So put the things on the locomotive and do a low test as prescribed by GE, you will very, very
10 quickly see if the output of this is not there. That is where it stands right now.

MR KHOSA: Just for those last two locos?

MR HARRIS: Just those last two.

MS NYANDA: And BT is still standing at 21... (intervenes)

MR HARRIS: No, no, no, that is GE.

CHAIRPERSON: GE.

MS NYANDA: Oh.

MR HARRIS: So they are at 231. All right, come to BT, they currently have 20, I expect two more locomotives to be expected, to
20 be accepted within this month still.

MS NYANDA: Ja.

MR HARRIS: And then there are three more that completed the testing, they have fitted the radios and the peripheral equipment, so by the end of October I think we will have 25. So there are 35 in total in process, 20 of which has been accepted, two in fault free runs at

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this moment in time and three done with the static testing indeed. So they slowly but fairly they are starting to pick up.

They do not foresee a higher output soon, they talk of two to three locomotives per month up till maybe November in which they hope to push it up to six per month, but from a government perspective they are very cross with us because we do not even go close to what we promised to deliver to them. That prediction was based on the schedule we had last year November and unfortunately when you send those figures in to the best of your knowledge at the
10 time, you can say all right, from what I see on the lines, this may materialise, but now other things unfortunately happen and you are not allowed to change, but that is BT. CNR, still 21 accepted.

MS NYANDA: Okay.

MR HARRIS: We are waiting for the real first and that is also component knockdown kits up till loco 35, but it is just not moving. So we are putting a lot of pressure on the OEM and my latest suggestion to the STEERCO is to even push them further. I proposed to issue proforma 23 that is potential breach of not delivering locomotives. Incidentally on BT we did issue proforma 23, the issue there is the
20 fight about the schedule, you are aware of the fact that we signed an addendum to the contract dated October last year... (intervenes)

MS NYANDA: It was not signed.

MR HARRIS: Well no, the addendum was signed but they did not initial the... (intervenes)

MS NYANDA: (Inaudible).

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MR HARRIS: No, the clause in the addendum said... (intervenes)

MS NYANDA: They will reschedule.

MR HARRIS: Ja, all they had to do is to come with the detail as to the handover and acceptance dates based on the high level quantities, but then we said no, no, no, stuff you, we issue proforma penalty based on that schedule because that is what was agreed on. Initialled or not, that is not on, because they submitted on the 12 December a later one which we were prepared to consider and then in the end you know, ja TE did not accept and the other thing was by
10 end of March they were already six behind even on the new schedule and we just said no-go, because you just come along whenever you see you are behind, you come with a new schedule.

That is not on, you must give us a plan because from and operations point of view, our guys are crying for the locomotive. Now I cannot tell the guy listen, be calm, you will have 50 locomotives by June next year and here comes these guys and they only give me 10. What the hell do I tell? (Inaudible) Nair, he is, the guys to maintain the old ones but telling 50, of course you will withdraw them from service, he does not have to maintain. If I come late, what does he
20 do then? Where does the...? So that is the issue.

CHAIRPERSON: So BT are holding them to the October 2017 schedule?

MR HARRIS: We are holding them to that.

CHAIRPERSON: We are holding them to that?

MR HARRIS: Yes. We issued and the proforma 23, potential of

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breach, because a clause in that addendum says they must supply us with the handover and acceptance days making up those high level quantities, they have not done that. I think the D-day for that is the 18 September. Now it is like someone threatening someone else, you know if I threaten you and I then do not act, next time I threaten you... (intervenes)

MS NYANDA: He will not do much.

MR HARRIS: (Inaudible).

MS NYANDA: Ja.

- 10 MR HARRIS: You know, I just hope, I am sitting here, I do not know what is going to happen.

CHAIRPERSON: So what do you think what would be the consequence if we issue a proforma 23 for BT and they do not give us this handover and that schedules?

MR HARRIS: Well proforma 23 is potential breach.

CHAIRPERSON: It is a potential breach.

MR HARRIS: So I think then we will have to look at the situation and said are we really going to put them in breach? That is the next logical step or... (intervenes)

- 20 CHAIRPERSON: BT.

MR HARRIS: Declare a formal dispute that it goes through the dispute resolution mechanism and then let the ombudsman decide what the outcome should be.

CHAIRPERSON: Oh so it can either be placing them on breach or we can go to dispute resolution?

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MR HARRIS: Well you know, well okay as an engineer my first intention would be, is to actually declare a formal dispute, but then the guy said no, it is a long legal process which of course it is and you guys drive around in Bentleys and you need to get paid and it is very expensive.

CHAIRPERSON: Ja.

MR HARRIS: [Laughs]. He admitted.

CHAIRPERSON: Well what I actually wanted to say is, I want to try to see for example, because look, we are now sitting let us say at
10 October and there are still the 25 out of 240, so I am trying to look at the options to say... (intervenes)

MR HARRIS: We are not going... (intervenes)

CHAIRPERSON: Do I want to go to the dispute resolution route or do I want to put them in breach and terminate this contract?

MR HARRIS: No, I will go to the dispute, that is why I say as an engineer I will go to dispute. There is... (intervenes)

CHAIRPERSON: Why should I not terminate this agreement?

MR HARRIS: Your old fleet Vilva(?) cannot maintain any longer because this while there things were dragging on, he had to maintain
20 the old locomotives with second-hand equipment that pulled his running dry, so if you pull the... (intervenes)

MS NYANDA: Sorry, you said?

MR HARRIS: Vilva Nair, he is the Acting Chief Engineer on our Maintenance side... (intervenes)

CHAIRPERSON: But it is having a problem and I am only getting 25

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after how long.

MR HARRIS: Ja, after four years.

CHAIRPERSON: How long is it now? Ja, this is four years and I am sitting at 25.

MR HARRIS: Ja.

CHAIRPERSON: They are not helping my situation.

MR HARRIS: They do help, even with that 25 because they are in service now on that line.

CHAIRPERSON: No, no, I am saying I have got this 25 here but
10 what kind of impact is it having on that problem that we are having?

MR HARRIS: It is helping him because there are certain 10E locomotives running on that line which he cannot maintain as well as 18Es which at least he can start to withdraw. The hole, it currently is partially being filled by the addition of 22Es there, because CSR is supplying. That is how it helps. Do not even go to this notion of pulling the plug on these last two contracts.

I will tell you why, if you do that now, apart from the consequences, you know the contract better than I do, I think if one's final accounts are settled it is going to cost you a lot of money and
20 you still sit with these locomotives, the few that you have. The second thing is, if you do that it takes three to three and a half years with the tender issue, the evaluation *et cetera*, testing again before you will get new ones in. So if it was my business I would not even consider terminating. Whoever thought of that, I think is totally crazy. That is my opinion, not necessarily Transnet's. It will be ridiculous.

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It is a lot of resources. If I just think of, I cannot really describe it as painful but it is irritating, it is long times away from home just doing the design to get the locos where we can actually start to run them. I am not doing it again, I am sorry. Someone else can try, but from Transnet, do not think about it. I am telling you for three years at least, we will not have inflow from... (intervenes)

MR KHOSA: Can I ask a question just to explore what can be a viable option? So with these (indistinct) four...

MR HARRIS: Four suppliers.

- 10 MR KHOSA: Four OEMs, you received your batch from GE and CSR and you are almost finished with them, right?

MR HARRIS: With GE, not CSR.

CHAIRPERSON: With GE and CNR.

MR HARRIS: No, no... (intervenes)

MR KHOSA: And then you have got BT here who is doing very bad, so would you not, would it not be an option if you were to confine maybe to GE or CSR and say just add more locomotives... (intervenes)

MR HARRIS: No... (intervenes)

- 20 MR KHOSA: Using your current design, then waiting on this guy?

MR HARRIS: No, I would not.

MR KHOSA: Why?

MR HARRIS: Why would you do it?

CHAIRPERSON: Because I am getting (inaudible)... (intervenes)

MR KHOSA: Because you are saying I am stressed, I have paid this

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guy for more than 40% of the money... (intervenes)

CHAIRPERSON: And you get nothing.

MR KHOSA: And I am only at 25. It does not make business sense, the (inaudible)... (intervenes)

MR HARRIS: The only thing that you need to do is get that loco production line in shape and push the locos out.

MR KHOSA: Then happen... (intervenes)

MR HARRIS: The potential is there in (inaudible)... (intervenes)

MR KHOSA: In Durban?

10 MR HARRIS: Yes.

CHAIRPERSON: So what is the problem, why can we not put them... (intervenes)

MR HARRIS: The shortage of skills, rotation of personnel, over and over retraining, that is what is happening. I am telling you 35 locos are in process. That line was built for a production of 12 potentially per month.

CHAIRPERSON: I want to take up what Thami is saying, this is affecting Bayhead and if you look at Koedoespoort, we are almost done.

20 MR HARRIS: No, we are not almost done, you still have 162 locos from CSR... (intervenes)

CHAIRPERSON: Well GE is done.

MR HARRIS: Produced, ja they are done, produced at the rate of 8 per month, also a line that is supposed to give us 12 per month. You are not going to necessarily make up what is lost there.

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CHAIRPERSON: No, I am saying for example if you look at the delivery that GE has been doing over that period and they are almost done.

MR HARRIS: No, they are a year late, you know that.

CHAIRPERSON: Ja, compared to four years, 25 locos in four years.

MR HARRIS: Ja.

CHAIRPERSON: They are almost done but they are only a year late.

MR HARRIS: But the only OEM that was prepared to build that loco from scratch here in South Africa, is the only one that did not import
10 anything.

CHAIRPERSON: Exactly.

MR HARRIS: You realise that?

MR KHOSA: This company, is that BT?

CHAIRPERSON: GE.

MR HARRIS: Yes.

CHAIRPERSON: BT?

MR HARRIS: Ja and all, remember in this time, all that TE has to do with that loco is assemble, because the localisation portion, the entire body is built by DCD Dorbyl. The traction combo comes from IEC
20 holding, the brake resistors come from MS Ntelema, also local guys. All that they do is assemble. The manufacturing challenge in Bayhead is actually on the CNR locos, there they physically manufacture. Yes, they do manufacture bogies, TE for the BT one. That is the only supplier that was willing to do the locos, also the most expensive.

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CHAIRPERSON: The BT ones?

MR HARRIS: Ja, 54-million in pieces.

CHAIRPERSON: They are the ones who are doing, are prepared to do the entire localisation?

MR HARRIS: Ja, well no to build the loco, not localisation.

CHAIRPERSON: Oh okay, to build the loco.

MR HARRIS: It also depends on how you define it.

CHAIRPERSON: Ja, there are... (intervenes)

MR HARRIS: What do you drive?

10 CHAIRPERSON: To build the locomotive.

MR HARRIS: Ja, what car do you drive?

CHAIRPERSON: It is a German car.

MR HARRIS: A BM?

CHAIRPERSON: A VW.

MR HARRIS: Okay, would you be happy with an engine in your VW that was built by Chelantis Diesel?

CHAIRPERSON: No.

MR HARRIS: Why not?

CHAIRPERSON: I do not know it.

20 MR HARRIS: But it is local.

CHAIRPERSON: Okay. [Laughs]. You know that.

MR HARRIS: No, the point I am trying to make is that there is this misconception with localisation that any of these OEMs will give you the recipe for their diesel engine or the traction motor or whatever. You will not get it, you will get the right to assemble the engine, but do

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not expect them to give you the mix of the material as will Volkswagen also not. So what I cannot understand, we have got a very successful motorcar industry in this country, I saw the other day, I think it was Volkswagen incidentally, for the Vivo, Polo Vivo... (intervenes)

CHAIRPERSON: Ja, Polo Vivo.

MR HARRIS: They assembled the millionth engine here, assembled, so why are we measuring different? Why this whole lot balooh about traction motors and not having 80% local content? From where? A
10 manufacturer will allow you to build the body of the thing and even to assemble. The engine, they will not tell you how to design it, forget it. And what we do is, we measure SD as well as LC in terms of value, not activities. Go there and you ask them how many jobs have been created with the activity of the line being in Koedoespoort, built in Chinese or...

I do not think they can tell you, because we are only worried about money which is wrong, because the diesel engine on a diesel locomotive is 30% of that loco's price, so if you take 30% off, what is your chance earning up at 55% local content? It is ridiculous, you
20 cannot do it like that but it is not my rules, therefore Thami with all due respect, they sit in (inaudible), "is dié praatjies meneer", go and talk to the clever people.

We offered our services because in early May 2015, three guys got appointed in my section, that are programme managers now for these various streams, and I asked them kindly, the very first

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thing, pay attention and give input into ST and training. SCS said to them thank you so much if you want to help, but not now. Their plans are not finalised, you have nothing and that day I decided stuff you. I am implementing these locos, whatever you do as ST is your problem, I am not game.

MR KHOSA: Okay.

MR HARRIS: Thami, what did I leave out? We have talked so much.

MR KHOSA: No, I am sure you have pretty much covered everything on my side.

10 MR HARRIS: If you have got additional questions, say now that I can... Ziyanda, no it is not time for Nando's.

MS NYANDA: No, I have got a meeting. [Laughs].

MR HARRIS: Oh.

CHAIRPERSON: Okay, do you have any other questions?

MS NYANDA: I think you will deal with the variation order question.

MR HARRIS: Oh ja... (intervenes)

CHAIRPERSON: That is the last one.

MR HARRIS: I will just give it to you.

CHAIRPERSON: Okay. No what I also wanted to ask, a question to
20 say for example, at whose instance do we get company variation orders?

MR HARRIS: It depends on what the requirement, the one that comes... (intervenes)

CHAIRPERSON: Let us talk about the CCTV for example.

MR HARRIS: Ja, the roof camera, the CCTV.

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CHAIRPERSON: Who decides that?

MR HARRIS: It depends... (intervenes)

CHAIRPERSON: I want to add it now.

MR HARRIS: No, number one, if the specification said that it had to be included, BT is a case in point. Their one specifically said it is not included in the unit price.

CHAIRPERSON: BT said it was not included in the unit... (intervenes)

MR HARRIS: Yes.

10 CHAIRPERSON: Give and go, in the specifications it was there.

MR HARRIS: But that makes it an exercisable option, not a variation order.

CHAIRPERSON: Right.

MR HARRIS: So you would say yes, we now decided to exercise this option although it comes with the price, but the normal variation order, that is normally how I try to explain it, is in all your dealing with this locomotive, for some or other reason and with the knowledge at hand at the time, we could not fit a third step on getting onto a class 22E, that is a recent one that (inaudible). So a very interesting thing, we
20 deploy these locos in Ogies and there is one person that could not ascend because they are a bit hefty and because of that, the trade union said not the hell, we will bring these locos to a standstill unless you add a third step to it, just the middle step.

That is a typical example where when you did the design *et cetera*, looked at all reasonable measures that you took, you even

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had the dynamics specialist, they are checking this, looking at the clearances, that is the best you can do, we settled for that. But now comes a thing like this, we did not foresee it, then it is from a company, that you... (intervenes)

CHAIRPERSON: So who issues that, is that you?

MR HARRIS: Ja, I will normally issue it.

CHAIRPERSON: And you are the one who, you do not, it does not come from anywhere else as the person who is responsible for the (inaudible)... (intervenes)

- 10 MR HARRIS: I know what you are looking for, that one did not come from me. The so-called location, relocation to Durban, that is number one, I do not believe that is a variation order but it did not come from me.

MR KHOSA: I want to go back to this discussion about BT contracts, say we terminate the contract with CNR and CSR, what would be your proposal regarding carrying more locomotives quicker? What would be your...? Say it is a done deal, you have got to terminate BT and CNR, what would you propose the way forward for getting all locomotives?

- 20 MR HARRIS: I would probably say Transnet does it on its own, because I would not do it. No, I would not order more locos from the Chinese or the Americans. You have done... (intervenes)

CHAIRPERSON: You cannot confine to GE?

MR HARRIS: No, you cannot.

CHAIRPERSON: Why can we not confine?

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MR HARRIS: Confinement is a swear word, you know that better than I do, you cannot do that now.

CHAIRPERSON: No... (intervenes)

MR HARRIS: You could do it. No, do not let GE soft talk you guys, I know what the plan is. I just have this feeling.

MR KHOSA: No, no, no, you see... (intervenes)

MR HARRIS: No, no, Thami... (intervenes)

MR KHOSA: This is actually (inaudible)... (intervenes)

MR HARRIS: I am giving you an opinion.

10 MR KHOSA: Yes.

MR HARRIS: I am telling you I, Frikkie Harris, will not do it, I will not even consider it. If Transnet ever takes such a decision, I am done with locomotives. I am not dealing with other OEMs. I know the idea sounds okay, yes you can because there is a running line, I mean you can literally just carry on and say okay, produce more 22Es, then I am asking you what the hell is the fuss in the newspapers all about? Is not and I do not want, I know you want to...

CHAIRPERSON: For the record...


[End of recording]

20 INTERVIEW ADJOURNS

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that **as far as it is audible**, the foregoing is a true and correct transcript of the digitally recorded proceedings in the interview of:

TRANSNET 1064 LOCOMOTIVES INVESTIGATION**MR FRIKKIE HARRIS**

TRANSCRIBER	:	M Botha
DATE COMPLETED	:	28 September 2018
NUMBER OF PAGES	:	88
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SPRINGS 1559
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TRANSCRIBER'S NOTE

PARTIES Transnet Freight Rail – Interview with Mr F Harris

CASE NUMBER Not applicable

REASON FOR REPORT

➤ Some words/phrases were inaudible due to the following reasons:

1. Speakers had a tendency to speak at the same time.

➤ We are not *au fait* with technical terms mentioned during the interview, terms and names of which could not be sourced via the Internet were spelled phonetically.



M BOTHA
TRANSCRIBER

28 September 2018

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APPENDIX 2

Appendix 2

TRANSNET



Mr Brian Molefe
Group Chief Executive
Transnet SOC Ltd

**SUBJECT: AWARD OF THE TFR 1064 LOCOMOTIVE TENDER TO
ORIGINAL EQUIPMENT MANUFACTURERS AND THE
ASSOCIATED SUB-CONTRACTS WITH TRASNET
ENGINEERING**

For approval, please

COMMENTS / NOTES

16 MAY 2014

From: Mr Richard Vallihu, Chief Executive: Transnet Engineering

Richard Vallihu
20 May 14

Transnet SOC Limited
Registration Number
1990/000900/30

160 Lynette Str,
Kilner Park
Pretoria
0186

PO Box 15912
Lynne East
Pretoria, 0039
T +27 12 391 1301
F +27 12 391 1342



MEMORANDUM

www.transnet.net

TO : Mr. Brian Molefe; Group Chief Executive

FROM : Mr. Richard Vallihu; Chief Executive; Transnet Engineering

DATE : 15 May 2014

SUBJECT : **AWARD OF THE TFR 1064 LOCOMOTIVE TENDERS TO ORIGINAL EQUIPMENT MANUFACTURERS AND THE ASSOCIATED SUB-CONTRACTS WITH TRANSNET ENGINEERING**

PURPOSE:

1. To request the Transnet Group Chief Executive to formally communicate the allocation of Bombardier Transportation and CNR Rolling Stock South Africa to Transnet Engineering's Durban facility.

BACKGROUND:

2. On 17 March 2014, Transnet SOC Ltd signed agreements with the following Original Equipment Manufacturers ("OEM") for the supply of 1064 Diesel and Electric Locomotives for Transnet Freight Rail's General Freight Business:

OEM	LOCOMOTIVE TYPE	QTY
Bombardier Transportation	Electric	240
CSR Zhuzhou Electric Locomotive Company	Electric	359
CNR Rolling Stock South Africa	Diesel	232
GE South Africa Technologies (Pty) Ltd	Diesel	233

3. Associated with each of these contracts for the supply of locomotives, is a sub-contract between these OEM's and Transnet Engineering for a specified scope of work. During the tender and negotiation phases, Transnet Engineering prepared all offers on the basis that each of the OEM's would be based at the Koedoespoort facility. This was done to ensure that all offers were prepared on a like basis and that Transnet Engineering could in no way influence the outcome of Transnet Freight Rail's tender through pricing.

In discussions that took place during February and March 2014 at the Webber Wentzel offices, the Group Chief Financial Officer informed the OEM's concerned of this fact and of the intent to allocate them to the Durban facility. No objection was made by either OEM at this point. The rationale to distribute the OEM's between Transnet Engineering's facilities was twofold: Firstly to distribute the supplier development opportunities and secondly to address the possible confidentiality issues of similar OEM's being hosted at the same facility (i.e. both electric locomotive OEM's or both diesel locomotive OEM's on one Transnet Engineering facility).

DISCUSSION:

4. The proposed allocation of the OEM's is detailed below:

OEM	LOCOMOTIVE TYPE	TE PLANT
Bombardier Transportation	Electric	Durban
CSR Zhuzhou Electric Locomotive Company	Electric	Koedoespoort
CNR Rolling Stock South Africa	Diesel	Durban
GE South Africa Technologies (Pty) Ltd	Diesel	Koedoespoort

5. The decision to allocate CSR ZhuZhou Electric Locomotive Company and GE South Africa Technologies (Pty) Ltd to the Koedoespoort facility was based on the fact that Sub-contracts with these OEM's already exist and that the facility currently hosts production lines for locomotives designed by them. This would imply minimal time and costs to prepare these lines for production of the new locomotives for the TFR 1064 project. The other two OEM's were, therefore, allocated to the Durban facility (i.e. Bombardier Transportation and CNR Rolling Stock South Africa).
6. CNR Rolling Stock South Africa have indicated their acceptance of their allocation to the Durban facility through their actions and planning around the use of the Durban facility. Bombardier Transportation has, however, expressed their requirement for an official communication informing them that their factory site will be Durban. Section 1.1.33 of the Subcontract defines the facility or site as follows: 'Facilities shall mean the rolling stock assembly and engineering facilities of the Subcontractor situated in *Koedoespoort* or any other location of the Subcontractor as may be agreed upon by the Parties'. Until such time as the communication has been received, Bombardier Transportation insists that the contractual agreement is Koedoespoort.


BUDGET IMPLICATION:

7. Transnet Engineering has included the planned TFR 1064 project in its budget for the financial periods covering the duration of this project.


RECOMMENDATION:

8. In keeping with contractual requirements, TE duly requests that Transnet SOC Ltd officially informs Bombardier Transportation and CNR Rolling Stock South Africa of the decision to base their operations at Transnet Engineering's Durban facility. Letters to these OEM's concerning the decision have been attached for signature by the Transnet Chief Executive.

Compiled by:


Mr. Magan Govender
 GM: Locomotive Business
 Date: 16/05/2014

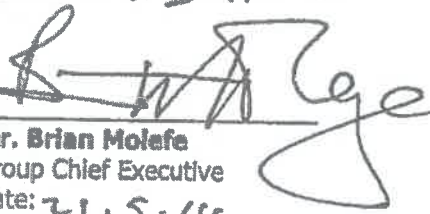
Recommended by:


Mr. Frederik Potgieter
 Chief Operations Officer
 Date: 16/05/2014

Recommended by:


Mr. Richard Vallihu
 Chief Executive
 Date:

Approved by/Not Approved:


Mr. Brian Molefe
 Group Chief Executive
 Date: 21.5.14.

APPENDIX 3

Appendix 3



CNR CONSORTIUM

Attention: Uindiwa Mofetsa
Transnet Freight Rail
Acquisition Council

11 March 2014

465 New Diesel Locomotives for General Freight – Impact of Locating in Durban

Dear Uindiwa and Gary

Further to our previous email in this regard, Following the request from TFR for CNR Consortium to consider the Durban facilities for manufacture of locomotives, the following calculations were made:

IMPACT OF MANUFACTURING IN DURBAN VS JOHANNESBURG

TRANSPORT COSTS

	Saving	Extra Cost	Comment
Engine		R 8 000.00	Engine imported but testing done in JHB
Propulsion System		R 16 000.00	ABB is located in JHB. 40% is imported portion, assembly in JHB
Brakes		R 2 000.00	Knorr Bremse located in JHB.
Chinese components supplier	R 8 000.00		Imported components from Dalian
Locomotive Gears		R 4 000.00	Based in JHB
Air Conditioner		R 4 000.00	Based in JHB
Wheels + Axles	R 8 000.00		Imported components
Refrigerator		R 500.00	Based in JHB
U-tubes and gear case	R 4 000.00		Rotacon based in Durban
Communications equipment		R 200.00	Located in JHB
Total	R 20 000.00	R 40 700.00	
Difference per locomotive		R 20 700.00	
Extra Cost on Locomotives		R 4 077 500.00	

Care of Global House, 60 Yorkagh Road, Kington Park 1636
P.O. Box 10235, Acton Manor, Kington Park 1615

Tel: +27 11 230 1900
Fax: +27 11 396 1994
Email: Rowlen@globalgroups.org

APPENDIX 4

Appendix 4

06 June, 2014

Transnet Freight Rail
Private Bag X47
Johannesburg, 2000
South Africa

BOMBARDIER
the evolution of mobility

TRANSPORTATION
Bombardier Transportation GmbH
Holländische Straße 195
34127 Kassel, Germany
Tel +49 561 801 02
Fax +49 561 801 6951
www.bombardier.com

Principal Office: Berlin
Registration Court: Amtsgericht Charlottenburg
HRB 64838

Chairman of the Supervisory Board:
Prof. Dr. Wilhelm Bender
Management Board:
Michael Clausen, Chairman
Dr. Susanne Kortendick
David Barry
Matthias Keller

RE: Allocation of Bombardier Transportation to the Transnet Engineering Durban facility – letter of Mr. Brian Molefe to Dr. Lutz Bertling dated 21.05.2014

Dear Mr. Jiyane

Further to our informal discussions, Bombardier has now received the letter above mentioned from your Group Chief Executive, Mr. Brian Molefe, via our Chief Operating Officer, Dr Lutz Bertling; on the 26th of May, 2014, Mr. Molefe officially informed us that Transnet Engineering's Durban facility should host our operations and asked Bombardier Transportation to agree. A response letter was provided by Dr. Bertling 5th of June 2014, confirming that our project team would contact TFR directly to confirm the next steps.

We understand the request of the South African Government and Transnet SOC Ltd to widen the railway industry hub from Gauteng to other regions of South Africa and we intend support this approach as much as possible. Obviously, this change of location represents a significant change to the Locomotive Supply Agreement – the TE facility is currently defined as Koedoespoort, Gauteng.

As you are aware, Bombardier has already made an initial visit of TE's Durban facility on the 19th of May when we extended the presence of three of our experts in South Africa following the kick-off meetings with Transnet Engineering (TE) in Koedoespoort on the 13th and 14th of May. This site visit demonstrates our commitment to support Transnet as much as possible and to save time and money for all stakeholders.

Despite this initial informal visit, there remain several significant activities that must be completed to determine the full impact of the requested change. To kick off these activities, and to follow more closely the formal process of the Locomotive Supply Agreement, we would like to request that TFR send us a Notice of Company Proposed Variation (Schedule 8, Pro Forma 14). Although this process was not discussed previously in detail, we would prefer to receive the Pro Formas of Schedule 8 as word-documents.

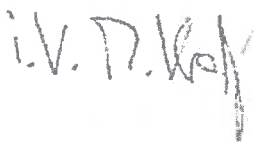
Once the Notice of Company Proposed Variation is received, Bombardier will need to review not only the infrastructure of the Durban facility itself, but also to determine the consequences for our entire supply and logistics chain as well as the impact on our project team. Based on Bombardier's first impression of TE's Durban site, it is already clear that the infrastructure in Durban must be upgraded to enable TE to produce the bogie frames and to perform the final assembly of the locomotives as well as the testing and commissioning of the vehicles on schedule.

Given the expected impact of the requested change, Bombardier proposes the following two-stage process:

1. The detailed analysis of the Durban facility and potential supply and logistics chain impact will require a significant investment of time and resources by Bombardier. This will definitely impact our ongoing project activities, due to the diversion of key personnel from their current project responsibilities to this assessment process. There will therefore be an immediate impact to the project, just to calculate the ultimate impact of the change of site. This first stage impact should be agreed in advance, between TFR and BT.
2. Once the detailed assessment is completed, TFR and BT can agree on the final expected increase or decrease in cost (as applicable), the extension of time (if any), changes to Supplier Development, and any other related amendment to the Locomotive Supply Agreement.

We are available to discuss this approach at any time, and look forward to receiving your Notice of Company Proposed Variation in the near future.

Kind regards



Markus Kratz
Director Project Management

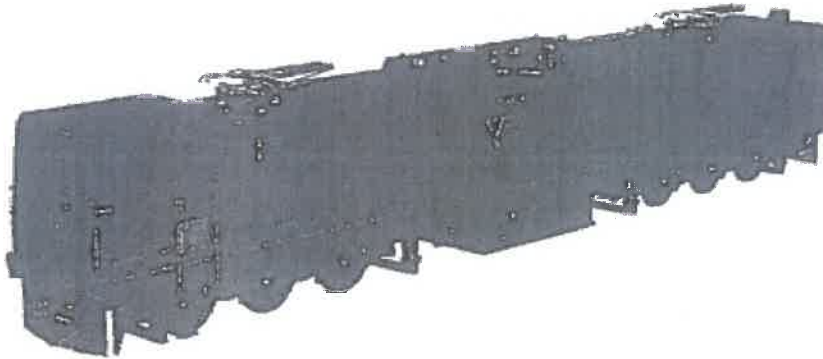


Ramon Perez
Project Manager

BOMBARDIER**Durban V.O.**

**Final Notice of Contractor Proposed Variation
with respect to Transnet's request to
move TE's Facility location from Koedoespoort
to Durban**

(hereinafter Durban Variation Order)



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BOMBARDIER**Durban V.O.**

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BOMBARDIER**Durban V.O.**

1 Introduction

Following the request from Transnet to Bombardier Transportation, we are pleased to provide our proposal to move the locomotives assembly site of Transnet Engineering from Koedoespoort to Durban.

This proposal refers to the following correspondence and specific meetings stated below:

- Initial letter dated 26 May 2014 from Transnet's Group Chief Executive, Mr Brian Molefe, requesting the Contractor to move TE Facility from Koedoespoort to Durban.
- The Contractor's response to Transnet's Group Chief Executive on 05 June 2014 and the additional response to TFR on 06 June 2014.
- Contractor's email correspondences, e.g. dated 25 June, 18, 23 and 30 July 2014 requesting the Company to formalize Notice of Company Proposed Variation.
- Company's email correspondence dated 21 July 2014 notifying the Contractor that the Company will prepare and send the necessary confirmation in relation to the Notice of Company Proposed Variation.
- Meeting held at the Company's offices on 07 August 2014.
- Contractor's letter dated 13 August 2014 confirming the date that the Notice of Company Proposed Variation shall be deemed to have been received on 07 August 2014.
- Notice of Delay Event and Notice of Contractor Proposed Variation sent on 13 August 2014
- Contractor's email notification of additional delay from Transnet Engineering dated 11 September ref.BT/TFR/00148
- 23 September offer received from TE to move the assembly facility to Durban.

Moreover, this proposal will briefly mention some provisions of the Locomotive Supply Agreement executed on 17 March 2014 (hereinafter the LSA) that would need to be modified, and then present the extension of time impacts and the cost or cost saving impacts related to the TE Facility change of location. With respect to the above impacts, Bombardier also details its pricing assumptions and conditions, as well as the validity of its proposal.

1.1 Provisions of the Contract

The following provisions, amongst others, of the Locomotive Supply Agreement dated 17 March, 2014 entered into between TRANSNET SOC LTD and BOMBARDIER TRANSPORTATION SOUTH AFRICA (PYD) LTD relate to the requested change of TE facility from Koedoespoort in Gauteng to Durban, KZN province, and would have to be modified once the Variation Order (hereinafter V.O.) is approved.

Clause 1.1 [Definitions] which defines TE Facility as Koedoespoort, Gauteng.

Clause 13.3.2 which states that the Technical Materials will be kept at the Contractor Facility in South Africa (and if TE is a Key-Subcontractor, at TE Facility) in either case, in a secure facility under the supervision of the Contractor.

BOMBARDIER**Durban V.O.**

In addition, the assumptions and the terms described in this offer apply to this proposal and would also necessitate adjustments to the LSA, including but not limited to Appendixes.

2 Impacts of the TE's Facility move of location to Durban

2.1 Scope of TE

The prices indicated in this Notice of Variation Order are based on the following scope of supply of TE completed at their Durban facility:

- Final Assembly from the first to the last Locomotive,
- Testing & Commissioning from the 7th to the last Locomotive,
- Bogie frame manufacturing and
- Bogie assembly.

2.2 Category of Impacts of the Variation Order

This Notice of Contractor Proposed Variation provides and outlines all the related impacts and opportunities resulting from the requested move of the TE Facility by the Company, considering two different types of costs or cost savings:

- The costs due to the **extension of time of the project schedule** (Inflation, resources needed for an extended project duration, etc)
- The costs due to the **change of location** from Johannesburg to Durban (Logistics concept, additional transportation, etc)

3 Pricing Assumptions

The following assumptions apply to all the prices of this proposal, unless stated otherwise:

3.1 Extension of time assumptions

3.1.1 Agreement between TE and Bombardier Transportation

The Company requested that Contractor aligns with its Key Subcontractor TE to provide a harmonized position with respect to the impacts on the project's schedule. Bombardier together with Transnet Engineering (TE) made the assessment of TE's facility in Durban and reached the following agreements:

BOMBARDIER**Durban V.O.**

- 3 (three) months delay (as shown in "Appendix 1" where the specific time impact for each locomotive is clearly visible) in the execution of the project during the validity of this offer.
- The proposal is based on the TE proposal received on 23 September 2014, and any modification to that proposal of TE would require a further adjustment of Bombardier's proposal.
- A set of milestones have been identified and defined between Bombardier and TE to execute the Variation Order and ramp-up of TE's facility in Durban. These milestones are attached to this offer in "Appendix 2".
- Bombardier specifically reserves the right to claim for additional delays and incurred costs derived from a delay in achieving the milestones agreed with Transnet Engineering, proven that Bombardier Transportation has not caused such delays.

3.1.2 Locomotives Delivery

- The 2 (two) months delay announced in our Notice of Delay Letters of 13 August and 26 September 2014 due to the elaboration of this Variation Order offer is incorporated in the above mentioned delay of this Variation Order.
- The new detailed Handover Dates and Acceptance Dates for all 240 Locomotives are shown in "Appendix 1".

3.1.3 Additional assumptions with respect to extension of time

- These above mentioned impacts may increase should the Company delay to make a decision to issue the Contractor with a Variation Order after the defined validity period of 20 business days, and in that instance the Contractor will request further additional time impacts that may be suffered.
- The Variation Order price would also increase for any additional delay should the Company delay to make a decision to issue the Contractor with a Variation Order after the defined validity period of 20 business days.

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3.2 Financial assumptions**3.2.1 Currency**

All the prices provided are in ZAR.

3.2.2 Bonds

No additional bonds or PCGs to the ones included in the LSA are considered in this offer.

3.2.3 Milestone Payments

Prices offered above are based on milestone payments as shown below (same as in LSA):

- 18.0% of the total offered price at the acceptance of this offer
- 9.0% of the total offered price 17 months after Effective Date of the LSA
- 68% pro-rata at the date of issue of an Acceptance Certificate for a Locomotive subject to retention for Mission Reliability and Fleet Availability
- 71% pro-rata at the date of issue of an Acceptance Certificate for a Locomotive not subject to retention for Mission Reliability and Fleet Availability
- 1.5% pro-rata at achievement of Mission Reliability targets
- 1.5% pro-rata at achievement of Fleet Availability targets
- 2.0% pro-rata at completion of Warranty Period

3.2.4 Payment Terms

Following payment terms apply (same as in LSA):

Payment after 10 (ten) business days with tax invoice.

3.2.5 Supplier Development Plan (SD Plan)

The SD Plan which is currently being negotiated between the parties may be impacted by the outcome of the parties' negotiations of this Variation Order. Bombardier reserves the right to adjust its SD Plan commitments accordingly once the Variation Order is concluded.

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3.2.6 General

All the prices included in this proposal do not include anything not explicitly mentioned in this offer.

3.3 Fixed price

Price is provided in following format:

- *Fixed Price*

Payment Milestones	Price the move to TE's Durban facility considering a delay of 3 (three) months according "Appendix 1"
As described above	R 634'316'000

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4 Validity of this offer

The Price is conditional and subject to the mutual agreement by the parties of the Durban Variation Order within the offer validity which is limited to 24 October 2014 (20 Business Days from submission).

5 Appendixes

Appendix 1 -> Handover and Acceptance Dates of the locomotives considering the move to Durban.

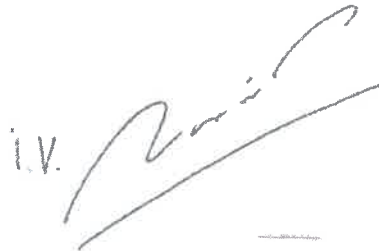
Appendix 2 -> Milestones defined with Transnet Engineering to materialize the move to Durban according to the terms defined in this offer.

26th September 2014



Markus Kratz
Director Project Management

26th September 2014



Ramon Perez
Project Manager

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Appendix 1 - Handover and Acceptance Dates of the locomotives considering the move to Durban (considering 3 months delay).

Loco	Scheduled Handover Dates	Scheduled Acceptance Dates
1	Thursday, March 31, 2016	Monday, August 01, 2016
2	Thursday, April 14, 2016	Monday, August 01, 2016
3	Tuesday, April 19, 2016	Monday, August 01, 2016
4	Friday, April 22, 2016	Monday, August 01, 2016
5	Friday, April 22, 2016	Monday, August 01, 2016
6	Friday, May 06, 2016	Monday, August 01, 2016
7	Monday, July 18, 2016	Wednesday, August 03, 2016
8	Tuesday, July 19, 2016	Friday, August 05, 2016
9	Wednesday, July 20, 2016	Monday, August 08, 2016
10	Tuesday, July 19, 2016	Wednesday, August 10, 2016
11	Friday, July 22, 2016	Friday, August 12, 2016
12	Tuesday, July 19, 2016	Monday, August 15, 2016
13	Friday, July 29, 2016	Monday, August 15, 2016
14	Tuesday, July 26, 2016	Tuesday, August 16, 2016
15	Tuesday, August 02, 2016	Wednesday, August 17, 2016
16	Thursday, August 04, 2016	Friday, August 19, 2016
17	Friday, August 05, 2016	Tuesday, August 23, 2016
18	Monday, August 08, 2016	Friday, August 26, 2016
19	Thursday, August 18, 2016	Thursday, September 01, 2016
20	Friday, August 19, 2016	Friday, September 02, 2016
21	Thursday, August 18, 2016	Monday, September 05, 2016
22	Thursday, August 18, 2016	Tuesday, September 06, 2016
23	Monday, August 22, 2016	Tuesday, September 06, 2016
24	Wednesday, August 24, 2016	Wednesday, September 07, 2016
25	Thursday, August 25, 2016	Thursday, September 08, 2016
26	Monday, August 29, 2016	Monday, September 12, 2016
27	Monday, September 05, 2016	Monday, September 19, 2016
28	Tuesday, September 06, 2016	Tuesday, September 20, 2016
29	Thursday, September 08, 2016	Thursday, September 22, 2016
30	Monday, September 12, 2016	Monday, September 26, 2016
31	Tuesday, September 13, 2016	Tuesday, September 27, 2016
32	Thursday, September 15, 2016	Thursday, September 29, 2016
33	Monday, September 19, 2016	Monday, October 03, 2016
34	Tuesday, September 20, 2016	Tuesday, October 04, 2016
35	Thursday, September 22, 2016	Thursday, October 06, 2016
36	Monday, September 26, 2016	Monday, October 10, 2016
37	Tuesday, September 27, 2016	Tuesday, October 11, 2016
38	Monday, October 03, 2016	Monday, October 17, 2016
39	Wednesday, October 05, 2016	Wednesday, October 19, 2016

BOMBARDIER**Durban V.O.**

Loco	Scheduled Handover Dates	Scheduled Acceptance Dates
40	Friday, October 07, 2016	Friday, October 21, 2016
41	Tuesday, October 11, 2016	Tuesday, October 25, 2016
42	Wednesday, October 12, 2016	Wednesday, October 26, 2016
43	Friday, October 14, 2016	Friday, October 28, 2016
44	Monday, October 17, 2016	Monday, October 31, 2016
45	Wednesday, October 19, 2016	Wednesday, November 02, 2016
46	Friday, October 21, 2016	Friday, November 04, 2016
47	Tuesday, October 25, 2016	Tuesday, November 08, 2016
48	Wednesday, October 26, 2016	Wednesday, November 09, 2016
49	Friday, October 28, 2016	Friday, November 11, 2016
50	Tuesday, November 01, 2016	Tuesday, November 15, 2016
51	Wednesday, November 02, 2016	Wednesday, November 16, 2016
52	Friday, November 04, 2016	Friday, November 18, 2016
53	Tuesday, November 08, 2016	Tuesday, November 22, 2016
54	Wednesday, November 09, 2016	Wednesday, November 23, 2016
55	Friday, November 11, 2016	Friday, November 25, 2016
56	Wednesday, November 16, 2016	Wednesday, November 30, 2016
57	Friday, November 18, 2016	Friday, December 02, 2016
58	Tuesday, November 22, 2016	Tuesday, December 06, 2016
59	Thursday, November 24, 2016	Thursday, December 08, 2016
60	Monday, November 28, 2016	Monday, December 12, 2016
61	Tuesday, November 29, 2016	Tuesday, December 13, 2016
62	Thursday, December 01, 2016	Thursday, December 15, 2016
63	Thursday, December 01, 2016	Thursday, December 15, 2016
64	Thursday, December 01, 2016	Thursday, December 15, 2016
65	Tuesday, December 06, 2016	Monday, January 16, 2017
66	Monday, December 05, 2016	Tuesday, January 17, 2017
67	Friday, December 02, 2016	Wednesday, January 18, 2017
68	Wednesday, December 07, 2016	Thursday, January 19, 2017
69	Friday, December 09, 2016	Monday, January 23, 2017
70	Tuesday, December 13, 2016	Wednesday, January 25, 2017
71	Wednesday, December 14, 2016	Thursday, January 26, 2017
72	Thursday, December 15, 2016	Friday, January 27, 2017
73	Wednesday, January 18, 2017	Wednesday, February 01, 2017
74	Thursday, January 19, 2017	Thursday, February 02, 2017
75	Friday, January 20, 2017	Friday, February 03, 2017
76	Tuesday, January 24, 2017	Tuesday, February 07, 2017
77	Thursday, January 26, 2017	Thursday, February 09, 2017
78	Friday, January 27, 2017	Friday, February 10, 2017
79	Tuesday, January 31, 2017	Tuesday, February 14, 2017
80	Friday, February 03, 2017	Friday, February 17, 2017

BOMBARDIER**Durban V.O.**

Loco	Scheduled Handover Dates	Scheduled Acceptance Dates
81	Tuesday, February 07, 2017	Tuesday, February 21, 2017
82	Thursday, February 09, 2017	Thursday, February 23, 2017
83	Friday, February 10, 2017	Friday, February 24, 2017
84	Tuesday, February 14, 2017	Tuesday, February 28, 2017
85	Thursday, February 16, 2017	Thursday, March 02, 2017
86	Friday, February 17, 2017	Friday, March 03, 2017
87	Tuesday, February 21, 2017	Tuesday, March 07, 2017
88	Thursday, February 23, 2017	Thursday, March 09, 2017
89	Friday, February 24, 2017	Friday, March 10, 2017
90	Tuesday, February 28, 2017	Tuesday, March 14, 2017
91	Thursday, March 02, 2017	Thursday, March 16, 2017
92	Monday, March 06, 2017	Monday, March 20, 2017
93	Wednesday, March 08, 2017	Thursday, March 23, 2017
94	Friday, March 10, 2017	Monday, March 27, 2017
95	Tuesday, March 14, 2017	Wednesday, March 29, 2017
96	Thursday, March 16, 2017	Friday, March 31, 2017
97	Friday, March 17, 2017	Monday, April 03, 2017
98	Friday, March 24, 2017	Friday, April 07, 2017
99	Tuesday, March 28, 2017	Tuesday, April 11, 2017
100	Tuesday, March 28, 2017	Wednesday, April 12, 2017
101	Thursday, March 30, 2017	Thursday, April 13, 2017
102	Monday, April 03, 2017	Wednesday, April 19, 2017
103	Tuesday, April 04, 2017	Thursday, April 20, 2017
104	Friday, April 07, 2017	Tuesday, April 25, 2017
105	Monday, April 10, 2017	Wednesday, April 26, 2017
106	Tuesday, April 11, 2017	Friday, April 28, 2017
107	Tuesday, April 11, 2017	Friday, April 28, 2017
108	Tuesday, April 11, 2017	Friday, April 28, 2017
109	Wednesday, April 19, 2017	Friday, May 05, 2017
110	Friday, April 21, 2017	Tuesday, May 09, 2017
111	Monday, April 24, 2017	Wednesday, May 10, 2017
112	Tuesday, April 25, 2017	Thursday, May 11, 2017
113	Friday, April 28, 2017	Monday, May 15, 2017
114	Wednesday, May 03, 2017	Wednesday, May 17, 2017
115	Thursday, May 04, 2017	Thursday, May 18, 2017
116	Monday, May 08, 2017	Monday, May 22, 2017
117	Tuesday, May 09, 2017	Tuesday, May 23, 2017
118	Friday, May 12, 2017	Friday, May 26, 2017
119	Thursday, May 11, 2017	Friday, May 26, 2017
120	Monday, May 15, 2017	Monday, May 29, 2017
121	Tuesday, May 16, 2017	Tuesday, May 30, 2017

BOMBARDIER**Durban V.O.**

Loco	Scheduled Handover Dates	Scheduled Acceptance Dates
122	Wednesday, May 17, 2017	Wednesday, May 31, 2017
123	Friday, May 19, 2017	Friday, June 02, 2017
124	Tuesday, May 23, 2017	Tuesday, June 06, 2017
125	Wednesday, May 24, 2017	Wednesday, June 07, 2017
126	Friday, May 26, 2017	Friday, June 09, 2017
127	Tuesday, May 30, 2017	Tuesday, June 13, 2017
128	Wednesday, May 31, 2017	Wednesday, June 14, 2017
129	Friday, June 02, 2017	Monday, June 19, 2017
130	Tuesday, June 06, 2017	Wednesday, June 21, 2017
131	Wednesday, June 07, 2017	Thursday, June 22, 2017
132	Friday, June 09, 2017	Monday, June 26, 2017
133	Tuesday, June 13, 2017	Wednesday, June 28, 2017
134	Wednesday, June 14, 2017	Thursday, June 29, 2017
135	Monday, June 19, 2017	Monday, July 03, 2017
136	Wednesday, June 21, 2017	Wednesday, July 05, 2017
137	Thursday, June 22, 2017	Thursday, July 06, 2017
138	Thursday, June 29, 2017	Thursday, July 13, 2017
139	Monday, July 03, 2017	Monday, July 17, 2017
140	Wednesday, July 05, 2017	Wednesday, July 19, 2017
141	Friday, July 07, 2017	Friday, July 21, 2017
142	Monday, July 10, 2017	Monday, July 24, 2017
143	Wednesday, July 12, 2017	Wednesday, July 26, 2017
144	Monday, July 17, 2017	Monday, July 31, 2017
145	Tuesday, July 18, 2017	Tuesday, August 01, 2017
146	Wednesday, July 19, 2017	Wednesday, August 02, 2017
147	Friday, July 21, 2017	Friday, August 04, 2017
148	Monday, July 24, 2017	Monday, August 07, 2017
149	Tuesday, July 25, 2017	Tuesday, August 08, 2017
150	Wednesday, July 26, 2017	Thursday, August 10, 2017
151	Friday, July 28, 2017	Monday, August 14, 2017
152	Monday, July 31, 2017	Tuesday, August 15, 2017
153	Wednesday, August 02, 2017	Thursday, August 17, 2017
154	Thursday, August 03, 2017	Friday, August 18, 2017
155	Monday, August 07, 2017	Tuesday, August 22, 2017
156	Thursday, August 10, 2017	Thursday, August 24, 2017
157	Monday, August 14, 2017	Monday, August 28, 2017
158	Wednesday, August 16, 2017	Wednesday, August 30, 2017
159	Friday, August 18, 2017	Friday, September 01, 2017
160	Tuesday, August 22, 2017	Tuesday, September 05, 2017
161	Wednesday, August 23, 2017	Wednesday, September 06, 2017
162	Friday, August 25, 2017	Friday, September 08, 2017

BOMBARDIER**Durban V.O.**

Loco	Scheduled Handover Dates	Scheduled Acceptance Dates
163	Tuesday, August 29, 2017	Tuesday, September 12, 2017
164	Wednesday, August 30, 2017	Wednesday, September 13, 2017
165	Friday, September 01, 2017	Friday, September 15, 2017
166	Tuesday, September 05, 2017	Tuesday, September 19, 2017
167	Wednesday, September 06, 2017	Wednesday, September 20, 2017
168	Monday, September 11, 2017	Tuesday, September 26, 2017
169	Wednesday, September 13, 2017	Thursday, September 28, 2017
170	Friday, September 15, 2017	Monday, October 02, 2017
171	Tuesday, September 19, 2017	Wednesday, October 04, 2017
172	Wednesday, September 20, 2017	Thursday, October 05, 2017
173	Friday, September 22, 2017	Monday, October 09, 2017
174	Wednesday, September 27, 2017	Wednesday, October 11, 2017
175	Friday, September 29, 2017	Friday, October 13, 2017
176	Tuesday, October 03, 2017	Tuesday, October 17, 2017
177	Wednesday, October 04, 2017	Wednesday, October 18, 2017
178	Friday, October 06, 2017	Friday, October 20, 2017
179	Tuesday, October 10, 2017	Tuesday, October 24, 2017
180	Wednesday, October 11, 2017	Wednesday, October 25, 2017
181	Friday, October 13, 2017	Friday, October 27, 2017
182	Tuesday, October 17, 2017	Tuesday, October 31, 2017
183	Wednesday, October 18, 2017	Wednesday, November 01, 2017
184	Friday, October 20, 2017	Friday, November 03, 2017
185	Tuesday, October 24, 2017	Tuesday, November 07, 2017
186	Wednesday, October 25, 2017	Wednesday, November 08, 2017
187	Friday, October 27, 2017	Friday, November 10, 2017
188	Tuesday, October 31, 2017	Tuesday, November 14, 2017
189	Wednesday, November 01, 2017	Wednesday, November 15, 2017
190	Friday, November 03, 2017	Friday, November 17, 2017
191	Tuesday, November 07, 2017	Tuesday, November 21, 2017
192	Thursday, November 09, 2017	Thursday, November 23, 2017
193	Monday, November 13, 2017	Monday, November 27, 2017
194	Wednesday, November 15, 2017	Wednesday, November 29, 2017
195	Friday, November 17, 2017	Friday, December 01, 2017
196	Tuesday, November 21, 2017	Tuesday, December 05, 2017
197	Thursday, November 23, 2017	Thursday, December 07, 2017
198	Monday, November 27, 2017	Monday, December 11, 2017
199	Tuesday, November 28, 2017	Tuesday, December 12, 2017
200	Thursday, November 30, 2017	Thursday, December 14, 2017
201	Monday, December 04, 2017	Tuesday, January 16, 2018
202	Tuesday, December 05, 2017	Wednesday, January 17, 2018
203	Thursday, December 07, 2017	Friday, January 19, 2018

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Loco	Scheduled Handover Dates	Scheduled Acceptance Dates
204	Monday, December 11, 2017	Tuesday, January 23, 2018
205	Tuesday, December 12, 2017	Wednesday, January 24, 2018
206	Thursday, December 14, 2017	Friday, January 26, 2018
207	Tuesday, January 16, 2018	Tuesday, January 30, 2018
208	Thursday, January 18, 2018	Thursday, February 01, 2018
209	Friday, January 19, 2018	Friday, February 02, 2018
210	Tuesday, January 23, 2018	Tuesday, February 06, 2018
211	Wednesday, January 24, 2018	Wednesday, February 07, 2018
212	Friday, January 26, 2018	Friday, February 09, 2018
213	Tuesday, January 30, 2018	Tuesday, February 13, 2018
214	Wednesday, January 31, 2018	Wednesday, February 14, 2018
215	Friday, February 02, 2018	Friday, February 16, 2018
216	Tuesday, February 06, 2018	Tuesday, February 20, 2018
217	Thursday, February 08, 2018	Thursday, February 22, 2018
218	Monday, February 12, 2018	Monday, February 26, 2018
219	Wednesday, February 14, 2018	Wednesday, February 28, 2018
220	Friday, February 16, 2018	Friday, March 02, 2018
221	Tuesday, February 20, 2018	Tuesday, March 06, 2018
222	Thursday, February 22, 2018	Thursday, March 08, 2018
223	Monday, February 26, 2018	Monday, March 12, 2018
224	Tuesday, February 27, 2018	Tuesday, March 13, 2018
225	Thursday, March 01, 2018	Thursday, March 15, 2018
226	Monday, March 05, 2018	Monday, March 19, 2018
227	Tuesday, March 06, 2018	Tuesday, March 20, 2018
228	Thursday, March 08, 2018	Thursday, March 22, 2018
229	Monday, March 12, 2018	Monday, March 26, 2018
230	Tuesday, March 13, 2018	Tuesday, March 27, 2018
231	Thursday, March 15, 2018	Thursday, March 29, 2018
232	Monday, March 19, 2018	Monday, April 02, 2018
233	Wednesday, March 21, 2018	Wednesday, April 04, 2018
234	Friday, March 23, 2018	Friday, April 06, 2018
235	Tuesday, March 27, 2018	Tuesday, April 10, 2018
236	Thursday, March 29, 2018	Thursday, April 12, 2018
237	Monday, April 02, 2018	Monday, April 16, 2018
238	Tuesday, April 03, 2018	Tuesday, April 17, 2018
239	Thursday, April 05, 2018	Thursday, April 19, 2018
240	Monday, April 09, 2018	Monday, April 23, 2018

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Durban V.O.

Appendix 2 - Milestones defined with Transnet Engineering to materialize the move to Durban according to the terms defined in this offer (3 months delay).

Line of BT TE project schedule	Milestone	Milestone	Date
8	Appointment Dates RSE - 1st Appointments (23 people)	Finish	18/11/2014
295	Master Production Schedule on Workstation Level	Finish	28/11/2014
296	3D Step-Files (Bogie)	Finish	30/11/2014
314	Jigs Concept Ready (Bogie frame)	Finish	17/12/2014
297	2D pdf&Catia files (Bogie) & EBOM	Finish	13/02/2015
93	Delivery Bogie Press	Finish	19/02/2015
358	Jigs Design Finalized (Bogie frame)	Finish	25/02/2015
280	Facility Upgrade (Bay 41/42)- Construction Work	Finish	17/03/2015
27	Appointment Dates Loco - 1st Appointments (40 people)	Finish	23/03/2015
102	Delivery 3D Measuring Equipment	Finish	08/04/2015
363	Jigs Priority #1 - Installation	Finish	17/04/2015
75	Delivery of Bridge Type Milling Machine	Finish	08/05/2015
443	Bogie Production (RSE) : Welded-sub-assemblies	Start	11/05/2015
298	Bogie Final Assembly Drawings & EBOM	Finish	05/06/2015
299	Locomotive Pre-Assembly Drawings & EBOM	Finish	05/06/2015
300	Locomotive Final-Assembly Drawings & EBOM	Finish	30/06/2015
245	Test Booth Installation	Finish	01/07/2015
534	Pre-Assembly Loco #1	Start	14/07/2015
392	Locomotive Pre-Assembly Routing	Finish	23/07/2015
459	Bogie Mock-up Straightening and measuring	Finish	29/07/2015
463	Lab Report Mock-up	Finish	24/08/2015
545	Final Assembly Loco #1	Start	26/08/2015
476	Bogie A: Machine	Start	21/09/2015
284	Layout Review (RSE: Bogie)	Finish	03/10/2015
479	FAI Frame Bogie A	Finish	13/10/2015
507	Bogie A: Assembly of piping and brakes	Start	26/10/2015
288	Layout Review (Production Line Set-up Locos- Preassembly)	Finish	31/10/2015
292	Layout Review (Production Line Set-up Final Assembly)	Finish	31/10/2015
514	FAI Bogie A	Finish	17/11/2015
553	TE Handover Loco #1 to BT	Finish	30/11/2015

Milestones under BT responsibility

Milestones under TE responsibility

APPENDIX 5

Appendix 5

INTERVIEW : THAMSANQA JIYANE

HELD AT:

DATE: 2018-06-01

MNS OFFICES
2nd FLOOR
16 FRICKER ROAD
ILLOVO

PRESENT:

1. Mncedisi Ndlovu (Chairperson)
2. Tshiamo Sedumedi (MNS)
3. Mandla Mnisi (MNS)
4. Thobani Mnyandu (MNS)
5. Nkosenhle Mzinyathi (MNS)
6. Thulaganyo Selokela (MNS)

VERBIS TYPING & TRANSCRIPTION SERVICES
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PROCEEDINGS ON 1 JUNE 2018SOUND FILE: SFANFEEDDAEDW JIYANE

CHAIRPERSON: Thobani Mnyandu, is our Construction and Engineering Law expert, she has done some work in the past as well for Transnet, (indistinct) and BP. Thulaganyo is a is a professional attorney at MNS, schedule is the secretariat in this project, Nkosenhle Mzinyathi is my deputy in this project, but he also specialises, he is a Director, both Thobani and Nkosenhle are Directors at MNS, he specialises, amongst others, with employment law.

10 MR JIYANE: Okay.

CHAIRPERSON: So the session is not going to be an interrogation, it is meant just to clarify things that we have read and that we do not understand well. We have also interviewed other people within Transnet currently still employed and those that have left as well, right. So felt that, before, our report is due next week, we felt that before we finalise the report, we must give you an opportunity to clarify things we have with us.

It is not everything that you give use that we will take into the report, some we will take, some we will not take in the report, but as
20 we have recorded, they are on transcript and that we have recorded. If you are not comfortable clarifying something that you think may be this might either incriminate me or whatever, please say so to say that I am not comfortable to answer this and then we will respect that decision as well.

MR JIYANE: Okay.

TRANSNET/cvj
T JIYANE

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2018-06-01

CHAIRPERSON: Ja, sure. We will just ask randomly and then we will take it from there. Let us start with the Business case, because I think this whole procurement starts there to a very great extent and we know that the business case was approved after the RFP's went out and all that, right. In your view, what informed the issuance of the RFP's if the, because the RFP's were issued in 2012, the Business case was approved by the Board in April 2013, what informed the issuance of the RFP's? Sorry... (intervenes)

MR SEDUMEDI: Apologies for being late.

10 CHAIRPERSON: Ja, this is Tshiamo Sedumedi, he is one of the directors.

MR SEDUMEDI: How are you?

MR JIYANE: Okay, fine.

MR SEDUMEDI: Good, pleased to meet you.

CHAIRPERSON: Ja, so... (intervenes)

MR SEDUMEDI: Okay.

CHAIRPERSON: What informed the issue of the RFP's before the Business case was approved by the board?

MR JIYANE: All right, in terms of how Transnet is structured, will be
20 (indistinct), so my role in Transnet Freight Rail, I was a Chief Procurement Officer.

CHAIRPERSON: Ja.

MR JIYANE: I was only responsible for managing and guiding procurement processes... (intervenes)

CHAIRPERSON: Okay.

TRANSNET/cvj
T JIYANE

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MR JIYANE: So my, it starts there and it ends there... (intervenes)

CHAIRPERSON: Ja.

MR JIYANE: (Indistinct) that includes tender issuing, ensuring that the evaluations teams they are appointed, they understand the processes, whenever they have challenges with regards to interpretations I would obviously consult.

CHAIRPERSON: Okay.

MR JIYANE: And the negotiations that follow, so (indistinct) specifically, I was not involved at all in the Business case
10 development.

CHAIRPERSON: Ja.

MR JIYANE: What happened was that there had been various engagements with regard to the number of locomotives that Transnet requires, at a point in time the Board, the team wanted to start the procurement process because of the age of the (indistinct), I am told at the time the average age of our locomotives are, is around 43, 45 years.

CHAIRPERSON: Okay.

MR JIYANE: In terms of age, so the Board and the BADC at the time,
20 (indistinct) remember the sequencing had said to the team, while you are finalising the Business case, we are going to give you authority to issue the tender, but, before you issue the tender, we want you to give us a procurement strategy, that is where my role started... (intervenes)

CHAIRPERSON: Okay.

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T JIYANE

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MR JIYANE: When they came to us to say we are wanting to buy (indistinct), in fact then (indistinct) that there is an issue of the 100 and the 60 or something locomotives, so we focused on 1064. So there is, it was just an open tender, but most importantly, the board wanted us to be clear on how the tender is going to be evaluated.

So in the procurement strategy, it was largely how we will evaluate the elements that you would consider, but I did not write the Business case or (indistinct), then there is a resolution where they, both Business and the Board gave us permission to issue the tender
10 subject to PFMA approval, and they also said we must have a clause on the RFP that says the RFP is subject to (indistinct).

CHAIRPERSON: What is your understanding of that?

MR JIYANE: That, to test (indistinct) approval is an application that is referring mainly by our Finance Group which goes to the Minister of Finance and our shareholder, I think it is (indistinct).

MALE SPEAKER: Section 54?

MR JIYANE: Yes.

MALE SPEAKER: Sorry Chair, I know you want to come in...
(intervenes)

20 CHAIRPERSON: No.

MALE SPEAKER: Tshiamo specialises with procurement... (intervenes)

MR JIYANE: Okay.

MALE SPEAKER: He has written articles and all that and we note and we agree with you, you were not involved in the finalisation Business case, because I think largely, to a very great extent

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T JIYANE

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(indistinct) was roped in to assist with the finalisation of the Business case and we were aware that you were the CPO of TFR at that point. But what we wanted to know that, in terms of the PPM there has to be, and you can talk better on these things... (intervenes)

MR SEDUMEDI: (Indistinct) management.

MR JIYANE: Ja, which gets done by the Business.

MR SEDUMEDI: By Business yes... (intervenes)

MR JIYANE: So the Capital Program Team together with Operations would have been the one who comes with the demand... (intervenes)

10 CHAIRPERSON: Okay.

MR JIYANE: And then, but in this case, because of the size of the transaction... (intervenes)

CHAIRPERSON: Ja.

MR JIYANE: It needed Board approval together with ministerial approval (indistinct) but as I say, it is there, even the minutes they are on public enterprises, if I am not mistaken, I just cannot remember, because I have not seen this documents in three years... (intervenes)

CHAIRPERSON: Yes.

MR JIYANE: I left here March 2015. He concurred with the tender
20 being issued while section 54 is (indistinct).

CHAIRPERSON: Okay, then in the Business case, there is this grey area of forex (indistinct) and all that, as Chief Procurement Officer, TFR... (intervenes)

MR JIYANE: TFR. I smile because... (intervenes)

CHAIRPERSON: Ja.

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MR JIYANE: This question keeps following me.

CHAIRPERSON: (Indistinct) unfortunately.

[Inaudible, speaking simultaneously]

MR JIYANE: I am answering now for the second time.

CHAIRPERSON: Okay, so answering should be easy now.

MR JIYANE: As I say, there is a team that wrote the business case...
(intervenes)

CHAIRPERSON: Ja.

MR JIYANE: They had various (indistinct) that they considered and
10 whatever they did and the, I am not sure of the initial Business case
because I am told there was a first version... (intervenes)

CHAIRPERSON: Ja.

MR JIYANE: Which would have been done either late 2011 or maybe
2012, which is the basis on which the board said you can issue the
tender.

CHAIRPERSON: Okay.

MR JIYANE: Then there was the April 2013 of the business case, I
am not the writer of the Business case... (intervenes)

CHAIRPERSON: Ja.

20 MR JIYANE: But let me, I will tell you what I understood this thing to
be. When they revised the business case (indistinct) 2014 there was
a time lapse between the original business case that they checked
with the Board, which led to the Board giving us conditional approval
to issue the tender and the Business case they did in 2013. There
was a change in one way or another in terms of foreign exchange...

(intervenes)

CHAIRPERSON: Okay.

MR JIYANE: There had been a change in terms of escalation because there had been a year that had lapsed, or more in fact, from their original, so what they said is, they have adjusted the Business case in terms of foreign exchange and escalation at the time. Now, Business cases to me it is just, in Transnet you call them ETC requests because it is Estimated Total Cost Request, underlying estimated, because especially if it is not work that we are going to do
10 ourselves, whether we are going to external parties, the final value of the Business case would be determined by what the contract value is.

So in most case, I mean you can, in a lot of instance (indistinct) go and estimate based on their understanding without, because obviously we do not allow our end users to engage suppliers once they are writing business cases because there was a finding many years ago, it creates a problem because those who are consulted, they know more, they get prepared a lot more than those who are not, so that when the tender eventually came, comes, they have got information, so the process is a process that, it was never
20 controlled. So the value of the business case, it is just an estimate of what they got based on previous procurement (indistinct).

CHAIRPERSON: Okay.

MR JIYANE: It was always understood that once the tenders have been awarded, we will have the actual figure, whether it is Finance that (indistinct) or it is the same or higher, then there is a process to

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obviously increase. Now I never got involved with this, but there are a lot of things to take into consideration, so it is foreign exchange escalation and then there is internal issues like finance and costs that the Finance guys, they call it borrowing costs and amongst many of the issues they take into consideration including Project Management Cost internally and they would also, based on the visibility and the stage of evaluation, they would also allow for, what you call contingency fees.

CHAIRPERSON: All right.

- 10 MR JIYANE: So I do not know there, but in just the issue of foreign exchange and escalation, you would find that everyone, if there was three or four business cases, each and every one of those business cases would refer to some form of escalation and foreign exchange. Because even if it is three months, the (indistinct), when you issue a tender, if you delay by three months in terms of award, you cannot just award without going back to the bidders and say, are your prices still fine and they deserve the right to tell you that look, because of the time that has lapsed, there has been a deterioration or there had been an appreciation in terms of foreign exchange, we are adjusting
- 20 our price, same applies to escalation.

So that is normal within the procurement processes, so these guys would build that into there, so each and every one of these Business cases would refer in one form or another to foreign exchange and escalation.

CHAIRPERSON: Okay, so in short, maybe if I summarise, you say

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the Business case did in some way refer to foreign exchange and (indistinct), what (indistinct)?

MR JIYANE: And escalation.

CHAIRPERSON: And escalation.

MR JIYANE: Ja.

CHAIRPERSON: It did... (intervenes)

MR JIYANE: It did talk about it because of the difference in the timing from the original numbers they presented to the numbers they are presenting in 2013.

10 CHAIRPERSON: But saying what, saying it is included or it is not included?

MR JIYANE: They said they are increasing the amounts, they have taken consideration of foreign exchange and escalation to that point.

CHAIRPERSON: In April?

MR JIYANE: In April 2013, remember the tender was eventually awarded... (intervenes)

CHAIRPERSON: Ja.

MR JIYANE: More than a year later as well, at the time I am told, because I did not even see the final Business case, once the prices
20 were finalised and negotiations were finalised, the Finance team, which was lead by the CFO at the time was, obviously he asked during the meeting with the bidders must, in fact, even the (indistinct) asked that, our preference is that we get a price which is inclusive of foreign exchange and escalation.

We had a group from Regiments who were assisting him with

models and so on and so on to say, what should be the minimum and the maximum that can be accepted and so on and so on, that is generally within our delegations of authority, that is an issue that gets dealt with by our Treasury team at Group Finance.

CHAIRPERSON: Okay. So can I take (indistinct), you talk about what was negotiated, I think just help me to understand your position, when the Business case was submitted in 2013 it had, we made provision, you see there is reference to, but it is making provision to (indistinct) for forex and (indistinct)?

- 10 MR JIYANE: Yes, because at the, I do not know, I have not seen the... (intervenes)

CHAIRPERSON: You are not sure?

MR JIYANE: But the first business case to the second business case, they would have allowed for some form of foreign exchange where it appreciates or depreciates... (intervenes)

CHAIRPERSON: Sure.

MR JIYANE: An escalation, general escalation appreciates... (intervenes)

CHAIRPERSON: Sure.

- 20 MR JIYANE: It goes up and if you have to do another business case, you have to take that into consideration as well because generally we, anything more than three months is always, there is always a challenge with regard to foreign exchange and escalation.

MR MNISI: Sorry, my apologies sir, (indistinct) ja. My name is Mandla Mnisi, I am responsible for Corporate Governance and

Ethics... (intervenes)

CHAIRPERSON: Okay.

MR MNISI: I am sorry... (intervenes)

CHAIRPERSON: Okay no, that is fine. Ja, so in your view that is what happened, there was an indication, even though you did not see the business case, your understanding was that you know, this generally includes forex costs and (indistinct)... (intervenes)

MR JIYANE: I adjusted the numbers from the original business case... (intervenes)

10 CHAIRPERSON: Sure.

MR JIYANE: To the 2013 business case... (intervenes)

CHAIRPERSON: Ja.

MR JIYANE: And one of the motivations would have been the lapse of time from the original one and we should have (indistinct) there have been a change in terms of foreign exchange and escalation.

CHAIRPERSON: Do you know the value that was presented in the Business case in 2014?

MR JIYANE: Again I am confused, there is many numbers, there is R38-something that is being spoken about, the number was around
20 that.

CHAIRPERSON: Ja sure... (intervenes)

MR JIYANE: R38-billion rand ja.

CHAIRPERSON: Ja it was R238.6-billion.

MR JIYANE: Ja.

CHAIRPERSON: Okay, but Jiyane... (intervenes)

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MR JIYANE: Yes.

CHAIRPERSON: As someone who was responsible for procurement, I would take it for granted (indistinct) your analogy of procurement and Treasury regulations and PFMA and all that is, to a very great extent high.

MR JIYANE: That I accept.

CHAIRPERSON: That you accept, sure, then when you were issued the first RFP... (intervenes)

MR JIYANE: Ja.

10 CHAIRPERSON: In July, was it July... (intervenes)

[Inaudible, speaking simultaneously]

MR JIYANE: 13 July 2012, the advert.

CHAIRPERSON: Ja, when you issued the actual RFP, when the RFP, 23 July was given to the bidders... (intervenes)

MR JIYANE: Yes.

CHAIRPERSON: In your view, do you think it was compliant with the Treasury regulations?

MR JIYANE: That is why I (indistinct) in July. Treasury was (indistinct) together with TCI, there has been conversations, obviously
20 we heard only after (indistinct) together, there had been conversations between our (indistinct) and this governance team around the thresholds for local content for Electrics and Business. We issued the tender around 13 July, the advert... (intervenes)

CHAIRPERSON: Ja.

MR JIYANE: On Monday or Tuesday, the following week, before the

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bidders came to pick up the RFP... (intervenes)

CHAIRPERSON: Ja.

MR JIYANE: They issued the instruction.

CHAIRPERSON: May 16.

MR JIYANE: Ja, which created a problem because it meant that even though the advert has been issued, the physical RFP had not gone out, remember, it took us maybe month and a half to two months to, for finally to put the RFP together. We had various teams from Treasury, our guys who write the specifications, our Finance teams, across Transnet, a lot of people who we knew had knowledge in terms of the various aspects of the RFP.

So we had to finalise the RFP, in fact, we even took it to the (indistinct) if I am not mistaken, just to give them an indication to say these are the (indistinct) aspects of the RFP. So and they knew that we were, hence I am saying they were not. But, so what we then decided to do, instead of, because when you issue an advert, a tender of this nature, we do not have anyone in South Africa, we did not have at the time and at the moment, we still do not have, people who have IP when it comes to locomotives in South Africa.

20 So everybody who would built a locomotive in South Africa would depend on an international (Indistinct) who owns IP. So we had to either cancel or postpone or issue the RFP as it was, which was going to be the challenge in terms of PFMA because the instruction note is a clarification of what would have been on the, (indistinct) PFMA (indistinct).

So we then decided that look, we cannot tell bidders that, so we advertised, now there is a statement, I am confused, you do not know, so we decided to say, all the aspects of the RFP that would be affected by the instruction note we are going to withdraw, so only issue the aspects which would not change, irrespective of how this thing goes.

Now, one of the important aspects (indistinct) PFMA tenders above I think, R2-million, were supposed to use the 9010 evaluation and in the applications, in the document we shared with the board we indicated that the preferences to both 6040 valuation model, because of... (intervenes)

CHAIRPERSON: (Indistinct) development issues... (intervenes)

MR JIYANE: Yes, because of the transformation issues that we wanted to drive through this procurement program and the understanding therefore was that the Board was going to write to the Minister and inform the Minister of that. So we then split the RFP into two parts as a result of that, because as I say, before that if you remember, the PPPFA, only spoke about the 9010 where it relates (indistinct) two entities. There are lots of areas of the (indistinct) which we did not have to comply with... (intervenes)

CHAIRPERSON: (Indistinct).

MR JIYANE: Ja, and that version of the PPPFA that they were talking about, was bringing all the SOE's to be dealt with the same way as the municipalities. So we then split the RFP, I think the issue, the technical details and the other issues should be impacted by this and

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our evaluation, as I say, was 60/40 and there were aspects of instruction which would have required us even to change the document.

We then wrote to the Board to inform them that we have to change the document that we shared with them, go back to 9010, the Board said no. There were various letters between Transnet and the Ministers, the last one being the one that came in November or something because we moved the issuing of the second part and the tender briefing to December that year.

10 The minute said proceed, proceed as if you have been, you have got the approval to evaluate the way you want to (inaudible) then we issue (indistinct). So in as far as I am concerned, we complied with the (indistinct).

CHAIRPERSON: Go to this part 1, I am sure (indistinct) you said you split... (intervenes)

MR JIYANE: Ja, part 1 is that... (intervenes)

CHAIRPERSON: Part 1 and part 2, so the question (inaudible) part 1 (inaudible) was in compliance with... (intervenes)

MR JIYANE: (Indistinct).

20 CHAIRPERSON: What is required by the (indistinct) to be (indistinct) documents.

MR JIYANE: Ja.

CHAIRPERSON: Okay, I want us to move on the Procurement issues, unless there is something else on Procurement? Mr Radebe there was also (indistinct) reallocation... (intervenes)

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MR JIYANE: (Indistinct) Jiyane.

CHAIRPERSON: Mr Jiyane, sorry.

[Inaudible, speaking simultaneously]

CHAIRPERSON: So this thing they call relocation, which, you know, was born after the contractual... (intervenes)

MALE SPEAKER: Can I just ask?

CHAIRPERSON: Okay sure.

MALE SPEAKER: So when part 1 was issued to the bidders and (indistinct) date, so how were these (indistinct) to respond to this
10 part?

MR JIYANE: They were not supposed to respond to that part, it was just the technical details of the document, because we knew that we were going to have lost of (indistinct) in any event, when it comes to our specifications, just to, if I am not mistaken, on the specifications there was more than one thousand items that bidders had to respond to say that they comply with and indicate what is, how do they comply.

So we felt that it is actually, why it was not favourable for us, that it may be an advantage that you contend with the spec and
20 everything that goes with the specifications because it gives us time to understand what the challenges are, so by the time we have the briefing or we issue part 2, because actually it is just commercial aspects together with (indistinct).

CHAIRPERSON: So maybe just to make a follow up on this point, so if you say bidders were not supposed to respond to part 1, that is

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what you said?

MR JIYANE: Yes, they were not supposed to issue, give us proposals on part 1 but they could ask us clarifications on the specifications.

CHAIRPERSON: So part 1 was then not a bid document?

MR JIYANE: It was just part of the bid... (intervenes)

MALE SPEAKER: It was not a request for proposal.

CHAIRPERSON: Yes.

10 MR JIYANE: It was a request for proposal but we were clear, we explained to the bidders that part 2 will come to provide more details and after we have issued part 2 it also give you the closing date of the tender. It was a very peculiar set of circumstances... (intervenes)

CHAIRPERSON: I like that word peculiar.

MR JIYANE: Ja... (intervenes)

MALE SPEAKER: I think Mr Jiyane... (intervenes)

MR JIYANE: (Indistinct) find out (indistinct).

MALE SPEAKER: I think Mr Jiyane the point what Mr Ndlovu is getting to, trying to understand is, the request for proposals, part 1... (intervenes)

20 MR JIYANE: Ja.

MALE SPEAKER: Did not have enough information to allow a bidder to respond.

MR JIYANE: We are not expecting them to respond either.

MALE SPEAKER: And so part 2 is issued only in December... (intervenes)

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MR JIYANE: We found the bidders that, and bidders they were aware because the instruction note was a public document, it was not only issued to us, they were aware, because some of them were even saying, how are you going to deal with this thing, you know, so we, and we made it clear to them, we are issuing part 1 so that you familiarise yourselves with the specifications and if there are clarification or questions you want to ask, so that by the time you issue part 2, the issues around the technical specifications are out of the way.

10 CHAIRPERSON: Should we move?

MALE SPEAKER: Yes we can, we can Chair, (indistinct) but with your permission as well... (intervenes)

CHAIRPERSON: Ja.

MALE SPEAKER: Can we start with negotiations just like... (intervenes)

CHAIRPERSON: Okay, sure, no fine.

MALE SPEAKER: The role that was played by Mr Thamsanqa Jiyane... (intervenes)

CHAIRPERSON: Ja.

20 MALE SPEAKER: During negotiations.

CHAIRPERSON: Okay sorry, can you just assist him there, when you saying (indistinct) procurement.

MALE SPEAKER: Okay

CHAIRPERSON: Ja.

MALE SPEAKER: They can clarify.

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[Inaudible, speaking simultaneously]

MALE SPEAKER: (Indistinct) I was still asleep... (intervenes)

CHAIRPERSON: Ja.

MALE SPEAKER: So then, yes, then let us talk about the evaluation there, just some... (intervenes)

CHAIRPERSON: Ja.

MALE SPEAKER: Just clarity issues, the specs they (indistinct) was a thick document that was picking up on, the one that I want to focus on in particular to get our (indistinct) engineering also, so our specs
10 were to, they told our bidders, guys we must give us either a Bo-So or a Co+Co configuration, whoever... (intervenes)

MR JIYANE: Or a combination.

MALE SPEAKER: Correct yes, or the Bo-Bo or the Co+Co and a combination, in actual fact you are quite correct, (indistinct) you can even give us a mix of... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: 75, there were some percentages.

MR JIYANE: 100%

MALE SPEAKER: So when finally now in December when I got the
20 bid I knew as MNS (indistinct) Engineering that I can now do a Bo-Bo and a Co+Co (indistinct) combination of the two and (indistinct) put at 80% (indistinct) so anything that passes 80% (inaudible) it can then go to the 60/20/20 phase.

Now, along the way then a decision then is then taken to change there to say no, we do not want Bo-Bo (other official

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language) Co+Co... (intervenes)

CHAIRPERSON: Ja.

MALE SPEAKER: Only, do you know who took the decision to change the specifications at that time, because that happened during evaluation, or maybe was Procurement involvement... (intervenes)

MR JIYANE: No.

MALE SPEAKER: To be fair, was procurement involved I the decision?

MR JIYANE: We got a letter (indistinct).

10 CHAIRPERSON: From the CFET Technical or from who?

MR JIYANE: No, from... (intervenes)

MALE SPEAKER: The Office of the TO... (intervenes)

MR JIYANE: The Office of the... (intervenes)

MALE SPEAKER: Office the COO.

MR JIYANE: The COO, the letter had been signed off by the (indistinct) at the time together with the GCE.

MALE SPEAKER: So as Procurement we get (indistinct), no guys, let us forget what you said in... (intervenes)

MR JIYANE: Look, there was... (intervenes)

20 MALE SPEAKER: In the RFP's... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: So let us change course, so any feedback from Procurement to the (indistinct).

MR JIYANE: (Indistinct) saying, you are saying any feedback to... (intervenes)

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MALE SPEAKER: (Indistinct) there is a letter that comes...
(intervenes)

MR JIYANE: Ja.

MALE SPEAKER: To you, I am assuming you said the letter comes
from the Office of the COO?

MR JIYANE: Ja.

MALE SPEAKER: Because (inaudible) we are the custodians we
must have (inaudible) that this thing cannot (indistinct)... (intervenes)

MR JIYANE: Ja.

10 MALE SPEAKER: I am Jiyane, I am in charge of Procurement
(indistinct).

MR JIYANE: Ja.

MALE SPEAKER: So when you come and say no, let us change this
and we never want that which you wanted in the specs, we want to
change to Co+Co only, what was the view of Procurement
Department, do use the word loosely.

MR JIYANE: It was a challenge, but obviously if you look at the RFP
and some of the clarifications, we did indicate there, it was going to
be a mix but if we, as Transnet, because we were busy with various
20 studies in terms of whether we go, what combination (indistinct)
whether we need any or, so then we did indicate to the bidders that
we have given indicative specs we may end up maybe even just
(indistinct) hence we ask the bidders to say, give us in terms of this
fashion, I think there was 100% or something like that in terms of this
bids that we are asking.

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MALE SPEAKER: Ja, there was 100% Co+Co... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: 100% Bo-Bo... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: Then a mixture of.

MR JIYANE: Ja, because then we had given them an indication that Transnet might just go with one type, whether it is Co+Co or Bo-Bo, depending on the outcomes, the letter came obviously, we were not aware, we just saw the letter come in to say, they have made an
10 indication, we are not involved, so we then had to deal with it.

MALE SPEAKER: (Indistinct) not say?

MR JIYANE: No, in the classifications.

MALE SPEAKER: In the classification?

MR JIYANE: Ja.

MALE SPEAKER: They are saying in the classification is an issue.

MR JIYANE: The issue of the specs, it came, if I am not mistaken...
(intervenes)

MALE SPEAKER: Ja, I know the, yes no, it said give us Co+Co, give
us Bo-Bo... (intervenes)

20 MR JIYANE: And a combination.

MALE SPEAKER: Give us combination... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: Of either Co+Co... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: Or Bo-Bo.

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MR JIYANE: All right.

CHAIRPERSON: And around that, what criteria of evaluation were you going to use?

MR JIYANE: No, there, it is a (indistinct), it is the same, it is just, as I say, there was about one thousand in all, line items... (intervenes)

CHAIRPERSON: (Indistinct)... (intervenes)

MR JIYANE: Which bidder, ja, which bidders had to indicate their compliance to, which I what would inform the final 80% threshold.

CHAIRPERSON: Yes.

10 MR JIYANE: So 80% of the (indistinct), it was a combination of mandatory... (intervenes)

CHAIRPERSON: It was mandatory... (intervenes)

MR JIYANE: It says essential... (intervenes)

CHAIRPERSON: Desirable and essential.

MR JIYANE: Ja and desirable, there was a combination, or at least a certain number of them that they had to comply to, to move on to the next stage.

CHAIRPERSON: Okay.

MALE SPEAKER: Because the reason I am asking that, because
20 then we evaluate... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: Those who then did a Bo-Bo, not boo-boo, a Bo-Bo.

CHAIRPERSON: Bo-Bo, yes.

MALE SPEAKER: A Bo-Bo submission.

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CHAIRPERSON: Ja.

MALE SPEAKER: (Other official language) this change of decision by, letter from... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: (Indistinct) somebody or others, presumably they would have been (indistinct), they followed the prescription.

MR JIYANE: Ja, so they looked at the things that were in between.

MALE SPEAKER: They what?

MR JIYANE: They looked at what was in, I mean what was on the
10 (indistinct), because we did say 100% of the one and 100% of the other and then a combination.

MALE SPEAKER: Combination.

MR JIYANE: But if we obviously, if we went the other way of the, we are saying we are going with the Bo-Bo, they (indistinct) given us a bob that have been disqualified, so all the bidders came with various options to say, if you are going 100% Bo-Bo is this one, 100% Co+Co is this one, those obviously who came with the type that was not, and fortunately for us, the people who wrote that manual or who were doing that study were not part of the evaluations. So even though the
20 evaluations were taking place, they were not aware of whether there is even a bidder who would have responded with one type only, ja.

MALE SPEAKER: Which is why I am saying that in Procurement, because we are, those guys are not (indistinct) us as Procurement, (indistinct) guys look what you are doing it might have an impact on because there are people who complied with our request to give you

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100% either Co+Co or a Bo-Bo, so what you are doing might actually prejudice.

MR JIYANE: If we had not indicated that to the bidders, if they did not know, if we had said there will be a combination, then we would have had to go back, to them to say we have decided on this, so the option of 100% type was always there which is why there was not a need to go back, it meant that those who chose to go with one version, they took the risk to say, if it not any of this then we are out.

CHAIRPERSON: (Indistinct)?

- 10 MALE SPEAKER: Yes, (other official language) so there is that and then there is also the, on the issue of really now evaluating finance, it seems there was a lot of confusion about this finance evaluation thing because there was total costs of ownerships this and then we end up as well (indistinct), because of whatever the confusion is, take it as a given, we end up opting, when we doing the price evaluation.

In particular the second (indistinct) the price had various components, price, total cost of ownership, delivery schedule, contract, let us just focus on the total cost of operation. We then, the CFET Finance team that, as we are evaluating TCO... (intervenes)

- 20 MR JIYANE: Ja.

MALE SPEAKER: They end up now coming with (indistinct) service, one that was prescribed in the RFP, they then came with two other ones.

MR JIYANE: Okay, let me correct you, there is no option that was prescribed in the RFP.

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MALE SPEAKER: There was no option that was prescribed in the RFP and the TCO, when you are saying (indistinct)... (intervenes)

MR JIYANE: (Indistinct) saying to you what happened.

MALE SPEAKER: Maybe the (indistinct)... (intervenes)

MR JIYANE: Because I have had to deal with this in last weekend, somebody who got the (indistinct) report, some (indistinct), so I had to go to clarify to have the documents. What happened is, there is a board approved evaluation criteria with a lot of sub elements which the board was aware and the decision was, you cannot deviate from
10 this evaluation without coming back to it, obviously, just to insulate the process from any manipulation.

MALE SPEAKER: No, sure.

MR JIYANE: So in terms of what was given to the bidders, we are going to have (indistinct) TCO, price included, including total cost of ownership, that is what you get. There was not a mention to say, TCO, these are the components that we will evaluate, but in tendering, as I said... (intervenes)

MALE SPEAKER: Yes.

MR JIYANE: When we issued the RFP the Board wanted to know, to
20 the detail, how (indistinct) evaluated to we could not deviate. So when they, I mean ordinarily, on any tender process, if it was not (indistinct) before, if we were buying bearings or wheels, things that would be in my delegation as the CPO would have done one or two things, if the change does not prejudice the bidders, in which case it means that we have to go back to the bidders to say like change in

the evaluation, we are including elements that did not include or excluding elements that would have (indistinct).

Then the (inaudible), but if the evaluation was something that is internal within Transnet where we said, because even though we gave a high level view to the bidders of the elements that you include in the (indistinct), one of the things we have always maintained is to say, once the evaluation criteria must be given and signed off before the tender goes out so that we keep it, so that we do not look at the tenders and say, my friend here is not going to get the tender, let me
10 change the evaluation so that I favour them.

So we ask them to give us upfront, so that when the tenders come out they just use it as it is mechanically, so the same thing happened with this tender. Now there was an issue of, in the TCO where the bidders made assumptions and interpretation, I never evaluated a single tender, that is the feedback they gave me because, each and every one of the (indistinct) that you are doing, they will evaluate, once they have evaluated and then come and say, here is a report of the information.

So when they came with this report they had various issues,
20 I am not a fundi on these issues, I remember then they called the, Group CFO at the time wanted to know what the status was of the evaluation, I told him that the team has eventually (indistinct) and he said he wants to meets with them. He met with the team, I was there, in fact he even invited Mr Gama to the meeting and he engaged with them which is then when they explained to him as well and he made

various suggestions, then there were various clarifications that happened immediate after that.

Because they thought that maybe there is an issue with local content or the Technical, they brought in the Technical guys to come and assist them because they thought maybe there was something and then they (indistinct) the TCO, the Technical guys would understand and be able to give them clarity and that did not yield any positive results.

Then the CFO then said look, we do not want to be
10 challenged because the challenges, you are taking a version that you think is what the bidders meant may be a problem, rather try and have an evaluation that is not biased or at least let us strive for objectivity which is then why then there was a decision to say, let us go for the one and then there were engagements between myself and the CFO.

Because we are saying, only Transnet knows this thing, why do you not just talk about option 3, I was not comfortable with that, I said we must put all the options because the original one that the board approved was this, we must explain why there is these two and
20 then (indistinct) would make a decision.'

He then said no, let us propose the (indistinct), that was the safest one, I said fine, we will then put the three options and explain why the third one is the one that we would refer because the team has battled and unfortunately it was not changing any part of the RFP, it was a Transnet approved methodology that they had to deviate

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from, which is why I said, even the board must give us an indication to say, this I fine and then he obviously came back, there is also other things that he asked for that we discussed at the time, which they then wrote to me on, early January or later parts of December that.

MALE SPEAKER: Thanks for that and then, the last one on it, you are going to negotiations?

MR JIYANE: Ja.

CHAIRPERSON: Yes.

MALE SPEAKER: (Indistinct) negotiations, then we take a break.

10 MALE SPEAKER: Perhaps just to confirm Mr Jiyane, your role at negotiations, we have been advised that you were the lead negotiator?

MR JIYANE: Together with Anosh. I was supposed to be the lead negotiator, if you get, I am not sure if the documents (indistinct), I was appointed to lead the negotiations and the memo was sent to the GCE and then it came back unsigned with the note where, in fact there had been various engagements between us in Group Finance in the role that Group Finance wanted to play.

20 So the GCE note came back saying that Anosh would co-chair the negotiations which then I said to the GCE, I mean to the Group, to the CEO of TFI say, I mean there is nothing we can do, let us proceed, I do not know what it meant.

MALE SPEAKER: (Indistinct) Jiyane was... (intervenes)

MR JIYANE: No, I am saying I do not know what it meant, we just got a note to say Mr Singh would be the co-chair of the negotiations.

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MALE SPEAKER: Okay, ja.

MR JIYANE: But the good thing with the negotiations, the sessions were recorded from the beginning to the end, I am not sure if you have been given the recordings.

MALE SPEAKER: Yes, no, we have had access to the recordings.

MR JIYANE: So... (intervenes)

MALE SPEAKER: (Indistinct) complete for some, to the introduction.

MALE SPEAKER: First day, only the first day.

MR JIYANE: (Indistinct) recorded up to the last day.

10 MALE SPEAKER: No, we are just saying, we were given only the introduction to say, welcome and... (intervenes)

MR JIYANE: No, I will check, because (indistinct) find that relevant because he is supposed to have all those. Anyway so I continued to coach the negotiations, ja.

MALE SPEAKER: Okay, so as you coached the negotiations, were you given the terms of (indistinct) we must have a plan to say, these are the issues and these are the targets... (intervenes)

MR JIYANE: We prepared the negotiation pack with, because we just take the proposals of the bidders that we are looking at, so we
20 have prepared the, I am trying to remember the names that we used to call this thing... (intervenes)

MALE SPEAKER: Negotiation strategy.

MR JIYANE: Thank you. Which was to be signed by the GCE, because the Board had given the GCE the authority to manage the valuations and sign of (indistinct) and then a day or two, because

immediate we got the approval of the board, we then prepared this thing, now in terms of the process the CFO was the Director and he was the one who was charged with the responsibility to oversee procurement matters on behalf of the Board.

So we shared within the evaluation, the negotiation strategy sorry and then he then said to me, this looks fine as a draft, he had a team of experts that he had put together which were going to assist us during negotiations, I was surprised because I was not aware of anything of that sort.

10 MALE SPEAKER: (Indistinct) that comes from the CFO?

MR JIYANE: The Group CFO, Mr Nelson and then he then told me that he will come and introduce the team to, he came with a fellow colleague, Sagga who was from (Indistinct) and then we discussed and then I told them what we had done and then obviously prepared the initial negotiation strategy but Mr Singh has informed me that there is lots of consultants who work and support that we need get to get this thing finalised and there is a team. So obviously this is where it is, then Mr... (intervenes)

MALE SPEAKER: (Indistinct) when was this in terms of...

20 (intervenes)

MR JIYANE: Two days before the negotiations, do not call me a liar, maybe three days... (intervenes)

MALE SPEAKER: No sure.

MR JIYANE: But... (intervenes)

MALE SPEAKER: Some... (intervenes)

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MR JIYANE: Just after we got approval from the Board when we were preparing to inform the bidders, wait, actually written the letters to the bidders because we (indistinct) the letters. Then they started arguing because Wikus said, that meeting, before he does anything around or the strategy and everything, he wants to engage with certain (indistinct) executives to make sure that they are aware that there, the CFO has appointed them to do this work, because ordinarily these things were done by people in general.

Then they started arguing, this guy, Anosh saying look, do
10 not play politics on me, either do the work, do not tell me you are going to have to consult of people, I have given you a scope of the work and the contract, this guy said, no, I still want to consult then he says, I am taking away the scope of work from you, I am going to give it to somebody else and that was the end of the meeting.

That is what I know, so that is how it ended, we never proceeded from there, then later on I heard that there was (indistinct) who are now supporting him and the Finance team in terms of (indistinct) and escalation and many other models they were working on funding and so on, they never sat in the evaluation group.

20 So we, when the negotiations started, I am not sure if there was, it ever came back signed, I cannot remember, I would have to check, but what I remember, in that meeting, that is where I, that is the last I heard of the document, because that is going to be worked on by the consultant, even mentioned a fellow called David Porter that he said he wanted him to go through these and look at our approach

in terms of the elements of the negotiations and the limits in terms of the minimums and what you are saying that this is what we would accept as a minimum, he said there is lots of investigation that goes with that, I do not know whatever happened with those people because I never met them.

MALE SPEAKER: Ja, you see that one, because I am (indistinct) think what you call that document, this one where you said it had the minimums and... (intervenes)

MR JIYANE: Yes.

10 MALE SPEAKER: Negotiations worksheets.

MR JIYANE: Ja.

MALE SPEAKER: Negotiation worksheet, that is the word. So there were this negotiation were actually on various items... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: On this one at least (indistinct) if you are saying we are (indistinct) that is, this part... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: This is why, you must... (intervenes)

MR JIYANE: If we get the maximum well here we will say we are
20 won.

MALE SPEAKER: Correct.

MR JIYANE: If we get the minimum (other official language) at least we came back with something, something like that.

MALE SPEAKER: So that was part of the... (intervenes)

MR JIYANE: It was on the negotiation strategy.

MALE SPEAKER: Okay.

MR JIYANE: And then he said obviously he needed to get people who were experts on these things to assist him in IT and so on and so on and so forth, but unfortunately as I say, the wheels came off (indistinct).

MALE SPEAKER: No, I will... (intervenes)

CHAIRPERSON: You fine?

MALE SPEAKER: I am fine.

CHAIRPERSON: Okay, can we (indistinct).

10 [Inaudible, speaking simultaneously]

CHAIRPERSON: When you went into the negotiations, did you have a figure in mind that you went in there with?

MR JIYANE: You see the good thing that we had done, we said to the bidders, because remember, we issued the tender in 2012, December, where we gave the bidders a final RFP, 2013 and sorry, December 2012 when we gave them the final RFP.

The final evaluations, because the Finance team, once they finish with the evaluation, they gave a report with the finalised clarifications, they wrote to the, I hope you have all those documents.

20 CHAIRPERSON: We do.

MR JIYANE: From when they finally finished the evaluation, there were various documents that were put to us because when they engaged with the process we asked this question, they are there to clarify and so on and so on. So from the time when the tender closed, which was in April 2013, to the time when we were, finalised

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everything around this (inaudible).

December 2013, January 2014 we have felt a lot of things would have changed and we then asked that before we even go to negotiations, we must ask the bidders to give us best and final offers... (intervenes)

CHAIRPERSON: Yes.

MR JIYANE: So that we have got a base to negotiate, which was that, so in terms of that we are saying, anything that was going to be better than the best and final offer prices (indistinct) for us.

10 MALE SPEAKER: Just confirm Mr Jiyane when you say better, lower?

MR JIYANE: Yes, because remember we are going aggressively to fight with the on pricing.

CHAIRPERSON: Okay, did you achieve... (intervenes)

MR JIYANE: (Indistinct).

CHAIRPERSON: Your goal?

MR JIYANE: I thought we did, except that we started negotiations again, because negotiations happened in March, (indistinct) March 2014, do not call me a liar, a week plus, give or take and then the
20 Group CFO then, let me go back a bit, on the RFP one of the things that we had said is that we might decide to split the award (indistinct).

When the Finance guys are done in their evaluations, in those engagements, the Group CFO and the (Indistinct) and they were called to come and just meet with the team so they can explain to them the challenges that they were facing, the asked the issue of

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splitting the award, because you may be aware that Transnet had attempted, TFR sorry, had attempted to get approval to 160 locomotives while 1064 was being finalised and that had not been approved, so you are saying, is it possible that you can accelerate and do a split award.

Obviously with the view that, there are also other benefits I the split award that you are not stuck with one bidder and that there would be some form of standardisation in terms of parts and components. By (indistinct) you only have one bidder, but if you look
10 at the TFR fleet at the time you had choice assorted in terms of the locomotives we had.

So moving from four or five fleets of electric locomotives to two was better than having four or five, same applies to this and that was the feeling at the time. So in one of the documents I wrote, when we were recommending that we move on to the next stage, I said that there is a preference for the split, for TFR, but on the electrics it looks possible because it is, the top two bidders are very close to each other.

On the DC's however, there is a challenge because there
20 was a huge difference between bidder one and bidder number two in terms of the rankings, which is one of the issues that we have. So then I said, I indicated that the team has not evaluated this, so this is just a view to say, if you were to consider a split, going to ask bidders to give you a split on electrics might be possible and on the DC's, we thought because of the price difference it would be very costly to

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Transnet. Then there was a letter later on they wrote to me...

(intervenes)

MALE SPEAKER: They being?

MR JIYANE: The Group CFO, the GCE, as I said it was end of December or early January where they instructed on the things they wanted done and how we approached the issue of the price difference in terms of the best and final offers.

So when we started negotiations, we had the best and final offers that we had been given for the various bidders, so we
10 negotiated on the basis for the first week and a half, or (indistinct) the bid on awarding 599 and 465 to one bidder each. A week and a half into the negotiations the Group CFO came back and said no, let us rather go with this bid because the view to accelerate and (indistinct).

So from that point we then went with full speed, it is around about (indistinct), but I am trying to say, we never finished on negotiating based on the best and final offer because the best and final offers were based on each and every one of the bidders getting the full allocation of the orders.

CHAIRPERSON: Did you agree with the split (indistinct)?

20 MR JIYANE: The documents speak for themselves. I, TFR preferred that and as I am saying, I said it is possible, I did not agree, I said it is possible on the... (intervenes)

MALE SPEAKER: Electrics.

MR JIYANE: On the electrics because the prices were very close, depending on obviously, when you put the split discussion before the

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bidders on how they want to change their pricing because the issue of splitting is a matter of (indistinct), but they were, there was a strong view from TFR that even, it should be preferred that they have two bidders instead of one because we are not then stuck with one bidder who then, with time, take turns.

We had history like that in TFR when we had one supplier for slippers and many other components (indistinct) so there was a feeling that, because it is going to be a seven year program, if not more, it means these guys can change somewhere in the middle and
10 talk about escalation and want to reopen negotiations and we will not have any leverage.

But based on how we had evaluated and you will see, I cannot remember which one of the two documents where I said, there is a challenge with regard to the prices from this window, there is this preference, there is a challenge but the Group CFO then said, spoken to the GCE, the GCE is saying we are going with the split and it is on the records, we must inform the bidders on that, now they must come back with a response that says 50/50 or 60/40.

CHAIRPERSON: Was there any time in your interaction with CFO
20 where you have disagreed with him and maybe... (intervenes)

MR JIYANE: Many times.

CHAIRPERSON: And maybe you have record it in writing?

MR JIYANE: I think there is record there, you can just check, the truth will be recorded because we had lots of fights (indistinct) negotiations.

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CHAIRPERSON: So you would disagree with him and say no, (indistinct) he had no authority to discipline you, is it not?

MR JIYANE: He had, but he had to go through Mr Gama.

CHAIRPERSON: Ja.

MR JIYANE: Remember he was one of the, only two directors, executive directors... (intervenes)

CHAIRPERSON: Ja.

MR JIYANE: Of the Board so he could discipline both of us, myself and Mr Game.

10 CHAIRPERSON: Mr Gama.

MR JIYANE: But I was fortunate that (indistinct).

CHAIRPERSON: Okay. So okay, then there is the acceleration, there is the splitting, were you aware of the costs?

MR JIYANE: Obviously it was going to, I mean, it was one of the debates we had, that when somebody has issued the tender for, I mean giving that there is a proposal for 465 locomotives, locomotives, if you change and say we are giving you 50%, there would be a difference in cost and his response was that no, if I understood finance I would understand that if you know in terms of
20 the base price then it might go up, but if you look at escalation and foreign exchange it is of a shorter period of time as opposed to seven years or even ten years, depending on how long this programs run.

CHAIRPERSON: And I know this is that does not fall under you, your competency when you, it did not fall under your competency

when you were at TFR, do you think you had capacity for (indistinct) delivery as TFR in terms of... (intervenes)

MR JIYANE: You see that is an easier problem because I engaged with the engineers myself when that decision came up, they initially said it is going to be impossible. So when we sat down with them to understand what their challenges were, they were just worried about the physical engineers or technicians which have to go through the testing regime and so on and so on.

Because I initially thought when they were saying there is no capacity, they meant that the network is incapable of (indistinct) 40 to 48 locomotives a month, so when I engaged with them, they said no, we have limitations in terms of testing facilities and so on and so on, and then I mean remember, we are even saying, if TFR limits locomotives, they are battling to move volumes, can we not have these testing facilities running 24/7.

So eventually it came up as, it was, because I was under the impression, as I say, that the network was not going to be capable of absorbing this number of locomotives and... (intervenes)

CHAIRPERSON: Okay so you... (intervenes)

20 MR JIYANE: And it was a Human Resource issue.

CHAIRPERSON: So you supported acceleration?

MR JIYANE: I did not support it, remember, when it was decided... (intervenes)

CHAIRPERSON: Ja.

MR JIYANE: We had to make sure that the organisation is right,

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which is why I said, we cannot make the call without talking to the people who have to deal with this thing... (intervenes)

CHAIRPERSON: Ja.

MR JIYANE: You know, and then when you engaged with them, they initially said no, it is going to be a challenge, it is going to be impossible and so on and so on, and remember, there were a lot of further engagements with Mr Singh and the Technical team together with some of the Operations guys in TFR around this matters up to, they get, got to a point where they all agreed that it is possible.

10 CHAIRPERSON: Okay, but now you see that was the easy part the capacity to... (intervenes)

MR JIYANE: Yes, because... (intervenes)

CHAIRPERSON: What was the difficulty... (intervenes)

MR JIYANE: No I thought, it was a difficult, it was not going to be possible because maybe the network would not be able to absorb, the actual system in TFR, until we engage with them and find that it is a Human Resource issue and some of the facilities they use for testing.

20 So they were saying, we have got so many people who could project manage and then oversee the tests and I asked a simple question, how many hours do they work, they said they only work eight hours (indistinct) then we are making a mountain out of a molehill.

So there must be other reasons why you cannot go for a split or (indistinct), this was not going to be a reason that, I thought based on my engagement with them and from what I understand, they

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sorted this issue easily because Mr Singh said he would make sure that they get the resources they require in terms of personnel and this thing from what I understand, they agreed that it can be done.

MALE SPEAKER: Just a (indistinct) question, just for (indistinct). Speaking decisions taken by CFO and TFO acceleration... (intervenes)

MR JIYANE: Is the same thing.

MALE SPEAKER: Are you confirming then that the decision to accelerate, you say there is a decision to split.

10 MR JIYANE: Ja.

MALE SPEAKER: 20/40 or 50/50.

MR JIYANE: Ja.

MALE SPEAKER: That is the splitting... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: Acceleration is instead of five years... (intervenes)

MR JIYANE: Seven years.

MALE SPEAKER: Whatever... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: To whatever, three years (indistinct)... (intervenes)

20 MR JIYANE: Now let me explain to you why acceleration is splitting in this case, if you do construction you construct a role, if you say to a bidder, you saying you are going to do this (indistinct) and I want you to do it in nine months or six months, what they need to do is to double up the teams and equipment and materials and tell you that look, we cannot do six months, we can best give, because there are

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things that in terms of Project Management, they follow each other that we cannot do (indistinct).

In this case, each and every one of the bidders, one of the requirements was that they manufacture locomotives in South Africa and each and every one of them had said that they could do up to about 12, 10 or 12 locomotives, so splitting was to accelerate, I mean, to accelerate would have meant that, instead of getting one bidder, you get two which is why the numbers moved from about 20 to 24 to about 40 to 48 locomotives.

10 MALE SPEAKER: Let me just explain to you, I take your point... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: It is important for us to know, because these are two separate issues, because as to who (indistinct) because there is a dispute as to who took a decision to accelerate, I take your point about the decision to split... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: But there is a divergence when it comes to who took a decision... (intervenes)

20 MR JIYANE: (Indistinct).

MALE SPEAKER: That is why I say, I want to know who took a decision to accelerate. I take your point about splitting, (indistinct) to your knowledge.

MR JIYANE: As a result of taking the decision to split the negotiations are accelerating with the bidder, the person who took the

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decision to split, inadvertently made the call to accelerate and the rationale for splitting by the way, was to accelerate because they will say, instead of getting one bidder delivering, we have two bidders delivering (indistinct).

CHAIRPERSON: It was one of the reasons for splitting.

MR JIYANE: Ja.

MALE SPEAKER: I wanted to check, as I understand it, a team from TFR compiled a memo when they were against their (indistinct) of acceleration.

10 MR JIYANE: Ja.

MALE SPEAKER: You mentioned but one objection that they raised in the memo, apparently there were a number of issues that they are raising and I was trying to find the memo so that I can put it out, but I am struggling but I will try to talk to it, if I get something wrong then I will, forgive me, I am not trying to trick you or anything. As I understand it, a locomotive, you cannot look at a locomotive as a locomotive, you look at it in a network... (intervenes)

MR JIYANE: (Indistinct).

MALE SPEAKER: Ja, right, and that system, it includes your
20 customer that you are going to be buying from or whatever, whatever, or that are going to be transporting their goods, it includes the wagons, it includes, it included the (indistinct) out of the whole locomotives, the drivers and all of those things.

So the reasons that they were objecting to this, included all of, included a combination of all of these factors that, the network

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itself was not ready to absorb this... (intervenes)

MR JIYANE: If you remember my answer, when you read the memo, that is what they were saying until we engaged with them, because I called and told them that there is this few, is it possible, they went away and then came back with them, and then there was a meeting, but when we met with them, the issues around the network became non-issues.

The issues that they had challenges with were mainly the testing and the resources they had to test, because as I say, I thought
10 that it was going to, based, when they said it was impossible, until they wrote that memo to they went one by one on those matters and it is the same ones there because he obviously was wanting to finalise the decision on behalf of the (indistinct) at the time.

So I called the team then we engaged with them, so when we interrogated these things with them one by one, they eventually, because I remember, when we, before this thing was finalised, they were all there and they were the ones looking at the various delivery schedules from each and every one of their suppliers and they were happy, they agreed and signed.

20 MALE SPEAKER: That is the first part and then the second part is, if you look at the Business (inaudible) itself, it talks about problematic procurement because it is a, you know, one cannot guarantee the work and how the markets are going to perform so we cannot have a situation where there are going to be instances where Transnet can, is not in a position to procure, let us say, hundred locomotives that

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year, they can only procure 50. So we had to make allowance for that, now the rationale for splitting collapses that thinking.

MR JIYANE: It does not, in fact, if you look at the contracts, that thinking is still there, because we always said that there are instances, I do not have the contract in my hands but there are clauses that allow for instance if there is a change in the market conditions that TFR can, there were about three or four options that TFR can go for.

MALE SPEAKER: But is it not that, even if it is in the contract, is that
10 contract not a contradiction?

MR JIYANE: No, it is not, because still one bidder instead of delivering 50%, say delivery 10%.

MALE SPEAKER: Okay.

CHAIRPERSON: So Mr Jiyane, so you would agree with the view that acceleration and splitting knocked you off the negotiating, the negotiation which it (indistinct)?

MR JIYANE: (Indistinct).

CHAIRPERSON: So splitting and acceleration and all that moved you away from the sheet what you went with... (intervenes)

20 MR JIYANE: Ja.

CHAIRPERSON: To the table?

MR JIYANE: Even though that sheet was still being worked on... (intervenes)

CHAIRPERSON: Ja, but it was.

MR JIYANE: I agree, full, 100%.

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CHAIRPERSON: That, okay, sure.

MR JIYANE: Ja.

CHAIRPERSON: Ja, and also, it then also meant that your BAFA is no longer your BAFA?

MR JIYANE: 100%.

CHAIRPERSON: It means BAFA was also thrown out of the window.

MR JIYANE: 100% because bidders had to give us new prices on the basis of the split.

CHAIRPERSON: Okay and how did that affect those who never got a
10 chance to go to BAFA?

MR JIYANE: Sorry?

CHAIRPERSON: You are saying this acceleration, it knocked you off your sheet, it even affected the offers that you got at BAFA, (indistinct) say asking R10 for BAFA... (intervenes)

MR JIYANE: Ja.

CHAIRPERSON: Now there were those who were not at BAFA... (intervenes)

MR JIYANE: Okay.

CHAIRPERSON: So in your view, how did this now affect those who
20 never got a chance to go to... (intervenes)

MR JIYANE: We always had an issue on that, and in fact, even before we started the negotiations, because whether they negotiate for split or not, there could be a view that once (indistinct) we are only negotiating with one (indistinct) you can always go back to them.

So what we did was, if I am not mistaken, we have agreed

that we are not going to give them the task of completed work, to keep the window still open in case we do not agree with the ones that you have preferred (indistinct) many of that. So we went and said we talking, talked to, we negotiating (indistinct) at the time, on the basis of those negotiations if you do not believe that we are getting value and would obviously (indistinct).

CHAIRPERSON: Okay, the price increased from R38.6-billion to R54.5-whatever-billion, can you recall when did exactly reach that figure?

10 MR JIYANE: I know that the price increased, I do not know (indistinct), we can just check on the various negotiations documents, because when we finished with negotiations, there were prices per OEM on the basis of the split, but there is this thing of that Mr Singh and the Finance team and the regiments were working on our escalation and forex and then bidders when they asked to come back, they are not happy, they came back eventually, he said fine, these numbers are within the benchmark and so on and so forth and there is a spreadsheet that the team went on.

20 The number, as far as I know, because I remember sitting with Mr Gama on the announcement, we had that, it was R51-billion, we were both surprised because we thought that the number was around R40-something-billion because the original, the value from each and every one of the bidders before escalation is what we had, before escalation and forex, then they applied foreign exchange and escalation, then it changes obviously to some number, because the

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bidders take the risk for everything, you know.

So we asked, I remember asking, we are going to create a problem for me because these bidders are going to be writing to say, this is not what they contracted for and then Mr Singh said to me no, there are other charges that you have just included to come up with the total cost to Transnet which would include our finance charges and a whole lot of other things that they would have included.

CHAIRPERSON: Okay.

MALE SPEAKER: Maybe, just to follow up on that, before you finish
10 with the negotiations, were you aware that already the price was at around R49-billion?

MR JIYANE: R40-something-billion, I said earlier... (intervenes)

MALE SPEAKER: Ja.

MR JIYANE: Ja, that the bidders gave us prices without foreign exchange and escalation... (intervenes)

MALE SPEAKER: Yes.

MR JIYANE: As Transnet we said our preferred position is to enter into a... (intervenes)

MALE SPEAKER: (Indistinct).

20 MR JIYANE: (Indistinct) which obviously meant that the bidders must go and take the risk or then enter into (indistinct) contracts and escalation and come back with a rand number that you will not change for the duration of the project.

MALE SPEAKER: And you agreed to it?

MR JIYANE: Who?

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MALE SPEAKER: I am saying as the negotiation team.

MR JIYANE: No, that was a matter that is, even in terms of our DELEGATION OF AUTHORITY it is that national, the Transnet Treasury and the (indistinct) and obviously the GCA who would make a call on that.

MALE SPEAKER: But what I am trying to say... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: As the team you then recommended or, as the team we agreed that look, we are not able to achieve the R38-billion
10 below, the negotiations resulted at R49-billion... (intervenes)

MR JIYANE: You see, as a team we never spoke about R38-billion, the (indistinct) came in late... (intervenes)

MALE SPEAKER: Okay.

MR JIYANE: But maybe the... (intervenes)

MALE SPEAKER: My apology for that here sir.

MR JIYANE: The business case and the procurement are two different matters.

MALE SPEAKER: Okay.

MR JIYANE: Ja, so there would be numbers asked on each and
20 every one of the bidders on what they quoted for their allocation of the tender and then, based on that number, then there will be escalation and foreign exchange that is (indistinct), so it would not be the same as the R38-billion.

MALE SPEAKER: No, that is fine, I saw the R38-billion but it is then, you had the... (intervenes)

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MR JIYANE: There is a number, ja.

MALE SPEAKER: But what I am saying is you are right R38-billion
(indistinct)... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: After... (intervenes)

MR JIYANE: There is a BAFA number... (intervenes)

MALE SPEAKER: Ja, let us talk about, what about them, so that is
when you getting (indistinct) with the BAFA number... (intervenes)

MR JIYANE: Ja.

10 MALE SPEAKER: You walk into the room, now, copying his
questions, now you are seeing the BAFA numbers now going up, did
you now agree as a team, this BAFA number is increasing, it is okay?

CHAIRPERSON: According to your responsibility?

MR JIYANE: Yes, no, there was, there was, there were two
documents and I think I remember taking two of them, just putting
them in the boxes with her. There was regiments amongst the main
entities that Anosh was using it, who were working with him and even
before the bidders came back he said this is what the range that
would be and this even engaged the (indistinct).

20 CHAIRPERSON: Okay.

MR JIYANE: And then the Finance team again worked on the details
of the thing, obviously we cannot sit in in the negotiations, they would
them engage the bidders on this matters, then they will come back
with various proposals. There were many various (indistinct) of these
proposals during the process that these guys came with and then

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they will go and evaluate, sit with regiments and then come back and indicate (inaudible).

CHAIRPERSON: Okay.

MALE SPEAKER: Mr Jiyane there is just one issue in relation to negotiations which was not clarify, either on part 1 or part 2 of the RFP that seems to have contributed to the (indistinct)... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: I just want your understanding on the engagements in relation to the TE scope, we understand that is TE
10 scope and then there is additional TE scope.

MR JIYANE: Ja, then you are going to talk to me about the relocation. The, it is, the TE scope is a very complicated (indistinct) and we were told initially that the TE scope would be made available to TFR, TFR and TE are two different operating divisions in short.

MALE SPEAKER: Yes.

MR JIYANE: And the process was managed by the GCFO, the GCA together with the Procurement Officer of Transnet, Mr (Indistinct), so we never got the document, eventually we were told that bidders must allow for working with TE to be finalised during negotiations. The
20 GCFO, the GCA and the CEO of TE then agreed, I am told, that, to appoint PWC to assist them with that exercise, we were not involved.

So while we are negotiating the acquisition of 1064 locomotives, they were parallel negotiations while the GCFO was leading this group, the Group CPO was leading the GE scope together with PWC and the rest of the TE Exco at the time.

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All that we know is that at a point in time he came back and said there is also a challenge that TE is raising based on this bid in that they are worried about two competing OEM's being in one facility, as a result they are proposing that we have one (indistinct) OEM in TE and one (indistinct) OEM and both then move others together.

MALE SPEAKER: Sorry Mr Jiyane, you are saying it was TE that was saying that?

MR JIYANE: That is what he told us, yes, he said they said there will be a challenge with two competing OEM's in one facility because they would have lots of legal issues with one to copy the other's IP and so on and so forth, which was an issue that had never been discussed until that point and as a result of that, coming, because you want to talk about relocation.

MALE SPEAKER: Ja, sure.

MR JIYANE: Then there was a view that two of them would be relocated to go to the TE facility in Durban, but because the TE facility in Durban had not produced locomotives they had to go and then do an assessment and then come back and engage with the Group CFO and TFR on what it means for them to move everything, because all their bids were on the basis of them doing his manufacturing in, around Gauteng.

MALE SPEAKER: Okay, (indistinct) on that because the bids never said (indistinct).

MR JIYANE: Sorry?

MALE SPEAKER: You are saying people made assumption...

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(intervenes)

MR JIYANE: They went to (indistinct), all of them, there was even a document that I am told they produces, all of the bidders had gone to Koedoespoort, those who had not gone to Koedoespoort were the ones who did not want to work with TE but they had facilities in Gauteng that they were going to work for.

MALE SPEAKER: (Indistinct) assumption by the bidders.

MR JIYANE: Sorry?

MALE SPEAKER: The bidders were assumed that they will be based
10 in Pretoria (indistinct).

MR JIYANE: They were based in Gauteng.

CHAIRPERSON: Okay.

FEMALE SPEAKER: But the RFP itself did to say that?

CHAIRPERSON: Okay, that negotiations, was it discussed with possible bidders that were supposed to then move to... (intervenes)

MR JIYANE: Ja and it was a simple criteria... (intervenes)

CHAIRPERSON: Ja.

MR JIYANE: Remember, CSR had an existing line in Koedoespoort facilities of TE in Pretoria together with GE, so they said the ones who
20 had established lines, they will stay in Pretoria, then the ones who are going to start new would be the ones that get moved (indistinct).

MALE SPEAKER: So if it was part of the negotiations why was it not factored in... (intervenes)

MR JIYANE: It was not part of negotiations.

MALE SPEAKER: It was not part? Apologies.

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MR JIYANE: Hence we could not negotiate something we did not know, even the bidders had not even seen the Durban facility.

MALE SPEAKER: So it was not.

MR JIYANE: Ja.

CHAIRPERSON: So were you involved with negotiations around location?

MR JIYANE: We asked bidders to give us an estimation when I was in (indistinct), remember we signed in March if I am not mistaken... (intervenes)

10 MALE SPEAKER: 17 March.

MR JIYANE: Ja, and then we asked the bidders to go and assess the site in Durban and tell us what the implications would be if they move to Durban. That process took some time, I think we got the first proposals after many reminders and engagements around August, July, August 2014 and then we then sent them to the team to say this is what the (indistinct) are saying.

20 There were responses, eventually the Group CFO said he would personally engage on this process because there was a misunderstanding from what you are saying with the bidders, some thought they would go start working as and when they (indistinct) coming up and be able to (indistinct) from Transnet and (indistinct). Unfortunately I left TFR before the process was finalised, I remember he invited me to one or two sessions after I had moved to TE... (intervenes)

CHAIRPERSON: Who is he?

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MR JIYANE: Mr Singh, I went, one was at the airport if I am not, maybe one if I am not mistaken because you are saying (indistinct) then I told him that the (indistinct) is telling me that they had discussed with these guys and they had said, Transnet would absorb the TE costs for the move because it was a Transnet request so they must do this on their own without, including Transnet costs.

MALE SPEAKER: So Mr Jiyane just to confirm, you were not part of the team, Eastern Cape we understand what you were... (intervenes)

MR JIYANE: I was included on the team.

10 MALE SPEAKER: In the negotiations?

MR JIYANE: Ja, so I attended one or two sessions, up to the end of this, how this thing was finalised I was not involved and if you get the records you will see that.

MALE SPEAKER: Ja, no we have seen you were only present at the OR Thambo International Airport meeting.

MR JIYANE: Yes, remember and then I moved, I was no longer the CPO of TFR at the time.

MALE SPEAKER: Yes, but can I take you back to 2014... (intervenes)

20 MR JIYANE: Yes.

MALE SPEAKER: In March, a week before the contracts are concluded.

MR JIYANE: Yes.

MALE SPEAKER: There is an estimate for CMR which is just below R4.5-million, are you aware of it?

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MR JIYANE: I do not remember, I can check on the documents.

MALE SPEAKER: Okay, and in terms of your general understanding, because you not being a person... (intervenes)

MR JIYANE: Ja.

MALE SPEAKER: That specialises in engineering as such, would it not be the cost of relocation (indistinct), would it not be the setup costs that they have said they would incur if they were going to be in TE, as against now having to setup a new production line, so would it not be the (indistinct)?

- 10 MR JIYANE: No. This thing was very complicated, let us start, choose a bidder we make them, use them as an example, let us choose Bombardier. Bombardier relied a lot on the facilities they had used to assemble Gauteng, in fact, up to this day, Bombardier they have components that are being moved from Gauteng to Durban, they are manufactured in Gauteng and then transported to Durban.

So their teams have to move between Durban and Johannesburg in terms of assessing these suppliers in terms of quality and so on and so on and there is duplication, because even the facility that they have created is here in Isando that they started
20 working on and approvals with whoever that they did not want to change, so they ended up putting it up here.

So all those components, they are making (indistinct) so I do not know the details of, for each and every one of the bidders but it is not necessarily the setup costs, because each and every one of these bidders had entered into an agreement with a local partner in

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Gauteng with whom they are going to work.

If you take CMR, I remember there is a group called Global or something like that, who they were working, they were going to use to, they were going to use their facility and use a whole lot of their system to manufacture, in Durban they did not have any facility.

CHAIRPERSON: But some of the OEM's had no base at all in South Africa.

MR JIYANE: But they had people that they agreed on during the tender which meant that they would cancel existing contracts and
10 (indistinct) contracts.

CHAIRPERSON: Ja, so you, you are putting... (intervenes)

MR JIYANE: No, again I am saying, that is the understanding I got at the time, because I in fact I was not saying, this (indistinct) should be even cheaper because some of these components are coming from China, they land in Durban and come to Pretoria, so them landing in Durban and not having to move further to Pretoria, they should be saving from a Transnet point of view.

CHAIRPERSON: Okay.

MALE SPEAKER: You know Chair, the question of how the
20 negotiations is closing before this one, just one question, when we interviewed Mr Laher he said you could not rely on the report, the negotiating report because it is not signed, he was told to stop writing it, can you comment on that?

MR JIYANE: That is possible ja, because as I say Mr Singh said he had a team of experts and I remember him mentioning David Porter

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was going to work with Mackenzie and do the negotiation strategy.

MALE SPEAKER: No, it is a report, you are talking about the report.

[Inaudible, speaking simultaneously]

MALE SPEAKER: The end report. Both Mackenzie and Porter.

MR JIYANE: Ja.

MALE SPEAKER: When you finished the negotiations, who is the (indistinct), there is a report that is prepared, that I the report I am talking about.

MR JIYANE: Ja, you are saying what did he say?

10 MALE SPEAKER: He said he was asked to stop working on the report, so you cannot rely on that report.

MR JIYANE: I was not in the meeting where he was asked that.

CHAIRPERSON: But maybe just put it different, did you sign the negotiation report, because as all of the leaders in the negotiation team?

MR JIYANE: Ja, the, we, the report was not finalised.

CHAIRPERSON: Okay.

MR JIYANE: Well I did not sign it, I am told Mr Singh together with Mr Laher and others worked on a report which they took to the board,
20 I never saw it, I am told Mr Gama was called to say he must sign as the people who are going to (indistinct) but Mr Laher and Mr Singh prepared the report and that report is what was taken to the board.

I only heard afterwards and I asked him why, he told me that because you are still within TFR, in the report we would have included some aspects of TE and you did not want to (indistinct) to have that

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information.

MALE SPEAKER: So there was a report that was speaking to (indistinct)?

MR JIYANE: Yes, in May 2014 which include the, which in summary is the one that apparently asked for an increase in ETC... (intervenes)

CHAIRPERSON: The memo?

[Inaudible, speaking simultaneously]

MR JIYANE: No, there is a report that went with that memo, they may have not shared with the board or (indistinct), I do not know, but
10 there was a report that led to that memo, there were detailed workings and calculations in terms of the negotiations, I will check, because one of the things I did not mention, which is why I sometimes feel very betrayed with this process, when I read what is (indistinct).

What we had tried and attempted to do was to separate the teams that would do evaluations because in the past in Transnet we had lots of leaks while we were evaluating the bidders who already know who was going to win, so in this case, all the teams would evaluate but none of them would see the other one's (indistinct).

So and what we did we also gave them, we asked them not
20 to use their computers so that because there is people who come and say maybe somebody hacked my computer and all that nonsense or it was (indistinct), so we issued them with computers to use.

So on all these things, even during negotiations we are using those computers, those workings should be in those computers because as I say Mr Laher after that, they went with Mr Anosh,

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consolidated the evaluation report and then based on the evaluation report then took the report from the TE discussions with the information they got in terms of fixing foreign exchange and escalation and then finalise the Business case to the Board.

MALE SPEAKER: I will tell you why I am asking the question, as I understand the PPM, it requires the (indistinct) negotiation should have a final report but which, in terms of process I would think falls under your... (intervenes)

CHAIRPERSON: Your (indistinct).

10 MALE SPEAKER: So the follow up question was that, did you see the report... (intervenes)

MR JIYANE: No, as I say, they said they had one report because the final number would include TE and all that aspects, remember between TFR and TE they had created Chinese walls, so they said, because I asked him to say, so what was the final number, what did you eventually agree on and he then came back and said, because of the negotiations that we were having with TE and so on and so on, it is information that should not be in the hands of TFR.

20 So what was the issue with regards to the (indistinct) but Mr Laher, from what I understand, even in my discussions with Mr Singh, was a person he was working with to finalise report together with the Treasury guys, if they say they... (intervenes)

CHAIRPERSON: On their behalf?

MR JIYANE: Sorry?

CHAIRPERSON: On their behalf?

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MR JIYANE: Remember he was a co-chair.

CHAIRPERSON: I mean Singh.

MR JIYANE: Singh, yes, so he could write the report and sign it off because if, I mean as a Chairperson who chaired the negotiations, except that I would have expected to have seen the final report.

CHAIRPERSON: Okay.

MR JIYANE: At least for the negotiations, but it did not happen because they input the numbers from TE and so on and so on which is why then they decided that they have many assistance from Group
10 and finalise the report, prepare the business case and then take it to them.

FEMALE SPEAKER: I am a bit confused, maybe I do not understand properly on foreign exchange, my mind is still stuck on forex, cost and all of that. If I understood you correctly at the beginning, you did mention that it is a preference of Transnet to have a rand value of the locomotives... (intervenes)

MR JIYANE: Ja.

FEMALE SPEAKER: Submitted by the bidder, amongst other is to sort of consider, to also include the forex costing and lock it at that
20 process for the duration of the project.

MR JIYANE: The fixed price.

FEMALE SPEAKER: The fixed price.

MR JIYANE: Ja.

FEMALE SPEAKER: Right, so that would have been done upon the submission of the bid, before we even got to... (intervenes)

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MR JIYANE: BAFA.

FEMALE SPEAKER: Yes, before we got to BAFA negotiations and so forth.

MR JIYANE: No, all the bidders, most of the bidders gave an indication, remember, the fixing of foreign exchange, you must know the date on which you are getting the award, because everything start from this point. So, until they gave indications and some would say we work with Transnet, there were various responses for the bidders.

It was a tall order to ask unless somebody knows exactly on
10 the date thereof and exactly how many, because we were clear on the RFP that, we even give them by sizes to say, you must tell us on the award so many locomotives to you and so on and so on, so there were lots of variables that bidders would have had to have for them, so if we had been clear to say, we are not splitting, we are going to award you on this date, then they would have given us a firm offer with regard to fixing of escalation and forex.

CHAIRPERSON: Okay.

FEMALE SPEAKER: Okay.

CHAIRPERSON: Mr Jiyane just two more last questions I think if I
20 was, unless the team wants to ask you something else. One, it is confinement, but before we go to confinement, we generally ask the questions relating to your qualifications as Mr Jiyane, because some of the things would be viewed within the context of your expertise, your skill, your academic background and the job that you do, what was your qualifications and academic background when you were

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CPO at TFR?

MR JIYANE: Okay, I am a teacher by profession.

CHAIRPERSON: Okay.

MR JIYANE: But I had a Bachelor of (indistinct) Administration...
(intervenes)

CHAIRPERSON: Sorry, teacher by profession means what?

MR JIYANE: I have a teaching diploma, I am a qualified teacher.

CHAIRPERSON: You have a teaching diploma, okay, sure.

MR JIYANE: And then I have a Bachelor of (Indistinct) Administration
10 in Supply Chain Management.

CHAIRPERSON: Okay, Bachelor of?

MR JIYANE: It is called BBA.

CHAIRPERSON: BBA.

MR JIYANE: In Supply Chain Management and I think I also have a
Masters at Business (Indistinct)... (intervenes)

MALE SPEAKER: At that time?

MR JIYANE: Ja.

CHAIRPERSON: At that time, in 2015, 2014?

MR JIYANE: Ja I think the MBA like what is it in 2008 or 2009.

20 CHAIRPERSON: Okay, so you are no longer a teacher?

MR JIYANE: Well I am still a teacher, they say you are, once a
teacher always a teacher.

CHAIRPERSON: Okay sure, so confinement.

MALE SPEAKER: Hundred (indistinct).

CHAIRPERSON: Ja, let us just go to the hundred, let us leave the

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(indistinct).

MALE SPEAKER: (Indistinct).

CHAIRPERSON: There is a confinement to hundred locos, ja, this is the last question, you can relax.

MR JIYANE: Okay.

CHAIRPERSON: Confinement to hundred locos, and this is something that was squarely under your competence as a Chief Procurement Officer at that time at TFR, right. So what happened with (indistinct)?

10 MR JIYANE: I do not know. Look, I remember, I do not know, there was a contract with Monsuie, I think even before I joined TFR... (intervenes)

CHAIRPERSON: Ja.

MR JIYANE: (Indistinct) and then there were, there was an engagement that there was a need to (indistinct) hundred and all, I think it was original 150 locomotives for the whole line and then because of optimisation and so on, excuse me, in terms of capital expenditure, then the number was reduced to a hundred.

20 So within TFR I know that we had agreed that we need to confine (indistinct) so they give us, it has got a 19A locomotive that we use on the coal line, it is a 26 (indistinct) and then there was a memo, I remember, we went to one, because as Chief Procurement Officer I had to go and explain to the, at least the Acquisitions and Disposals Committee on why we thinking this is the best procurement approach to take.

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It was not a very comfortable and nice meeting, and we came back with nothing, it was not approved because we were recommending that the confinement be to Monsuie and GE so that we could also take some of the (indistinct) on the coal line and move them to GFB because (inaudible), that is it.

That was, I did not write the original document because obviously there were lots of technical details that you needed to put in, Capital Programming team wrote the document, which I remember in one engagement they said they were going to (indistinct) so I said it
10 is fine because we were busy at the time (indistinct).

Then on the morning of the presentation to the board, or one of the things we were asked, I was saying, I feel betrayed because it, a process that you thought was going to be the future of how many tenders in Transnet seems to have had challenges because it looks like people used information from evaluations to give to the parties, I guess that is what I see in the papers.

The, we had requested when the GCE was asking me just initially, together with the Group CFO (indistinct) to say this process is the biggest tender in Transnet and what would be your preferences
20 and what do you suggest we do to make sure that you do not end up with these things being leaked and bidders having information so then I said (indistinct) laptops, the people must never have information, they must never use their modem sticks and so on and so on.

We locked documents in one central place, they go in and evaluate, leave everything, they even (indistinct) and so on and so

forth. So on the day of the, so one of the things I also asked him over and above that to say, we had on the 95 tender, one bidder who came boasting to one of the colleagues I used to work with to say, ja we know, we have seen your evaluation criteria, we know what was done during the evaluation of the 95 locomotives.

So I said to him, even the Board and the BADC are not very comfortable, they are still human beings like both of us, if we are worried about leaks, we must go and have the meetings with them on the same day and announce immediate after that so that these
10 people, the source trading, that (indistinct) happens on the basis of our tenders (indistinct), so he had agreed.

So we went to Carlton Centre that morning with the memos in draft obviously to be finalised (inaudible) to BADC and Board to award (indistinct). Mr Putter was never involved in the valuations, during negotiations he was working with, sorry, I am confusing myself, he was not involved in evaluations as (inaudible) the CFO, CPO, the person who was informed all the time of each and every step was both the Group CFO and (indistinct).

So when we got there that morning, obviously we start
20 engaging on the memos that we had drafted for the Board and the BADC, then Mr Singh tells me that they are working on a memo to confine a hundred locomotives, I said what changed, he said no, we are giving you locomotives, do you want locomotives (indistinct) I think so Mr Gama is here, I think (indistinct) still asking and he says ja, then you are confining but the GCE has decided.

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Okay, the GCE has decided that you are no longer (indistinct) based on what, he said ja, because at least it will pay (inaudible) tenders (inaudible) taken part in successful on these two tenders and we believe that they are the ones, instead of taking somebody and then the memo was (indistinct) and I heard Mr Putter saying he will send me the final memo so that I have one.

I am not sure if we actually, I think I did read it here afterwards, but so we went to that meeting, if I am not mistaken, Mr Gama did not even see the memo before the meeting, he had not
10 signed it, I remember they were not very happy with him not signing it, I do not know if they made him sign afterwards.

MALE SPEAKER: He says he was overseas at the time, on the...
(intervenes)

MR JIYANE: No, for that meeting, for that specific meeting he was there.

MALE SPEAKER: Okay.

MR JIYANE: It is the documents that were generated in December where he was overseas and early January and the letter that Mr Singh and Mr (Indistinct) signed instructing myself and the CFE
20 team on what we needed to do to finalise the evaluations and he was not there, and they asked him to just support it on his return but then already he had given them the instructions and a lot of papers, things have happened (indistinct).

MALE SPEAKER: But was there any performance issues with Monsuie, (indistinct) was there any performance with the performance

TRANSNET/cvj
T JIYANE

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of Monsuie?

MR JIYANE: At the time I was not aware of any.

CHAIRPERSON: Guys are you fine?

MALE SPEAKER: No I am fine.

CHAIRPERSON: Mr Jiyane thank you so much for coming, we appreciate the input that you have given us and the clarities and how that (indistinct) a long way in assisting us to finalise your report.

MR JIYANE: I thank you.

CHAIRPERSON: Ja, thank you.

10 [End of recording]

HEARING ADJOURNS

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that **as far as it is audible**, the
aforegoing is a true and correct transcript of the digitally recorded
proceedings in the matter of:

TRANSNET

and

THAMSANQA JIYANE

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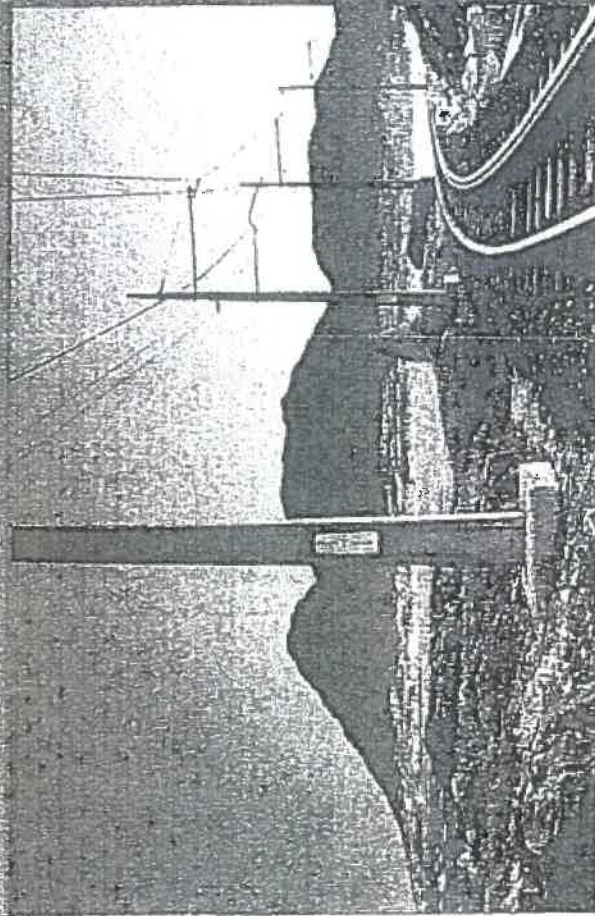
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APPENDIX 6

Appendix 6

High Level Review of TTE's Production Readiness for 1064 Locomotive Assembly

Draft for Discussion



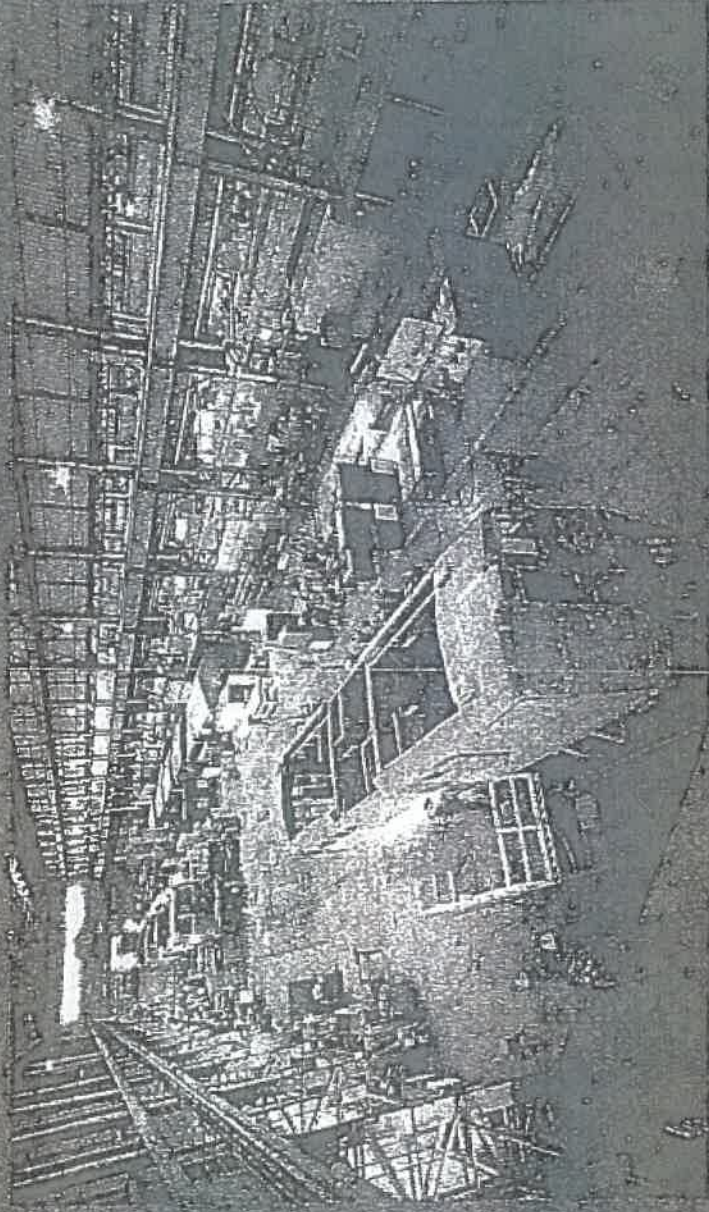
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21st February 2014

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Background

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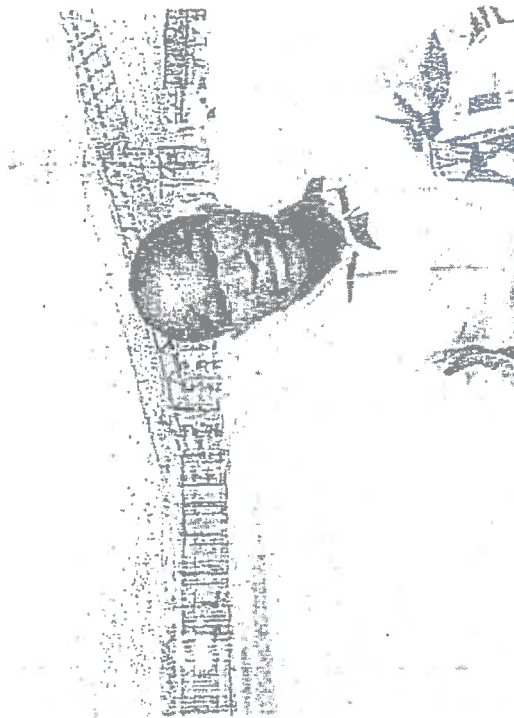
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Scope of work

The scope of the review was to assess the readiness of Transnet Engineering (TE) to start production of the 1064 Electric and Diesel Electric Locomotive order.

In assessing the operational readiness for the manufacture of the locomotives, PwC reviewed the following areas as well as identified the major risks associated with each review objective:

1. Review and approval of the locomotive designs
2. How fast can production be ramped up to full production rates?
3. What is the maximum production rate?
4. Where should the assemble lines be located?



Method applied during the operational readiness assessment

The overall objective of the review was to assess the operational readiness of TE by looking at the following key areas:

- The future anticipated assembly requirements of locomotives at Koedoespoort and Durban,
- Interviews with key personnel responsible for current and proposed locomotive manufacture,
- Observations from walk-throughs of the main assembly lines at Koedoespoort and the proposed assembly lines at Durban,
- TE's historical performance on recent CSR and GE contracts, and
- Observations based on PwC's experience.

The assessment was conducted primarily by reviewing operational information provided by the Transnet Engineering (TE) Management team, conducting interviews with key operations personnel, engagements with Transnet Freight Rail (TFR) and observations from conducting site inspections.

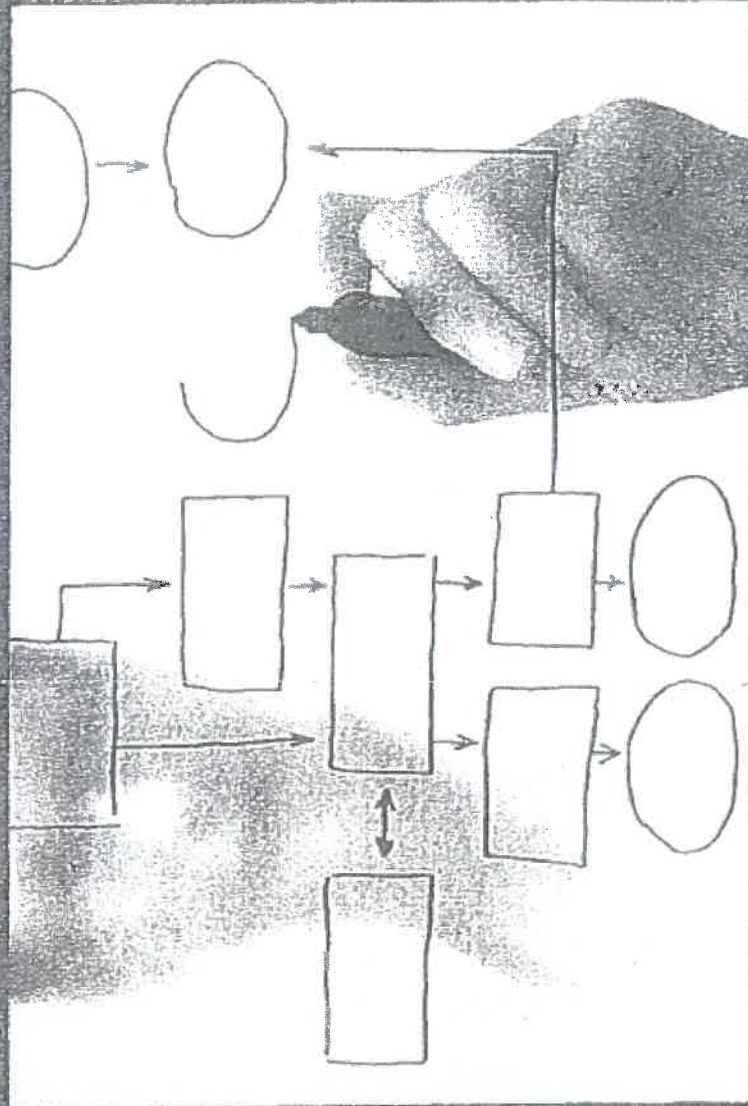
Reliance was placed on the written and verbal information provided, most of which could not be verified due to time constraints given the need to report in time for the Original Equipment Manufacturer (OEM) negotiations process.

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Review and approval of locomotive designs

2



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What does the activity duration mean? Assumed, nominal, etc.???

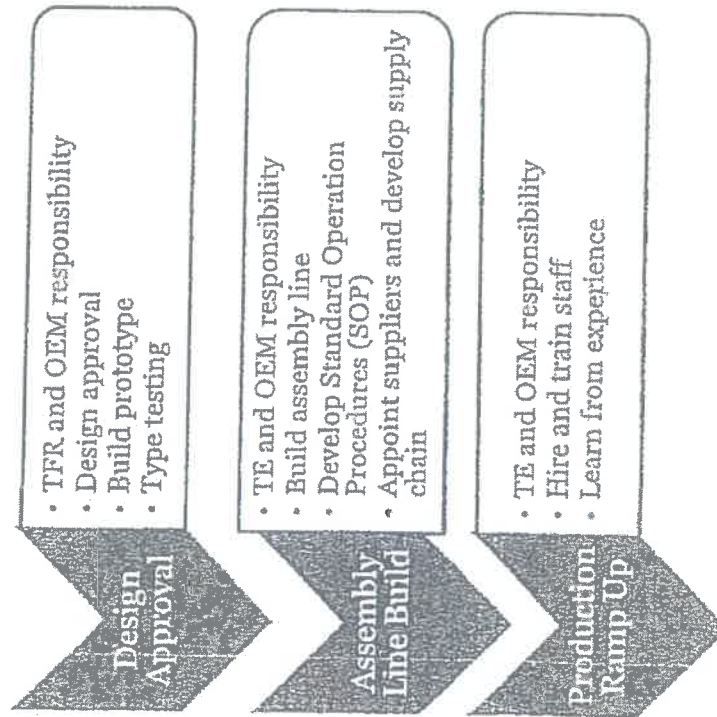
Three separate phases in production ramp up

There are primarily two milestones which must be met prior to TE ramping up production of the locomotives.

The locomotive designs must be finalised and a design freeze be declared by TFR and the OEM. Once the designs are approved then TE is in a position to assess what the requirements for setting up an assembly line are.

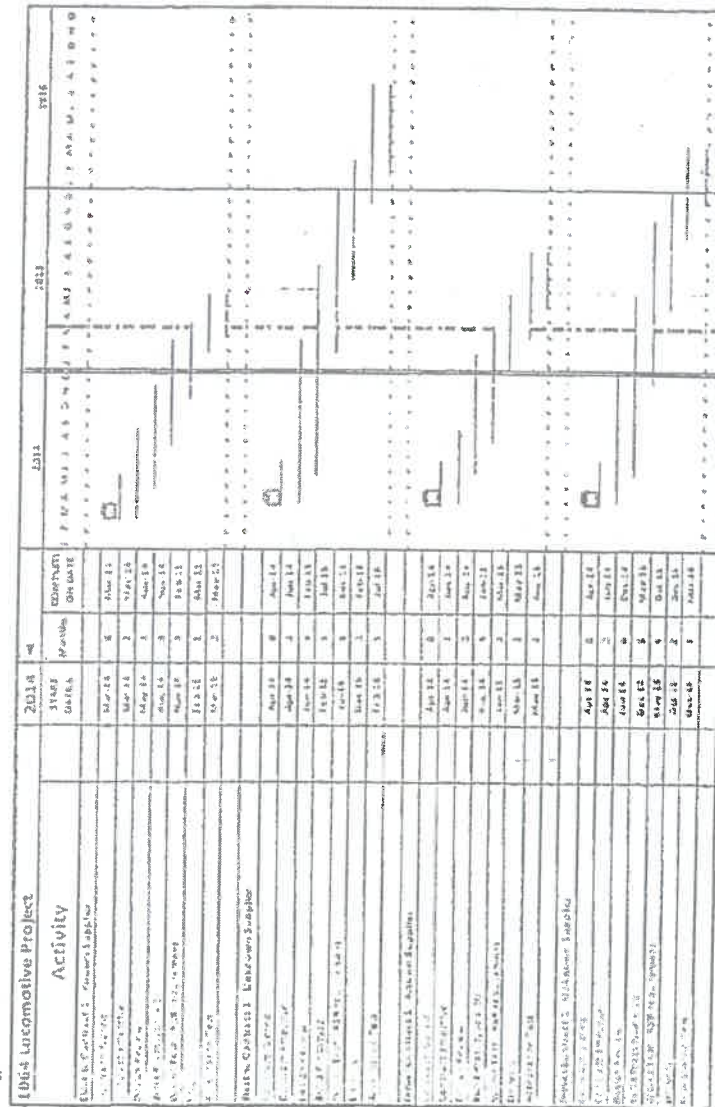
TE and the OEMs are jointly responsible for setting up the assembly line for the locomotives. Once set-up, standard operation procedures (SOP) are finalised in preparation for production by either TE and the OEM together with the accredited third party suppliers.

Once the production line is defined and set-up, TE is deemed ready to initiate the production ramp up process.



TFR's Proposed Design Phase Timeline

The following chart depicts the planned design timeline for the four OEMs that have been shortlisted. It is observed that the timeline is shorter for the OEMs which TFR and TE have an existing working relationship with. The timeline for the two new OEMs have been estimated based on historical experience.



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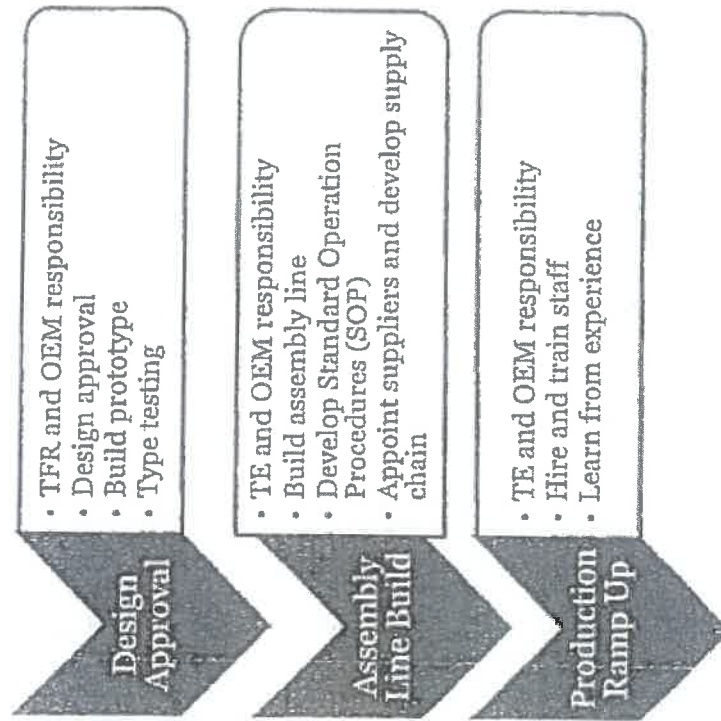
Three separate phases in production ramp up

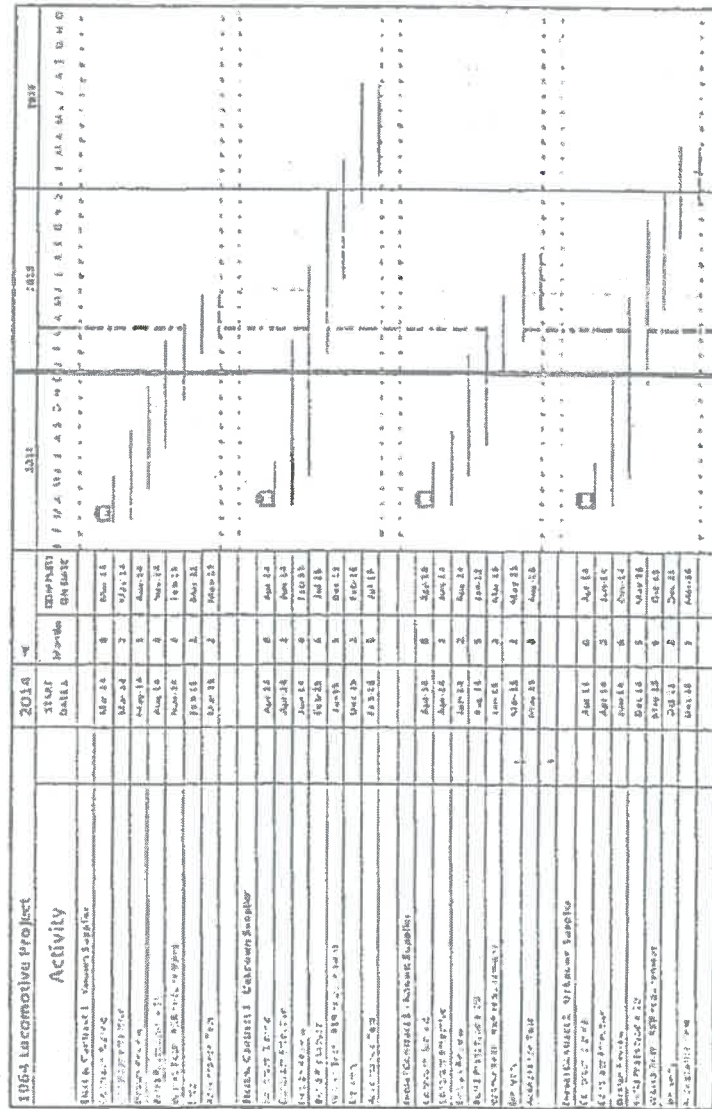
There are primarily two milestones which must be met prior to TE ramping up production of the locomotives.

The locomotive designs must be finalised and a design freeze be declared by TFR and the OEM. Once the designs are approved then TE is in a position to assess what the requirements for setting up an assembly line are.

TE and the OEMs are jointly responsible for setting up the assembly line for the locomotives. Once set-up, standard operation procedures (SOP) are finalised in preparation for production by either TE and the OEM together with the accredited third party suppliers.

Once the production line is defined and set-up, TE is deemed ready to initiate the production ramp up process.

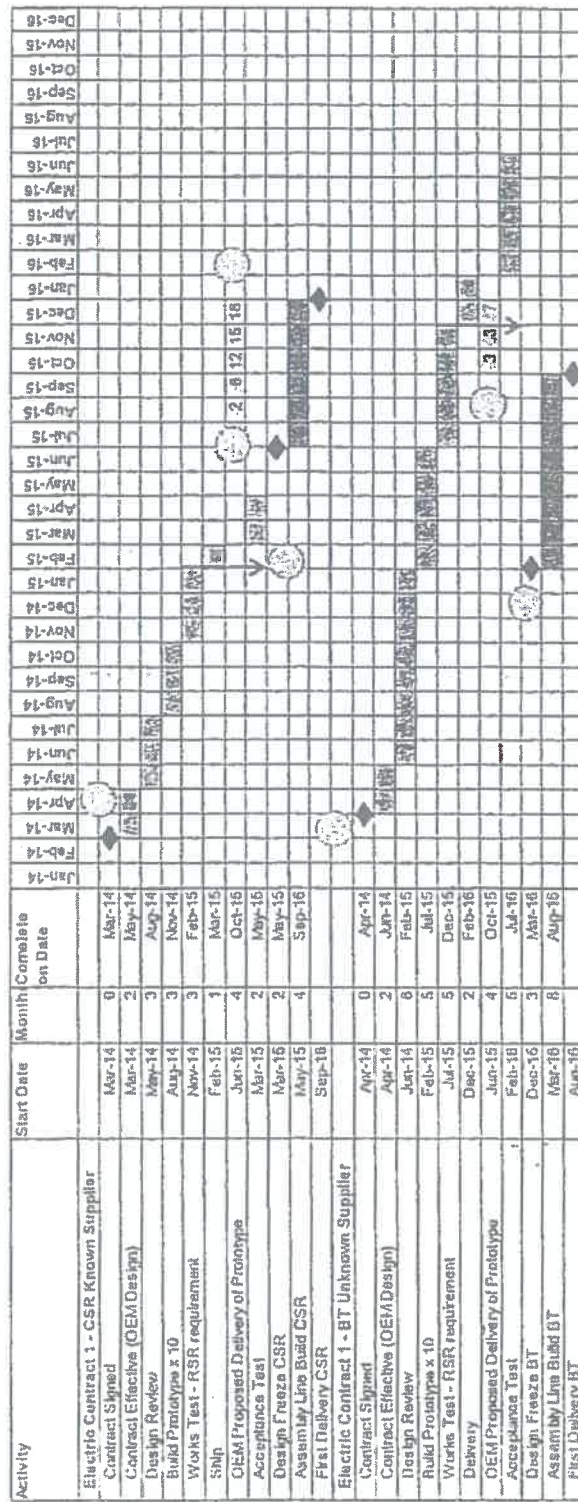


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There is misalignment between OEM design & delivery schedule and TFR design capability

The following is the outcome of our assessment of the design readiness for the electric locomotives. It was observed during the review that there are areas of concern which TE needs to manage in order to meet delivery schedules. These issues are depicted on the time below and the details articulated in the following slides.



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The date stated in the columns vs. time line do not match for the design freeze rows.

Does set up include assembly of loco? (Delivery milestone at end of set up time, first delivery by OEM)

Misalignment between Electric OEM design & delivery schedule and TFR design schedule

The following are issues that were identified during the review of the realisation of the electric locomotive design requirements in preparation for the finalisation and approval of the locomotive designs, which are plotted on the timeline in the timeline on the previous slide:

1. **Different assumed contract signing dates** - CSR schedule is based on a February 2014 contract signing date. TFR schedule is based on a 1 March 2014 contract signing date.
2. **Different prototype delivery dates** - CSR Prototype delivery is 5 Months after TFR's planned prototype delivery date. TFR believe the design phase will be much quicker as they already have experience with this supplier.
3. **Reduced Local Content** - CSR has proposed to deliver the first 45 locos as factory prototypes fully assembled in China. This large number of locos will reduce total contract local content percentages.
4. **TFR can reduce design approval time** - TFR believe they can approve design and works testing approximately 5 months earlier based on prior experience with CSR. This is provided that there are no issues found during works testing which require design modifications.

Misalignment between Electric OEM design & delivery schedule and TFR design schedule (Cont.)

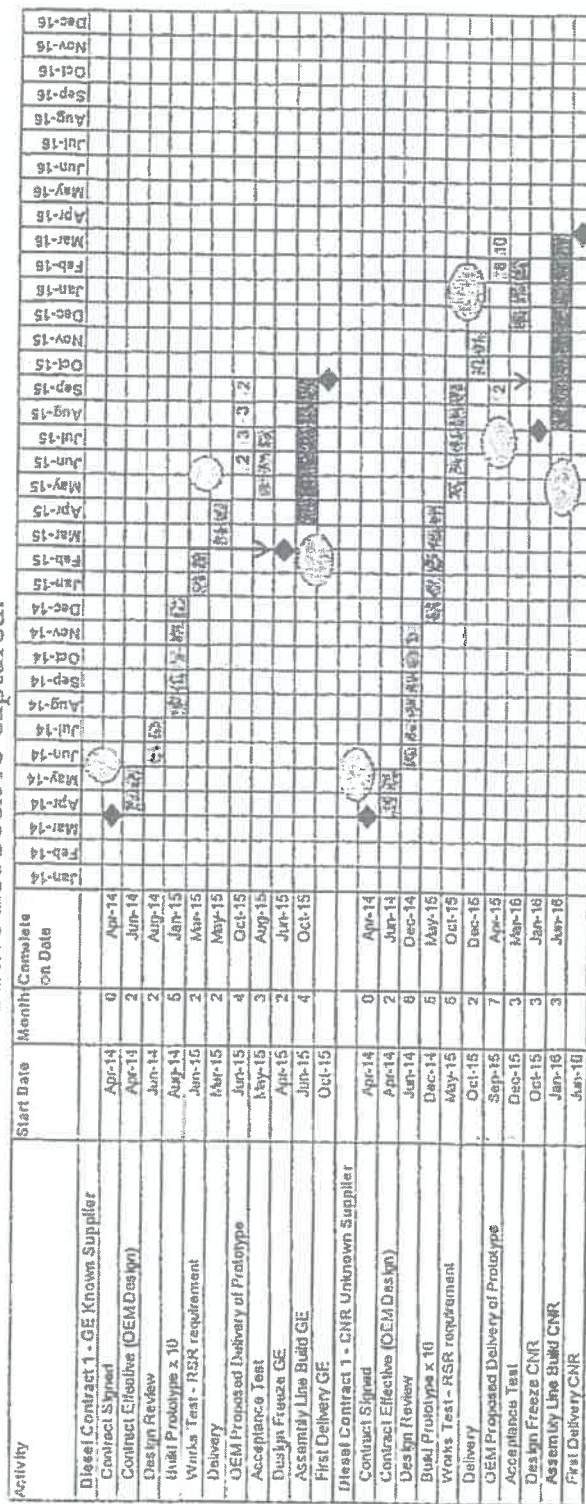
5. Different assumed contract signing dates - BT schedule is based on a February 2014 contract signing date. TFR schedule is based on a 1 April 2014 contract signing date.
6. BT can deliver prototypes ahead of the TFR schedule - BT's delivery schedule has the delivery of the prototypes 4 months ahead of TFR schedule. This is provided that there are no issues found during works testing which require design modifications.
7. Design freeze must occur 8 weeks prior to prototype delivery - BT's prototypes will be built locally in South Africa. To allow for TE's 8 week assembly line set up period the design freeze needs to occur by Feb 2015

TE is making the initial prototypes. It is not clear how TE will develop SOPs (Standard Operating Procedures) if they have no assembly line to copy.

BT's prototype delivery schedule shows first delivery of 3 locos. This will require TE to assemble 3 locos in the first month of setting up the assembly line.

There is misalignment between OEM design & delivery schedule and TFR design capability

The following is the outcome of our assessment of the design readiness for the diesel electric locomotives. It was observed during the review that there are areas of concern which TE needs to manage in order to meet delivery schedules. These issues are depicted on the timeline below and the details articulated in the following slides. Note that some of the issues are similar to the ones identified for the electric locomotive. These have not been re-captured.



TFR and OEM responsibility

TE and OEM responsibility

Timeline

Issue reference number

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Misalignment between Electric OEM design & delivery schedule and TFR design schedule

The following are additional issues (in addition to those shown on slides 11&12) that were identified during the review of the realisation of the diesel electric locomotive design requirements in preparation for the finalisation and approval of the locomotive designs, which are plotted on the timeline in the previous slide:

8. Different assumed contract signing dates - GE schedule is based on a February 2014 contract signing date. TFR's schedule is based on a 1 April 2014 contract signing date.
9. Different prototype delivery dates - GE Prototype delivery is 1 month after TFR's planned prototype delivery date. TFR believe the design phase will be quicker as they already have experience dealing with this supplier.
10. Reduced design cycle - TFR are proposing a 1 month reduction in the design phase when compared to GE's proposed design time. This is provided that there are no issues found during works testing which required design modifications.
11. Different assumed contract signing dates - CNR schedule is based on a February 2014 contract signing date. TFR's schedule is based on a 1 April 2014 contract signing date.
12. Different prototype delivery dates - CNR's Prototype delivery is 3 month ahead of TFR's planned prototype delivery date. TFR have reduced the time as they do not have the resources to cope with additional work load.
13. Delay in Prototype delivery - CNR has proposed to initially deliver 2 prototypes in September 2016. Then there is a delay of 5 months before the next 18 prototypes are delivered. We are unclear why such a delivery schedule is being proposed.
14. TE needs an earlier design freeze - TE will need design freeze to occur two months ahead of TFR delivery schedule if they are to meet CNR's delivery schedule and ramp up production after the last prototype has been delivered.

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TFR's design phase is not aligned to OEM's design phase timeline

TFR has proposed a more stringent timeline for GE and CSR which might be at risk due to limited availability of capable technical professionals that can test and approve the prototype from OEMs.

- TFR has proposed a reduced time frame for delivery of 1st prototype for GE and CSR. TFR believes this can be achieved because of their recent experience working with these OEMs.
- TFR has limited technical people capable of approving and testing OEM products. To smooth the workload TFR is proposing to pull in the approval processes for the two known OEMs - GE and CSR and push out the approval process for the two unknown OEM's BT and CNR.

Time from contract start to delivery of 1st prototype

OEM	OEM Timing	TFR Timing	Difference
CSR	17 Months	12 Months	-4 Months
BT	18 Months	22 Months	4 Months
GE	15 Months	13 Months	- 2 Months
CNR	18 Months	20 Months	2 Months

TFR ramp up time can be reduced slightly with significant increased risk

The currently proposed TFR ramp up period for GE and CSR is ambitious given the insufficient availability of technically skilled professionals who can complete the design work for all four OEMs.

- The current proposed schedule from TFR is already considered quite aggressive for the known OEMs (CSR and GE). The TFR proposed design schedules for both these OEM's have been reduced.
- It is considered high risk to take the shortest design period from either TFR or the OEM's. TFR do not have sufficient skills to complete all four design phases simultaneously and if forced to do so will significantly increase risk. Errors made in the design phase will have long lasting impacts to the loco performance and life time costs.

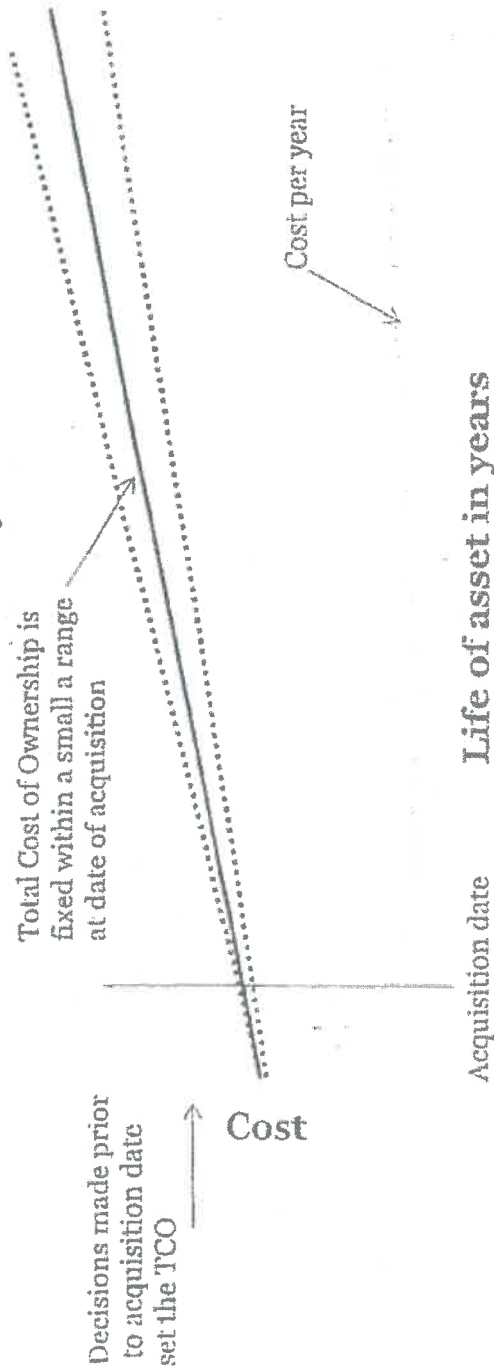
OEM	OEM Timing	Low Risk	Medium Risk (TFR proposed)	High Risk
CSR	17 Months	17 Months	12 Months	12 Month
BT	18 Months	22 Months	22 Months	18 Months
GE	15 Months	15 Months	13 Months	13 Months
CNR	18 Months	20 Months	20 Months	18 Months

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Key considerations given the aggressive design timelines

- Care should be taken not to reduce the design timelines beyond critical duration. Errors or omissions in design phase can have a significantly effects on the total cost of ownership (TCO) of an asset.
- The following guideline needs to be borne in mind - That although only about 20% of the TCO of an asset is spent at the time of the acquisition of the asset, 80% of an asset's TCO is *locked* in at this time.

Asset Life Cycle Cost



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What is the purpose of this slide?

Answer: 1/3/2014

TE's design phase is aligned to OEM's design phase timeline

The forecast time to the delivery of the first locomotive assembled by TE is in line with the OEMs target:

- Most OEMs have not specifically provided details of the duration from design freeze to the delivery of the first locomotive assembled by TE.
- We have assumed design freeze occurs at the completion of Type testing.

Time from design freeze until first TE delivery

OEM	OEM Timing	TE Timing	Difference
CSR	~6 Months	6 Months	0 Months
BT	~8 Months	8 Months	0 Months
GE	6 Months	6 Months	0 Months
CNR	~8 Months	8 Months	0 Months

TE ramp up time can be reduced slightly with increased risk

TE targets a ramp-up period between six and eight months in preparation for the assembly of the first locomotive:

- TE's proposed duration from design freeze to first TE delivery is already considered aggressive based on previous experience

OEM	Time from design freeze until first TE delivery			
	OEM Timing	Low Risk	Medium Risk	High Risk
CSR	~6 Months	7 Months	6 Months	5 Month
BT	~8 Months	10 Months	8 Months	7 Months
GE	6 Months	7 Months	6 Months	5 Months
CNR	~8 Months	10 Months	8 Months	7 Months

Locomotive Design - Risk Summary

The following risk assessment was performed for the building of the assembly line. Mitigation actions are proposed which should be considered for the medium to high risk areas. Low risks should be monitored so that they do not escalate.

#	Risk	Impact*	Likelihood of Occurrence*	Risk Score
1	TFR required to make approval short cuts which impact on the long term benefits of new locomotives	2	2	4
2	Errors made in the design phase will have long term effects on locomotive performance and total cost of the locomotive		2	
3	TFR has limited staff qualified to conduct design reviews and performance testing			
4	Schedule dates for CSR are ambitious/aggressive with an estimated 3 months assumed for design review and 4 months for assembly line set-up time compared to 6 months of actual set-up time.		2	
5	Misalignment on OEM and TFR design signing dates.			
6	TFR has an ambitious/stringent timeline for the delivery of the prototype (CSR and GFR).	2	2	4
		2	2	4

* 1 = Low, 2 = Medium, 3 = High

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Locomotive Design - Risk Assessment and Mitigation Strategies

The following potential risks were identified on the accelerated completion of the design phase for TFR. Mitigation strategies are proposed to reduce the likelihood of their occurrence:

#	Risk	Impact	Likelihood of Occurrence	Mitigation Strategy
1	TFR required to make approval short cuts which impact on the long term benefits of new locomotives	Medium	Medium	<ul style="list-style-type: none"> Identify and complete tasks which can be completed in advance to design freeze. Include a random and /or spot check quality control step Seek regular feedback on progress of design freeze status and adjust assembly line build programs as required
2	Errors made in the design phase may have long term effects on locomotive performance and total cost of the locomotive	High	Medium	<ul style="list-style-type: none"> Be very considerate when reducing design phase timeline. Seek other areas to bring locomotive delivery in earlier in preference to pressurising design phase
3	TFR has limited staff qualified to conduct design reviews and performance testing	High	High	<ul style="list-style-type: none"> Hirer industry experts to assist in the design review and performance testing Spread design reviews and performance testing over time so that they do not occur simultaneously Investigate opportunity to second TE engineers to assist in the design phase of the project

Locomotive Design - Risk Assessment and Mitigation Strategies

Risk	Impact	Likelihood of Occurrence	Mitigation Strategy
4 Schedule dates for CSR are ambitious/aggressive with an estimated 3 months assumed for design review and 4 months for assembly line set-up time compared to 6 months of actual set-up time.	High	Medium	<ul style="list-style-type: none"> Discuss the re-adjustment of the CSR target dates to realistic timelines with the OEM. Identify the activities that could be brought forward to improve the likelihood of achieving the timeline. Identify non value adding activities that could be dropped to reduce the time required to complete the planned activities.
5 Misalignment on OEM and TFR design signing dates.	Medium	Medium	<ul style="list-style-type: none"> Identify the activities on the TFR side that could be brought forward to improve the likelihood of achieving the OEM timelines. Review the TFR design signing process to identify which activities could be shortened to enable meeting the target OEM sign date.
6 TFR has an ambitious/stringent timeline for the delivery of the prototype (CSR and GE).	Medium	Medium	<ul style="list-style-type: none"> Identify areas of improvement from the previous work done with CSR and GE to enable the achievement of the target delivery dates. Identify which activities could be brought forward to improve the likelihood of achieving the tight delivery schedule.

Recommendations – Design review and approval

The following mitigation recommendations are made to address the medium and high risk areas:

Insufficient design approvals due to lack of resources

- Contract rail industry specialists to assist with the design approval and prototype testing
- TFR engineers to brainstorm ways of reducing design approval and prototype testing phases

Design flaws due to time constraints adversely affect locomotive performance and total cost of the locomotives

- Contract rail engineers to assist with the design activities
- Review the design process to identify activities that could be reduced in scope or sub-contracted to improve design turnaround time
- Prioritise designs to reduce batches that must receive 100% design review and approval

Insufficient availability of qualified staff to conduct design reviews and performance testing

- Contract rail engineers to assist with the design activities
- Second TE Engineers to assist in this phase of the project

Recommendations – Design review and approval

The following mitigation recommendations are made to address the medium and high risk areas:

CSR's schedule is aggressive / ambitious

- Discuss the possibility of increasing the timelines for CSR in line with the other OEMs (BT & CNR)
- Review and prioritise design activities for CSR to focus on critical areas.

Misalignment on OEM and TFR design signing dates

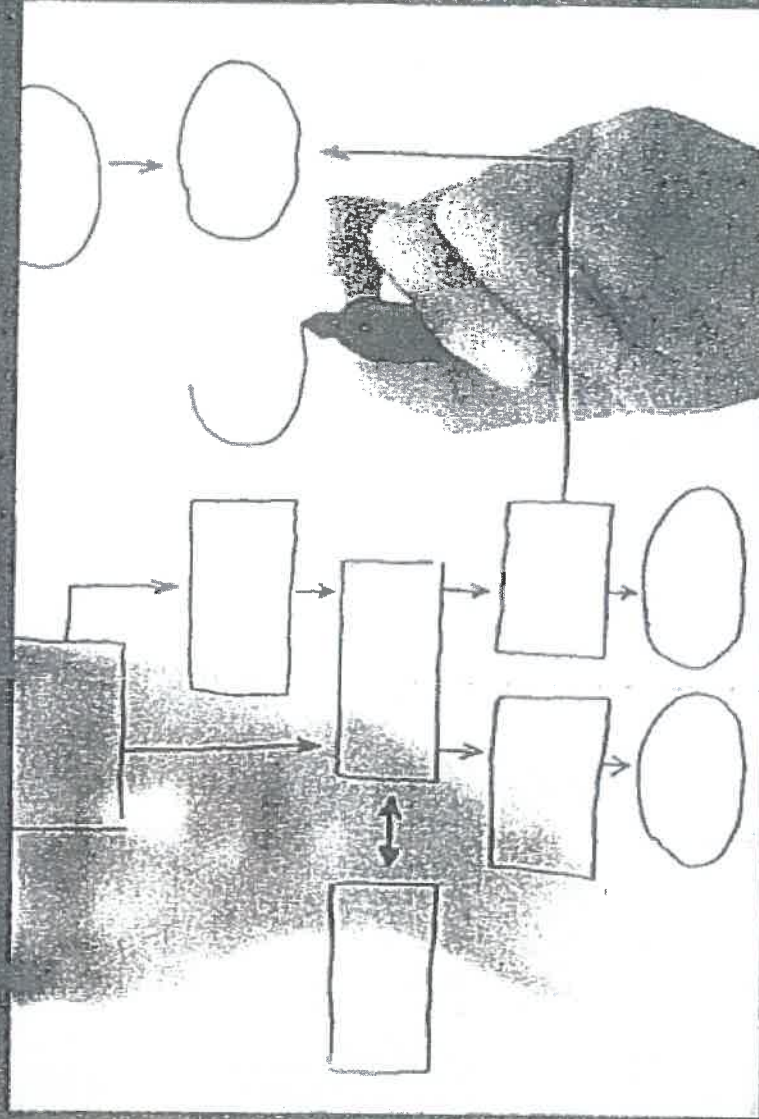
- Review the design signing dates and impact to identify opportunities to align signing dates.
- Review to identify design activities that could be brought forward to achieve the design signing dates.

TFR has an ambitious / stringent timeline for the delivery of the prototype (CSR and GE)

- Review the possibility to align the CSR and GE timelines for the delivery of the prototypes with those for CNR and BT.
- Prioritise and rationalise the OEMs to balance high and low intensity OEMs in order to reduce work load.

2

How fast can full production be ramped up?



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Assessment Areas for Assembly Line Ramp-up

The overall objective in evaluating this assembly line build up was to assess how far TE is in addressing the minimum requirements for preparing to assemble the locomotives. The following were noted during our review:

Assembly line

Currently TE operates an assembly line for Diesel and Electric locomotives which are similar to the locomotives planned for the 1064 transaction. The understanding from the operation of these two production lines will go a long way in helping to set-up assembly lines for General Electric (Diesel loco) and China South Railway (Electric loco).

Although TE does not currently have experience with Bombardier Transportation (Electric loco) and China North Railway (Diesel Loco), the approach used to set-up the assembly lines for GE and CSR will be adopted for BT and CNR.

Development of standard operating procedures (SOP)

Standard operating procedures have been developed for the Diesel Loco (Class 43) which is similar to the planned Class 44 as well as for the 20E Electric Loco which is similar to the planned 21E.

However, these will not be fully adaptable and thus will have to be reviewed after design freeze and with learning from the manufacturing of the prototype locomotives.

Supplier development

Supplier development for the OEMs and TE are at different stages with some work still to be finalised. TE has suppliers which they have been working with on the Class 43 and 20E locomotives. These are going to be complemented with the suppliers that have been identified and/or used, to some extent, by the OEMs.

TE has demonstrated an on-time delivery performance

The following table of results provides a summary of the time it took TE to deliver the first locomotives after design freeze. Projected target dates were extrapolated for the 1064 locomotives consignment.

Milestone	Responsible	Previous TE projects			Projection			
		EMD	GE	CSR	GE	CSR	CNR	BT
Contract sign		01-Mar-07	01-Dec-09	01-Dec-12	01-Apr-14	01-Apr-14	01-Apr-14	01-Apr-14
Design freeze	OEM TFR	01-Jan-09	01-Jan-11	01-Nov-13	01-Apr-15	01-Mar-15	01-Oct-15	01-Dec-15
Proto delivery	OEM	01-Mar-09	01-Feb-11	01-Dec-13	01-Jun-15	01-May-15	01-Jan-16	01-Mar-16
First TE Delivery	TE OEM	01-Aug-09	01-Aug-11	01-May-14	01-Oct-15	01-Sep-15	01-Jun-16	01-Aug-16
Times from Contract sign (Months)								
Design freeze		22	13	11	12	11	18	20
Proto delivery		24	14	12	14	13	21	23
First TE Delivery		29	20	17	18	17	26	28
Design freeze to TE delivery		7	7	6	6	6	8	8

- With the EMD, GE 43 Class and CSR locomotives, TE has ramped up for the delivery of their first locally assembled locomotives to 7 months from Design Freeze
- TE propose that they can ramp up for delivery of the first locally assembled locomotives for CSR and GE within 6 months from design freeze. This is because they already have experience dealing with these OEMs.
- TE propose that they are able to ramp up for delivery of the first locally assembled locomotives for BT and CNR within 8 months of design freeze.

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TE can reduce assembly line ramp up duration through several means

TE ramp ups are already considered aggressive and of medium risk

Further reductions in ramp up could be achieved through:

- Importing knock down kits earlier and over a longer time period to give time for the identification and contracting of local suppliers,
- Identify and complete tasks that can be completed ahead of design freeze,
- Detailed planning and project management of assembly line preparation well in advance and prior to design freeze,
- Ensuring supply chain and planned recruitment are initiated early in the process and well before design freeze, and
- Seeking OEM input in the assembly line preparation and set up well before design freeze.

TE Assembly Line Set-up - Risk Summary

The following risk assessment was performed for setting up of the assembly line. Mitigation actions are proposed which should be considered for the medium to high risk areas. Low risks should be monitored so that they do not escalate.

#	Risk	Impact*	Likelihood of Occurrence*	Risk Score
1	Long lead times in supplier contracting process delays commencement of locomotives assembly	2	2	4
2	Setting up of 4 OEM assembly lines simultaneously will spread critical resources and delay delivery schedule			
3	Transnet Engineering attempts to manufacture as much scope as possible within TE as opposed to looking for opportunities to outsource products to third parties local suppliers	2	2	4
4	Limited number of experienced locomotive assemble managers			
5	TE do not have the necessary project management skills and experience to manage complex projects			
6	Quality of assembly of product may result in potential bottleneck at testing stations due to quality of assembly	2		
7	Allow adequate time for the translation of drawings (especially Chinese)	2	2	4
8	TE cannot develop their Standard Operating Procedures (SOP) for ET through observation as usually the case. (ET plan to assemble prototypes at TE)	2	2	4

* 1 = Low, 2 = Medium, 3 = High

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TE Assembly Line Set-up - Risk Assessment & Mitigation

#	Risk	Impact	Likelihood of Occurrence	Mitigation Strategy
1	Long lead times in supplier contracting process delays commencement of locomotives assembly	High	Medium	<ul style="list-style-type: none"> Included a designated supply chain and procurement personnel in each production line team to ensure open communication and accountability Share future demand requirements with supply base to allow supplier preparation. Working with suppliers (e.g. Abardare Cables) to upgrade product specifications to fit with new design specifications Stagger the phase out of knock down kits from the OEM to provide increased timeline Commence contracting process prior to final design freeze on components. Obtain "shipping list" upon shipping date and feed to MRP system to identify potential gaps to be addressed
2	Setting up of 4 OEM assembly lines simultaneously will spread critical resources and delay delivery schedule	High	High	<ul style="list-style-type: none"> Set up 4 separate project teams responsible for readying each production line. Appoint a strong steering committee with critical skills to review project progress and advise further actions on regular basis Utilise critical resources in an overseeing and directive role as opposed to hands on role. Review opportunity to stagger the commencement of each production line to focus of critical resources (with lines in Pretoria commencing first, followed by the Durban lines) Agree an increased number of OEM direct supply locos to allow a longer time to set up each production line

TE Assembly Line Set-up - Risk Assessment & Mitigation

Risk	Impact	Likelihood of Occurrence	Mitigation Strategy
3 Transnet Engineering attempts to manufacture as much scope as possible within TE as opposed to looking for opportunities to outsource products to third parties local suppliers	Medium	Medium	<ul style="list-style-type: none"> Review the performance measures of TE business units to encourage sharing of assets for the benefit of TE as a whole Critically review each component manufactured internally for opportunities to outsource the work to third party local suppliers Seek opportunities to centralise the manufacture of components across all four production lines to reduce duplicating complex sub-component processes.
4 Limited number of experienced locumative assemble managers	High	High	<ul style="list-style-type: none"> Advertise in the market well in advance to identify potential candidates Approach OEMs to second senior staff for duration of contract Identify internal candidates now. Develop an training program which commences now and builds up until project commencement.
5 Poor workmanship when assembling components may result in bottlenecks at testing stations	Medium	High	<ul style="list-style-type: none"> Manage the workmanship by continuous training as well as a full time QA representative per line Ensure correct number and quality of product available in advance through MRP system to reduce number of snags as a result of "missing components"

TE Assembly Line Set-up - Risk Assessment & Mitigation

#	Risk	Impact	Likelihood of Occurrence	Mitigation Strategy
6	Inadequate time reserved for the translation of design drawings (especially Chinese)	Medium	Medium	<ul style="list-style-type: none"> Ensure drawings received is understood by key personnel, to transfer knowledge to team members and suppliers Understanding of drawings and unusual spec's to be created during training at OEM's and early conversion to TE system Working with OEM's on understanding the full scope of changes to be incorporated after initial design, before commencement of first built With supply of knock down kits, actual samples of parts to be delivered locally will be available for improved training and adherence to standards
7	TE do not have sufficient project management skills and experience to manage complex projects	High	High	<ul style="list-style-type: none"> Utilise experienced and skilled project managers to manage the process Identify an employ an experienced project manager if they can't be found internally Implement a regular balanced project reporting model Appoint a steering committee comprising of all key stakeholder groups
8	TE cannot develop their Standard Operating Procedures (SOP) for BT through observation as usually the case. (BT plan to assemble prototypes at TE)	Medium	Medium	<ul style="list-style-type: none"> Understand how BT have handles this knowledge transfer in the past. Ensure the issue is understood by the BT/TE project team and a mitigation strategy is developed

Recommendations – Assembly Line Ramp-Up

The following mitigation recommendations are made to address the medium and high risk areas:

Long lead times in supplier accreditation and contracting process

- Review the supplier accreditation and contracting process to identify opportunities to shorten/fast-track the process.
- Prioritise the suppliers into tiers based on the order of critical components for the accreditation process.

Critical resources stretched due to setting up of 4 OEM assembly lines simultaneously

- Identify the type of critical resources that must be brought in to complete the ramp up process.
- Identify critical areas that must be resourced with contract specialists and initiate the recruitment process as soon as TFR/OEMs contracts are signed.

TE not passing the non-strategic scope to local suppliers

- Evaluate which of the non-strategic scope of supply can be outsourced.
- Evaluate the available scope of supply to identify which areas could be outsourced or co-sourced.
- TE to develop a roll-out programme based on criticality of components and reliability of suppliers.

Recommendations – Assembly Line Ramp-Up

The following recommendations are made to address the mitigation actions proposed to address the medium and high risk areas:

Limited number of experienced locomotive assemble managers

Poor workmanship during assembly of components may result in bottlenecks at the testing stations

In adequate time provided for translation of design drawings (Chinese)

- Contract rail engineers to assist with the design activities.
- Evaluate and stagger the activities for ramp-up process to balance the available personnel.
- Match experienced engineers with novice engineers to reduce the workload while maintaining quality
- Increase the number of qualified artisans and match experienced artisans with the novice to increase the pool of effective and productive workforce.
- Introduce quality circles to identify and share performance improvement techniques.
- Introduce quality spot checks to drive quality improvement and knowledge transfer.
- Procure the skills of Chinese Engineers from CNR/CSR and team with local engineers to assist with translation.
- Explore the use of language translation tools for technical environments to complete custom work.

Recommendations – Assembly Line Ramp-Up

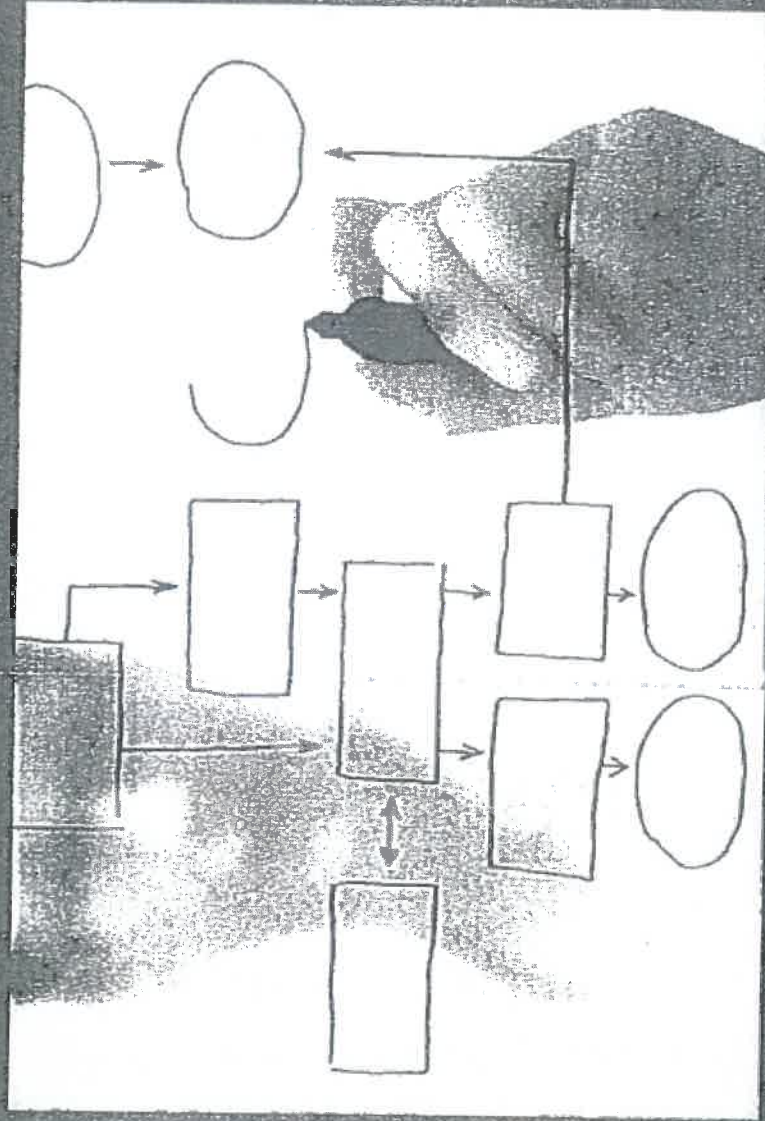
The following recommendations are made to address the mitigation actions proposed to address the medium and high risk areas:

TE do not have sufficient project management skills and experience to manage complex projects

TE needs to adopt a different approach to develop SOPs for BT

- TE to appoint a program manager with experience of similar sized and complexity projects.
- Contract rail engineers to assist with the production set-up and ramp-up activities.
- Empower experienced technicians to carry out routine project risk and monitoring activities.
- Second experienced engineers to work with BT for the development of SOPs.
- TE to procure the SOPs from BT including time for the customisation to suite the TE operations.
- TE to negotiate their requirements to develop SOPs with BT which includes exposure to BT's operations.

What is the maximum production rate?



TE can produce 10 locomotive per month per assembly line

- In February this year TE agreed to produce the CSR designed E20 locomotives at a rate of 10 locomotives per month.
- TE has previously produced a up to a maximum of 12 GE43 Class locomotive per month.
- Given time and effort TE may be able to increase production up to 15 locos per month but this may well come at increased cost per loco, and as yet is an untested production rate.

	Low Risk		Medium Risk		High Risk	
Locos per month per line	10	15	12	18	18	24
Locos per month all lines	40	60	50	72	72	92
Work hours per week	40 (1 shift)	80 (2 shift)	60 (1.5 shifts)	80+ (2.5 shifts)	80+ (2.5 shifts)	168 (3 shifts)

Assumptions used in developing delivery schedules

An evaluation of TE's throughput for low, medium and high risk was done using the delivery schedules of the four OEMs given the following assumptions:

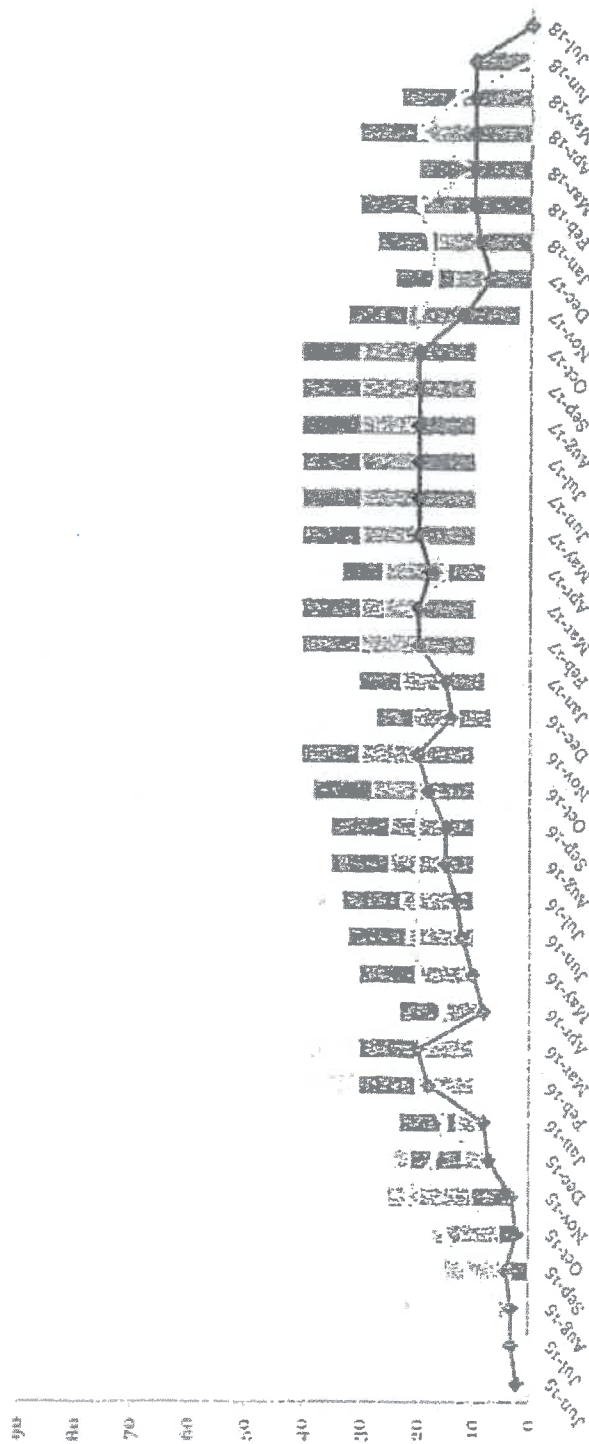
- Delivery schedules are based on OEM's proposed delivery schedules and production ramp ups,
- TFR design constraint have not been considered,
- TE will commence delivery of locally assembled locomotives in the month following the delivery of the final prototype for that OEM, and
- December and January production is at 50% capacity due to seasonal shut down.

Low Risk: 40 Locos per month (10 per OEM)

Assumptions

- Ramp up 1, 2, 4, 8, 10
- Halve production over December and January

GE
 CNR Prototype
 CSR
 BT
 Total Electric
 Total Diesel



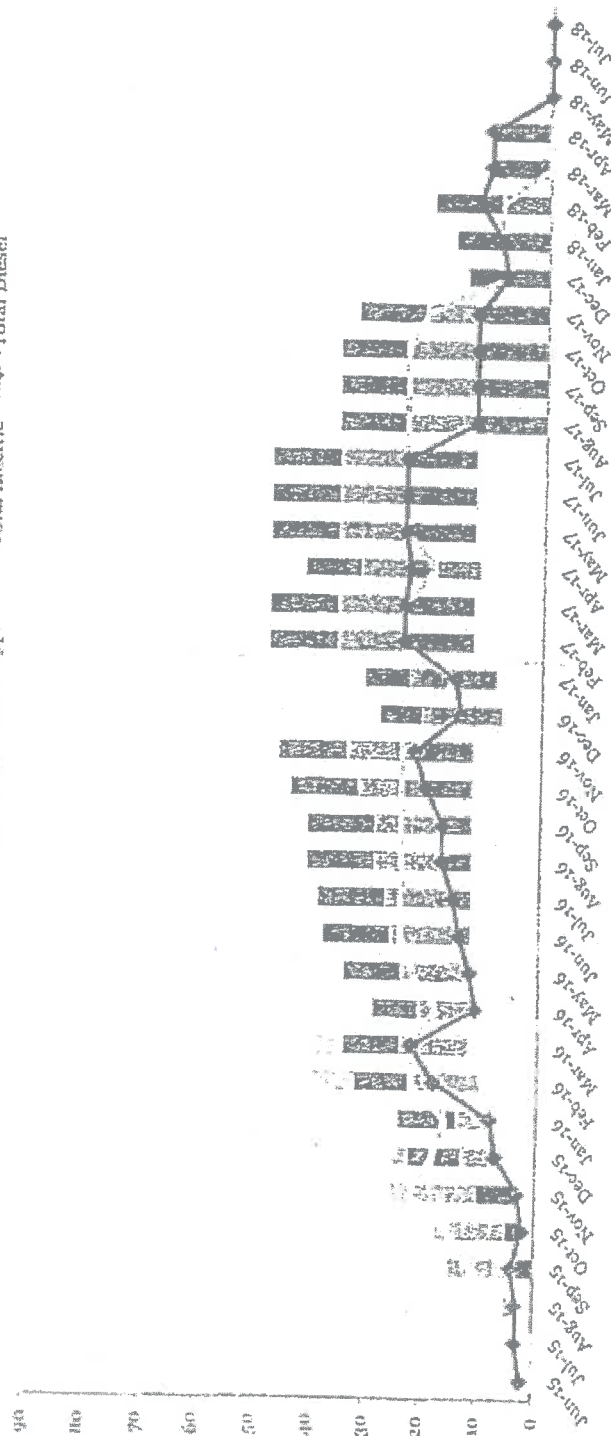
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Low - Medium Risk : 48 Locos per month (12 per OEM)

Assumptions

- Ramp up 1, 2, 4, 8, 12
- Halve production over December and January

GIE
 CNR Prototype
 CNR
 CSR Prototype
 HT Prototype
 BT
 GE Prototype
 Total Electric
 Total Diesel

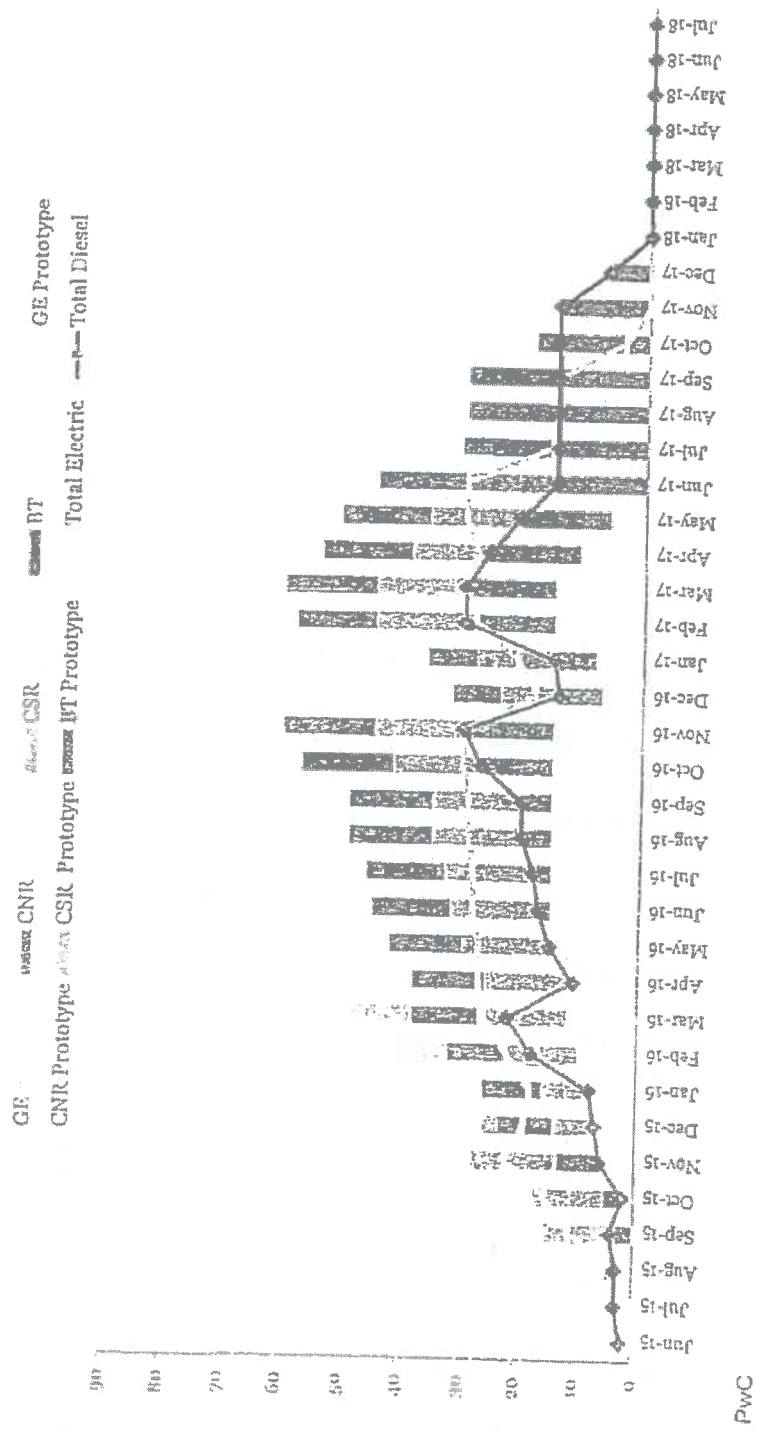


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Medium Risk: 60 Locos per month (15 per OEM)

Assumptions

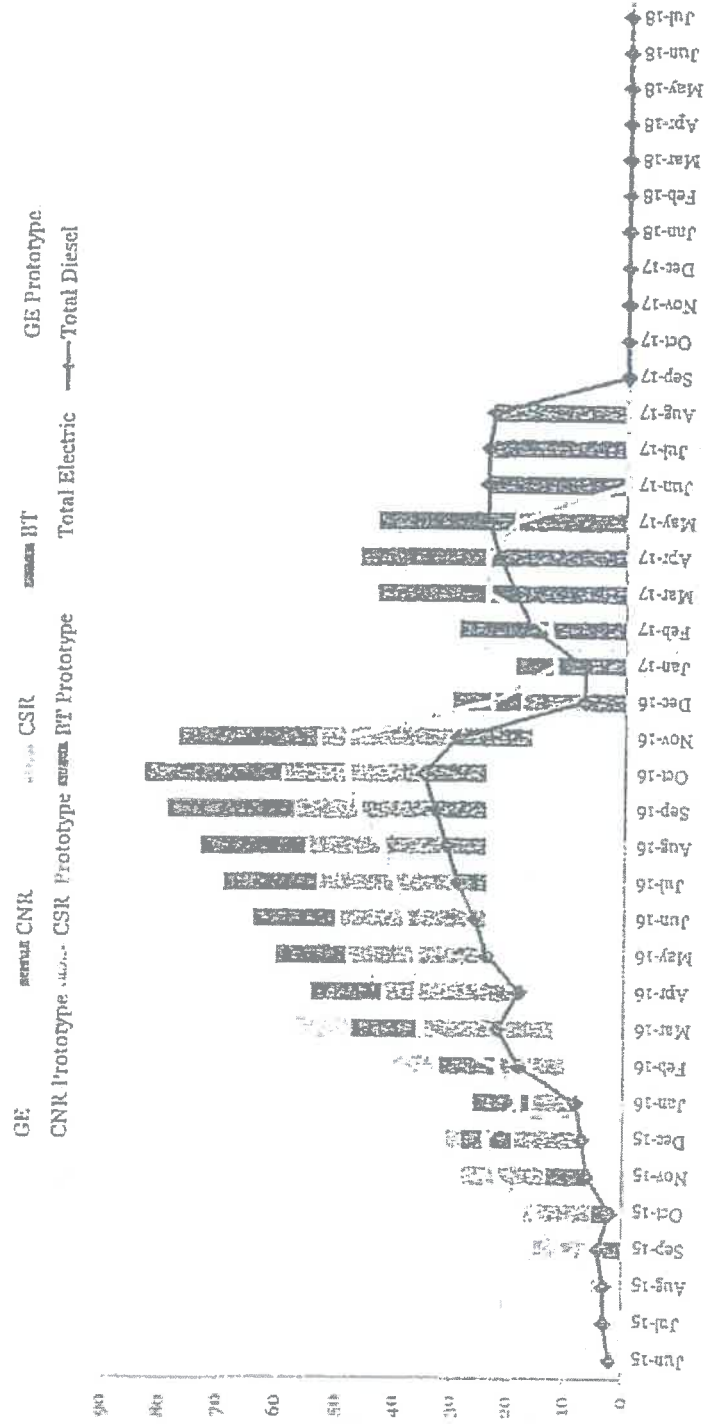
- Ramp up 1, 4, 10, 15
- Halve production over December and January



High Risk: 83 Locos per month (24 per OEM)

Assumptions

- Ramp up 1, 4, 8, 12, 16, 20, 24
- Halve production over December and January

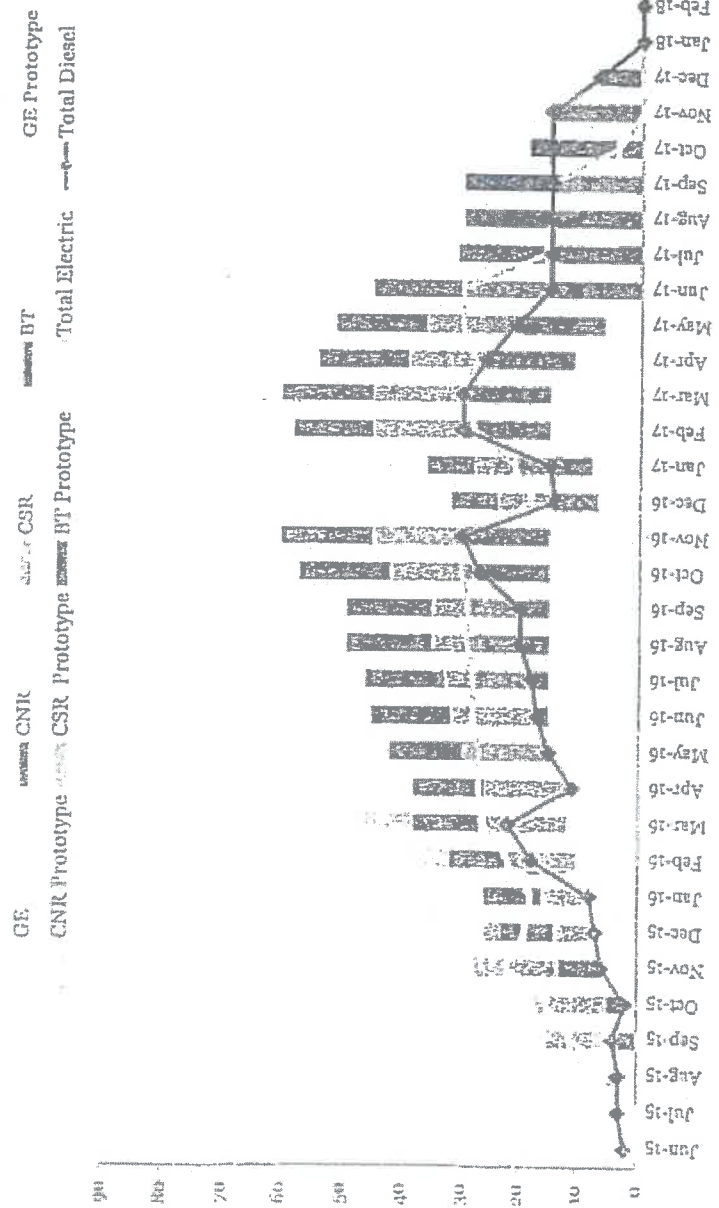


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Medium Risk: 60 Locos per month (15 per OEM)

Assumptions

- Ramp up 1, 4, 10, 15
- Halve production over December and January

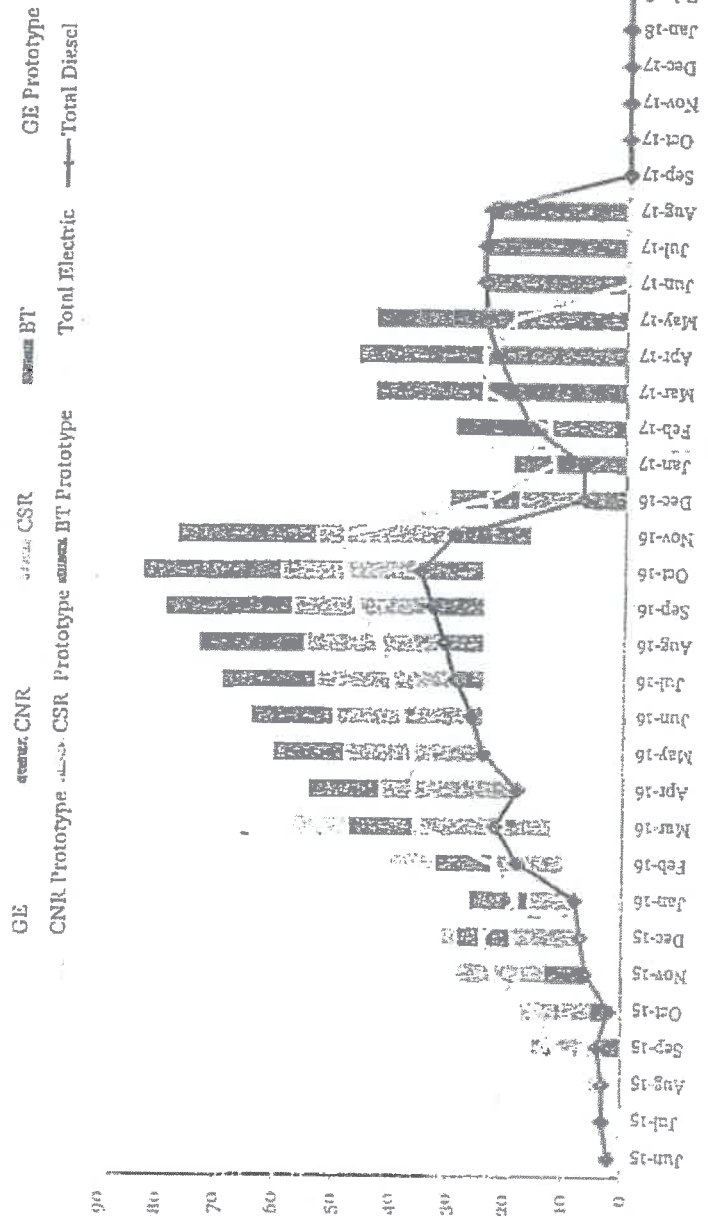


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High Risk: 83 Locos per month (24 per OEM)

Assumptions

- Ramp up 1, 4, 8, 12, 16, 20, 24
- Halve production over December and January



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TE Production - Risk Summary

The following risk assessment was performed for the production line. Mitigation actions are proposed which should be considered for the medium to high risk areas. Low risks should be monitored so that they do not escalate.

#	Risk	Impact*	Likelihood of Occurrence*	Risk Score
1	TE may not be able to produce locomotives at a rate higher than previously constantly demonstrated (8 per month)		1	3
2	Contracted labour on assembly lines will slow down production rates in an effort to extend contract duration			
3	Assembly lines are held up to lack of material/parts			
4	Production losses incurred because of the lack of information exchange between afternoon shift and day shift the following day	1	2	2
5	Increased cost incurred due to requirement to work overtime to catch up production	1	2	2
6	TE fail to constantly deliver locomotives as per required TTR schedule		2	
7	Delays caused by inconsistent/inaccurate packing lists from OEMs	2		

* 1 = Low, 2 = Medium, 3 = High

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TE Production - Risk Assessment & Mitigation

The following mitigation strategies were developed, for which the medium to high risk should be considered for implementation:

Risk	Impact	Likelihood of Occurrence	Mitigation Strategy
1 TE may be unable to produce locomotives at a rate higher than 8 per month	High	Low	<ul style="list-style-type: none"> TE to work additional hours per week to make up production. (Either more shifts or overtime or both) Incorporate lean manufacturing techniques in all TE assembly processes Utilise SAP to support and monitor production activities Seek productivity advice from OEMs Utilise knock down kits to increase productivity on assembly line
2 Contracted labour on assembly lines may slow down production rates in an effort to extend contract duration	High	High	<ul style="list-style-type: none"> Provide productivity incentivised pay as opposed to hours incentivised pay where possible. Utilise visual production status measures Strong supervision as appropriate
3 Assembly lines are held up to lack of material/parts	High	High	<ul style="list-style-type: none"> Appoint individuals responsible for the on-time deliver of goods. Utilise SAP to monitor and track potential delivery issues Suppliers contracted to find alternative delivery methods for goods which will not make due delivery dates

TE Production - Risk Assessment & Mitigation

Risk	Impact	Likelihood of Occurrence	Mitigation Strategy
4 Production losses incurred because of the lack of information exchange between afternoon shift and day shift the following day	Low	Medium	<ul style="list-style-type: none"> Try to complete all work on a single shift Assign different work to each shift Develop handover procedures which include exchange of necessary information Break work up into small tasks which can be completed in 30 minute blocks to eliminate need for exchange of information at handover.
5 Increased cost incurred due to requirement to work overtime to catch up production	Low	Medium	<ul style="list-style-type: none"> Provide productivity incentivised pay as opposed to hours incentivised pay where possible. Utilise visual production status measures Strong supervision as appropriate Utilise lean manufacturing techniques
6 TE fail to constantly deliver locomotives as per required TFR schedule	High	Medium	<ul style="list-style-type: none"> Contract assembly of some locomotives to other players in the market Maintain an option to import further batches of fully completed locomotives from OEM
7 Delays caused by inconsistent/inaccurate packing lists from OEMs	Medium	High	<ul style="list-style-type: none"> Contract with OEM's to provide material as required complete with accurate packing lists Request OEM to maintain stock level locally in their own warehouse facilities

Recommendations – Production Rate Improvement

The following mitigation recommendations are made to address the medium and high risk areas:

TE may be unable to produce locomotives at a rate higher than 10 per month

Delays due to contractor workers working slowly to prolong the contract time

Assembly lines are held up due to the lack of material/parts

- Consider the option of TE taking GE, CSR and one other OEM and providing a production line to an outside South African assembler in order to reduce the risk associated with rapid ramp up risk
- Increasing productivity through applying Lean Sigma methodologies to the assembly line processes
- Contract labour to be employed under production incentives as opposed to time incentives.
- Introduce a productivity tracking and monitoring programme
- Use the productivity monitoring programme to improve a productivity focused culture
- Institute a delivery forecast and monitoring system and proactively follow up on expected deliveries.
- Review the minimum order quantity levels given the loco delivery schedule to provide sufficient buffer while maintaining JIT (just in time).

Recommendations – Production Rate Improvement

The following mitigation recommendations are made to address the medium and high risk areas:

Increased cost incurred due to requirement to work overtime to catch up production

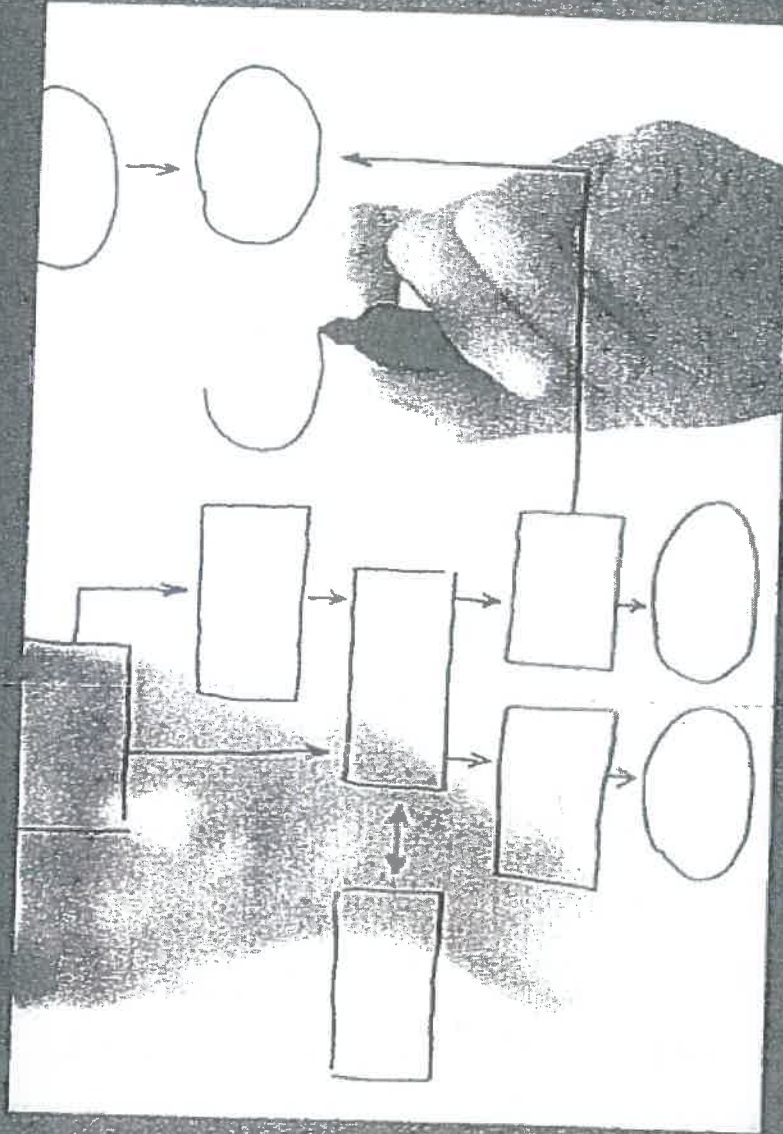
TE fail to constantly deliver locomotives as per required TFR schedule

Delays caused by inconsistent/ inaccurate packing lists from OEMs

- Institute a delivery forecast and monitoring system and proactively schedule required overtime to minimise financial impact.
- Develop a low cost operating model that could be adopted when overtime is required.
- Review and improve the current production tracking and monitoring system to manage risk areas that could impact the delivery rate.
- Extend the monitoring period for the forecasted delivery against work in progress.
- Track and monitor stock-outs or missing items and implement stock levels to prevent running out.
- Review minimum stock levels to identify optimum quantities given the type and expected production throughput.

Where should the facilities be located?

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TE's assessment of the physical facilities

TE conducted an assessment of different sites to identify which ones could be used for the assembly of the 1064 locomotive order. The assessment indicates that either Saltriver, Uitenhage and Durban works could be used for the assembly of locomotives in addition to the current facility at Koedoespoort.

A further high-level assessment of Koedoespoort and Durban works were conducted by the PwC team through site visits and interviews of key production personnel.

Koedoespoort has been used to assemble the Class 43 Diesel locomotives for GE and the 20F for CSR. Durban is primarily used for repairs, but has available facilities suited to the production line requirements of either of the four OEMs.

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Row Labels	*SRX Score	Dep Score	*Cam Shed	*Uth Score	DBM Score
Engle Assy	0.21	0.14	0.07	0.21	0.21
Bogie Fabrication	0.10	0.05	0.08	0.13	0.13
Cubicle Assy	0.02	0.03	0.03	0.02	0.02
General	0.15	0.10	0.08	0.15	0.15
Floods air component fabrication	0.20	0.15	0.25	0.30	0.25
Mainline Assembly	0.48	0.30	0.18	0.42	0.41
Offline Assembly	0.40	0.20	0.20	0.30	0.38
Paint	0.39	0.17	0.22	0.33	0.4
Platform (Carbody) Fabrication	0.30	0.10	0.15	0.35	0.32
Test	0.11	0.28	0.11	0.22	0.3
Traction Motor Assy	0.05	0.03	0.03	0.04	0.05
Transformer Assy	0.02	0.02	0.02	0.02	0.02
Warehouse	0.22	0.14	0.35	0.31	0.018
Wheel Assy	0.08	0.02	0.02	0.06	0.08
Grand Total	2.728	1.7195	1.783	2.856	2.72

Overview of TE's Koedoespoort Operations

The outcome of the assessment of Koedoespoort indicates that the site meets the majority of the requirements to establish the required lines, with some actions required to prepare for the assembly of the 1064 locomotives.

Diesel & Electric Locomotive

		AREAS OF GAPS CONSIDERED						Key	Size of gap	Ease to close
		Capability/Complexity	Availability of Floor Space	Equipment Availability	Number of Skilled Staff	Staff Skill Level Required	Down Stream Supplier Readiness			
TC Scope	Total Loco	SIZE OF GAP							Critical gap	Extremely difficult
		EASE TO CLOSE							Significant gap	Difficult
Bagle Assembly		SIZE OF GAP							Gap	Moderate
		EASE TO CLOSE							Slight gap	Slight
Loco Assembly		SIZE OF GAP							No gap	No gap to fill
		EASE TO CLOSE								
Locomotive Control System Assembly		SIZE OF GAP								
		EASE TO CLOSE								
Traction Motor Assembly		SIZE OF GAP								
		EASE TO CLOSE								
Power Conversion System		SIZE OF GAP								
		EASE TO CLOSE								
Propulsion & Electronic Braking		SIZE OF GAP								
		EASE TO CLOSE								

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Overview of TE's Durban Operations

The outcome of the assessment of the Durban works indicates that the site requires additional actions to meet the requirements for the assembly of the 1064 locomotives.

Diesel & Electric Locomotive

TE Scope		AREAS OF GAPS CONSIDERED					Down Stream Supplier Readiness
		Capability/ Complexity	Availability of Floor Space	Equipment Availability	Number of Skilled Staff	Staff Skill Level Required	
Total Loco	SIZE OF GAP						
	EASE TO CLOSE						
Bogie Assembly	SIZE OF GAP						
	EASE TO CLOSE						
Loco Assembly	SIZE OF GAP						
	EASE TO CLOSE						
Locomotive Control System Assembly	SIZE OF GAP						
	EASE TO CLOSE						
Traction Motor Assembly	SIZE OF GAP						
	EASE TO CLOSE						
Power Conversion System	SIZE OF GAP						
	EASE TO CLOSE						
Propulsion & Electronic Braking	SIZE OF GAP						
	EASE TO CLOSE						

Key	Size of gap	Ease to close
	Critical gap	Extremely difficult
	Significant gap	Difficult to close
	Gap	Moderate
	Slight gap	Easily closed
	No gap	No gap to fill

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Key	Size of gap	Ease to close
	Critical gap	Extremely difficult
	Significant gap	Difficult to close
	Gap	Moderate
	Slight gap	Easily closed
	No gap	No gap to fill

Pros and Cons of locating 2 of the 4 OEM lines in TE' Durban facility

Pros		Cons
Socio-Economic	<ul style="list-style-type: none"> Geographical distribution of jobs. Create jobs in Durban, known as a area of major unemployment. 	
Supply Chain	<ul style="list-style-type: none"> Reliance on a broader number of suppliers in Pta and Dbn. TE can double up locomotive supply chain function, through additional hires at Dbn. 	<ul style="list-style-type: none"> Greater TE supply chain management requirement by separated between two facilities Gauteng has deepest local supplier base, e.g. transformers, tractions motors, etc
Industrial Action	Risk of industrial action at one facility mitigated by separating 2 of the 4 OEMs	
OEM IP Separation	<ul style="list-style-type: none"> Current approach creates clear IP separations between OEMs: 1 electric + 1 diesel - Koedoespoort, 1 electric + 1 diesel - Durban. 	<ul style="list-style-type: none"> Two OEMs with the same platform (either diesel or electric) at the same site will require TE's to create active separation of management, supply chain, logistics and separate store facilities.
Manufacturing Synergies	Taking 1 electric and 1 diesel to separate manufacturing facilities would separate OEM IP	Consolidating all OEMs would create some sub-net synergies, but this would be limited by their requirements for separation
Import and export	Potential to grow local suppliers ability to export through Port of Durban.	Creates greater incentive to import components as logistics costs will be lower.

Pros and Cons of GE and CSR lines located in Koedoespoort

Pros	Cons
<ul style="list-style-type: none"> • GE and CSR production lines already exists in KDS resulting in shorter start-up times • The supply chain for GE and CSR locomotives are already be in place around KDS • Engineering support is conveniently located at KDR • Skilled resources are readily available • Increases ability for local suppliers to gain more economic order quantities • Good competition amongst local suppliers 	<ul style="list-style-type: none"> • Two large assembly line located at the same location will divide focus of local management • May create supply bottlenecks at security and surrounding areas • The more difficult task of setting of an assembly line for a new OEMs will be delivered by a regional site away from TE expertise and experience

Pros and Cons of CNR and BT lines located in DBN

Pros	Cons
<ul style="list-style-type: none"> • Good heavy manufacturing supplier base in the area • Lower wages in KNZ than in Gauteng which should reflect in lower cost of goods and services • Spread the economic activity away from Gauteng 	<ul style="list-style-type: none"> • BT would not be able to easily leverage supply chain from previous Gauteng production • The more difficult task of setting of an assembly line for a new OEMs will be delivered by in DBN site away from TE expertise and experience • Requires duplication of sub assembly lines in DBN or incur transport costs. • DBN has no experience in assembly of locomotives (only Loco overhauls and upgrades)

Pros and Cons of TE taking on all four locomotive assembly lines from an SA Inc perspective

Pros	Cons
<ul style="list-style-type: none"> • TE are by far the most experienced assemblers of locomotives in the country resulting in lower risk of poor workmanship. • TE will ensure localisation occurs within their supply chain even if it comes at a small cost • TE will be more likely to maintain locomotive specific knowledge and experience gain through this contract 	<ul style="list-style-type: none"> • Risk of industrial action within TE is not mitigated • No opportunity to test TE's cost of assembly in the market • TE has a higher labour cost base and this may be reflected in an increased cost of a locomotive • TE has a mind set to manufacture as much work internally as they are capable of as opposed to allowing it to flow onto lower level suppliers. Will limit the down stream benefits through the supply base.

TE Assembly - Risk Summary

The following risk assessment was performed for setting up of the assembly line. Mitigation actions are proposed which should be considered for the medium to high risk areas. Low risks should be monitored so that they do not escalate

#	Risk	Impact*	Likelihood of Occurrence*	Risk Score
1	Locating more than two assembly lines in KDS delays assembly start-up for additional lines	2		
2	Industrial action within TE halts locomotive delivery from all TE lines			
3	OEM's to assemble in Durban may indicate an increase price to compensate for relocation	2	2	4
4	Transnet Engineering's Durban facility has not previously assembled locomotives			
5	The input of inaccurate and incomplete data in SAP will result in the failure of SAP to be utilised to support the production process	1		3

* 1 = Low, 2 = Medium, 3 = High

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TE Assembly - Risk Assessment & Mitigation

The following mitigation strategies were developed, for which the medium to high risk should be considered for implementation:

#	Risk	Impact	Likelihood of Occurrence	Mitigation Strategy
1	Locating more than two assembly lines in KDS may cause delays assembly start-up for additional lines	Medium	High	<ul style="list-style-type: none"> Only locate two assembly lines in KDS and the other two lines at other locations TE to provide a detailed plan s for assembly line fit out and start-up of all lines which should be scrutinised for risk by an independent party Locate assembly at more than one location
2	Industrial action within TE halts locomotive delivery from all TE lines	Medium	Medium	<ul style="list-style-type: none"> Request OEM's to justify additional costs structure of Durban relocation Seek alternative assembly locations where additional costs are not incurred.
3	OEM's require an increase price to compensate for relocation of assembly in Durban	Medium	High	<ul style="list-style-type: none"> Agree a less aggressive delivery schedule with TFR (and compliment it with a steeper ramp up in Pretoria if required) Use OEM knock down kits for an increased number locomotives during start up Relocate critical resources to Durban facility for duration of the contract Utilise "refurbishment" knowledge and skills currently situated in Durban
4	Transnet Engineering's Durban facility has not previously assembled locomotives	Low	High	

TE Assembly Line Set-up - Risk Assessment & Mitigation

#	Risk	Impact	Likelihood of Occurrence	Mitigation Strategy
5	The input of inaccurate and incomplete data in SAP will result in the failure of SAP to be utilised to support the production process	High	High	<ul style="list-style-type: none"> Develop a clear picture of what support functionality will be required from SAP during the production process. Include a designated person to be assigned to each production line project team from the beginning who is responsible for SAP's ability to support the production process. Design a data entry process which ensures only accurate data is entered into SAP Design a data cleansing process to continually clean any inaccurate data

Recommendations – Assembly Location

The following mitigation recommendations are made to address the medium and high risk areas:

Delays due to more than two assembly lines located in Koedoespoort

- Spread delivery risk through assembling locomotives across several locations and/or other suppliers who have an assembly facility.
- Limit assembly lines at KDS to two lines unless TE can provide a detailed plan of where and by when a third or fourth line would be set-up at Koedoespoort

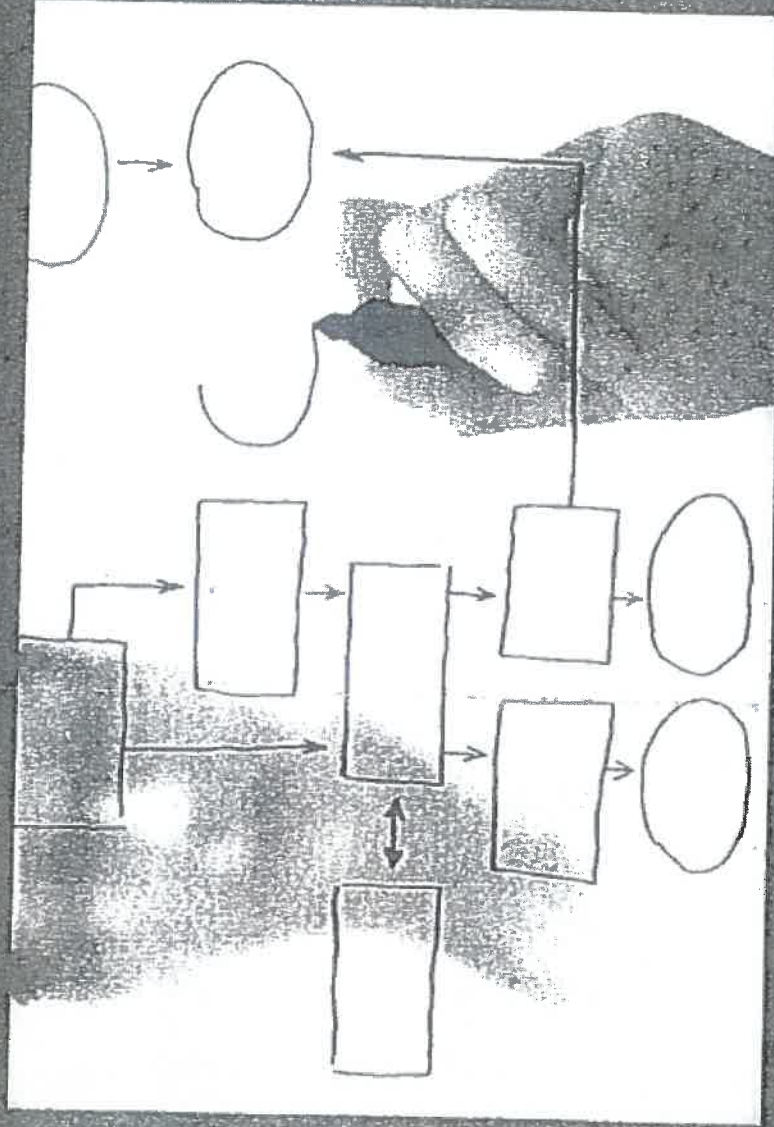
Production interruption due to industrial action

- TE to draft employment contracts that encourage an open communication and provide a platform for dialog for resolution of potential conflict/unrest.
- TE to consider an agreement and /or incentive measures to deter industrial action.

Locomotive price increase due to OEM required to operate from TE Durban site

- TE to locate the OEM with the least established local operations to minimise the impact of this cost.
- TE to develop a negotiation strategy comprising of the cost comparison between Gauteng and KwaZulu Natal to use as leverage to minimise costs.

Staffing Projections



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The following information was obtained from the TE management team on the staffing requirements for the assembly of the 1064 locomotives:

	Required			Existing			New Hires			Additional Shift		
	Electric	Diesel	Total	Electric	Diesel	Total	Electric	Diesel	Total	Electric	Diesel	Total
New Build - Final Assembly, Tes and Commission	349	267	616	140	60	200	209	207	416	336	254	590
RSE Carbody and Bogie Fabrication	170	140	310	125	40	165	45	100	145	163	133	296
Bogie Assembly	26	20	46	12	12	24	14	8	22	25	19	44
Wheel Set Assembly	8	8	16	6	6	12	2	2	4	8	8	16
Traction Motor Assembly	6	6	12	4	4	8	2	2	4	6	6	12
Supply Chain	13	13	26	4	3	7	9	10	19	3	3	6
Total			1026			416			610			964

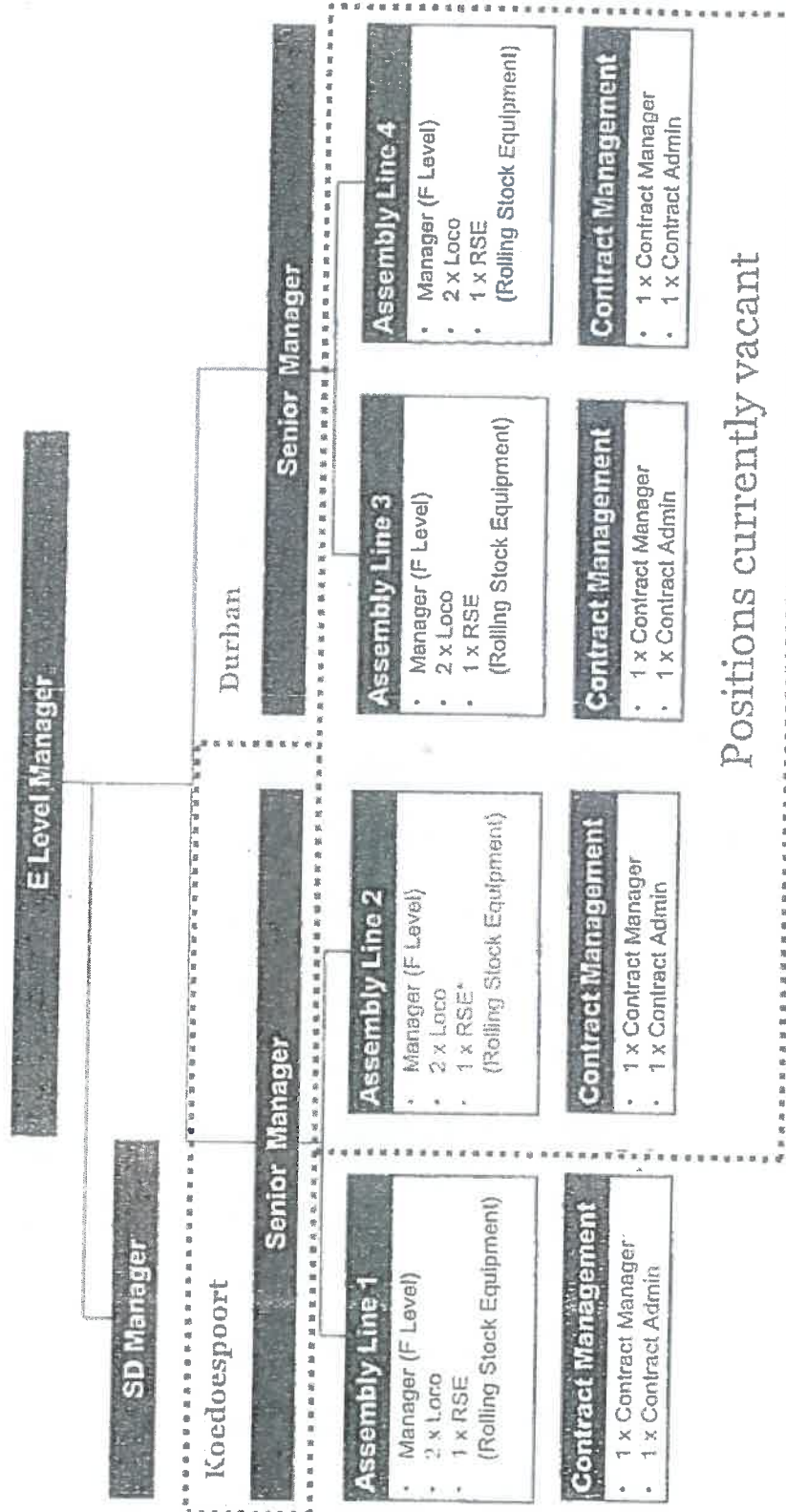
- TE must hire an additional 610 staff, on either contract or full time basis, to fill the requirements of four assembly lines
- Staff ramp up is planned to occur from Aug 2015 to April 2016.
- TE will need to hire an additional estimated 964 staff to increase production to a full second shift across all assembly lines.

There are some gaps in required skills which will need addressing

Required Skill	Gap	Comments
Project Management		<ul style="list-style-type: none"> Historically TE has done what is required to meet delivery schedules TE do not have proven project management experience relating to projects of this size and complexity Do not currently follow all the practices we would expect to see of a specialist project management organisation
Diesel Locomotive Assembly		<ul style="list-style-type: none"> TE have good experience with a few individuals regarding Diesel locomotive assembly They will need additional skills to manage four separate lines
Electrical Locomotive Assembly		<ul style="list-style-type: none"> Currently TE's Electrical locomotive experience is limited to upgrades and modifications. TE has commenced the assembly of 95 CSR Electrical locomotives with the first delivery due on 6 May 2014 This will provide TE with significant experience in assembly electric locomotives.
Procurement		<ul style="list-style-type: none"> Gap does not exist in skills but there is a gap in number of skilled staff. (See following page for vacancy details)
Expediting		<ul style="list-style-type: none"> In the past expediting has been an issue for TE. Over time they have been improving but it is still presenting problems
SAP utilisation		<ul style="list-style-type: none"> Has in the past been an issue for TE. Over time they have been improving but it is still presenting problems

Proposed Supply Chain Management Structure

Supply Chain Management proposed organisation structure to accommodate the additional procurement requirements for the Kocdoespoort and Durban plants.



TE Staffing - Risk Summary

The following risk assessment was performed for the building of staffing requirements. Mitigation actions are proposed which should be considered for the medium to high risk areas. Low risks should be monitored so that they do not escalate.

#	Risk	Impact*	Likelihood of Occurrence*	Risk Score
1	TE will have a short hiring lead time as they will not identify the actual number and skills of staff required until a few months prior to production commencement when Standard Operating Procedures are completed.	1	3	3
2	TE will not know if they need to work additional shifts to meet production requirements until the begin production. If an additional shift is required there will be a very short widow of time to hire a large number of additional staff.	1	3	3
3	Contracted labour on assembly lines will slow down production rates in an effort to extend contract duration	2	3	6
4	Recruitment department at TE cannot handle the processing of 610 new staff in the timeframe required.	3	2	6
5	HR's ability to on-board additional staff in required timeframe may delay production of locomotives	3	2	6

* 1 = Low, 2 = Medium, 3 = High

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TE Assembly location - Risk Assessment & Mitigation

The following mitigation strategies were developed, for which the medium to high risk should be considered for implementation:

Risk	Impact	Likelihood of Occurrence	Mitigation Strategy
1 Short hiring lead time due to the need to identify the actual number and skills of staff required.	Low	High	<ul style="list-style-type: none"> Identify conservator estimates of numbers early and bring potential staff through hiring process. Make final decisions on hiring numbers once SOP are developed.
2 Lack of foresight on the number of people required to meet production demands.	High	Low	<ul style="list-style-type: none"> Develop staffing contingency plan for a partial second shift Identify a pool of potential staff who have completed most of the screening process. Identify recruitment consultants who could be utilised to speed up hiring process. Utilise overtime to achieve increased production levels until additional staff can be hired.
3 Recruitment department at TE unable to handle the processing of 610 new staff in the timeframe required.	Medium	High	<ul style="list-style-type: none"> Develop plans to understand workload and timing. Start process early to spread workload out over next 18 month. Outsource recruitment screening process if required

TE Assembly Line Set-up - Risk Assessment & Mitigation

Risk	Impact	Likelihood of Occurrence	Mitigation Strategy
HR's ability to on-board additional staff in required timeframe may delay production of locomotives	High	Medium	<ul style="list-style-type: none"> Draw from pool of previously employed Transnet staff Reduce required employee skill level through detail SOP's, as well as OEM onsite training and assisting in development of SOP's Review opportunity to contract out initial employee screening process Review opportunities to divert resources from other programs of work such as refurbishments, coaches and wagons. Seek opportunities to outsource the manufacture of components to reduce need to increase staff. (See risk 4 below) as well as pre-assembly of certain components by suppliers Build capacity during the current GE / CSR contracts (employ more than needed for training purposes, carry over to 1064 contract) HR to form part of the Project Management team envisaged for Phase 1 of project(s)

Recommendations – Staffing Requirements

The following recommendations are made to address the mitigation actions proposed to address the medium and high risk areas:

Short hiring lead time due to the need to identify the actual number and skills of staff required

Lack of foresight on the number of people required to meet production demands

Recruitment department at TE unable to handle the processing of 610 new staff in the timeframe required

- Develop a skills matrix to inform the development of the recruitment drive based on priority.
- TE to request divisions within Transnet to second Human Capital (HC) Practitioners to assist with recruitment.
- Develop a recruitment plan that will focus and inform the recruitment and on-boarding process.
- Conduct a skills assessment to identify the nature, level and number of different skills that are required.
- Develop a skills map, based on priority, for the building of the 1064 locomotives.
- Secondment of HC Practitioners to assist with the recruitment and on-boarding process.
- Develop a customised induction and orientation programme for quick integration of new recruits.
- Establish a buddy system to assist with the speedy integration of new joiners.

Recommendations – Staffing Requirements

The following recommendations are made to address the mitigation actions proposed to address the medium and high risk areas:

Delay in production of locos due to HR's inability to on-board additional staff in required timeframe

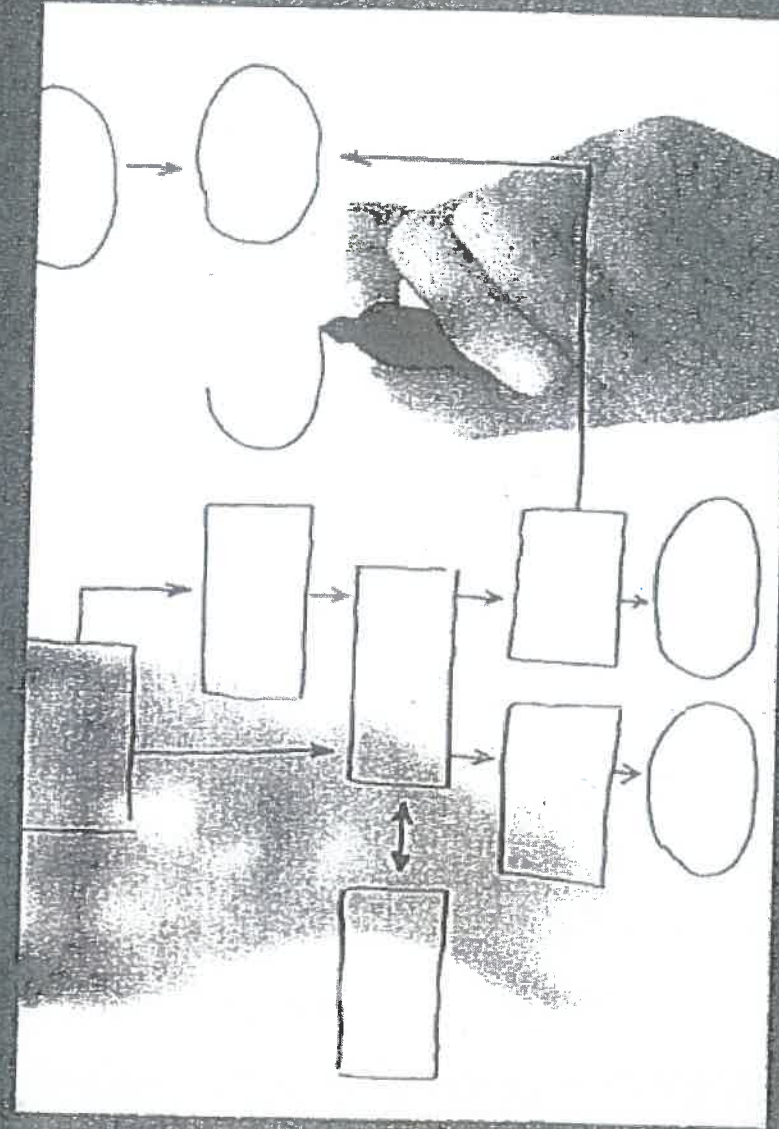
- Develop a customised induction and orientation programme for quick integration of new recruits.
- Establish a buddy system to assist with the speedy integration of new joiners.
- Secondment of HC Practitioners to assist with the recruitment and on-boarding process.

Recommendations for staffing requirements

The following recommendations are made on recruitment and on-boarding of staff depending on the delivery schedule that is adopted for the 1064 locomotives:

- Once TE assembly workload is finalised, TE needs to develop a more detailed staffing plan by assembly line and location. The staffing plan should include details on skills, number and timing. TE needs to make a contingency plans should a partial second shift be required.
- TE Recruitment team should develop a plan on how they can on-board the additional staff in the timeframes required. The plan should include a contingency plans should a partial second shift be required.

TFR Identified Risks



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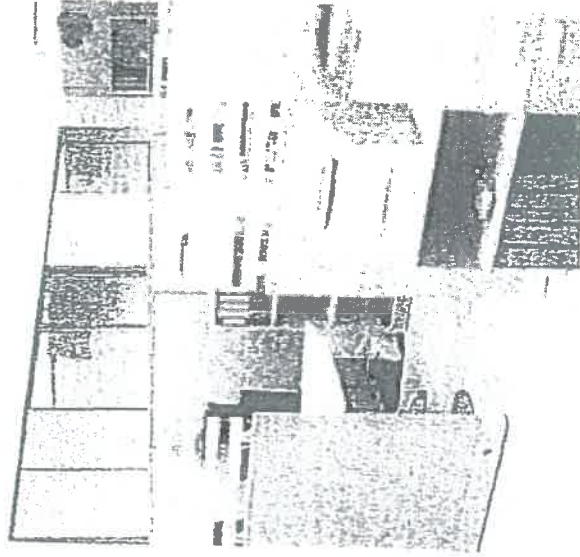
Outcome from Interaction with TFR

Ad hoc and a formal sessions were held with TFR to understand their status given their input into the design and commissioning of the locomotives.

The key areas which were discussed with TFR were:

- Readiness for review and approval of locomotive designs
- Locomotive delivery schedules
- High level operational readiness of TFR for the 1064 locomotives

A number of risks and concerns were raised by TFR and these are documented in this section of the report.



TFR Issues and concerns regarding TE completing locomotive assembly

The following risk assessment was compiled based on the outcome of the discussions held with TFR. Mitigation actions are proposed which should be considered for the medium to high risk areas. Low risks should be monitored so that they do not escalate.

#	Risk	Impact*	Likelihood of Occurrence*	Risk Score
1	Maintenance and MOPS will suffer as a consequence of TE changing focus			
2	TE do not have a good track record of project management and do not have the project management skills or experience to manage the ramp up of 4 OEM assemble lines			3
3	Testing facilities at Durban are not sufficient. They will need to be upgraded or increased testing time allowed for in delivery schedule.			
4	TFR are required to conduct design approvals on two Electrical locomotives simultaneously and/or two Diesel locomotives simultaneously	1		3
5	TFR's infrastructure cannot handle the delivery of greater than 300 locomotives per year (25 per month)			

* 1 = Low, 2 = Medium, 3 = High

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Risk Assessment and Mitigation Strategies

The following mitigation strategies were developed, for which the medium to high risk should be considered for implementation. Low risks should be monitored so that they do not escalate.

#	Risk	Impact	Likelihood of Occurrence	Mitigation Strategy
1	Negative impact on maintenance and MOPS as a consequence of TE changing focus	High	Medium	<ul style="list-style-type: none"> Draw from pool of previously employed Transnet staff Reduce required employee skill level through detail SOP's, as well as OEM onsite training and assisting in development of SOP's Review opportunity to contract out initial employee screening process
2	TE does not have the required project management skills or experience to manage the ramp up of 4 OEM assemble lines	High	High	<ul style="list-style-type: none"> Ensure TE appoint a project manager with demonstrated experience in managing project of this size and complexity Utilise a detailed project timeline to manage the assembly line start-up and ramp up. Utilise a proven project management methodology e.g. PMBOK Ensure OEM maintains responsible for TE assembly line start up and delivery schedule Implement a project management status reporting process to ensure all stakeholder are kept informed of progress
3	Testing facilities at Durban, are not adequate. They will need to be upgraded or in increased testing time allowed for in delivery schedule.	Low	High	<ul style="list-style-type: none"> Only assemble Diesel locomotives in Durban as the requirement for test facilities is less demanding. Id Electric locomotives are to be tested in Durban then they must allow for the additional testing time in the delivery schedule.

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Recommendations – TFR Identified Risks

The following mitigation recommendations are made to address the medium and high risk areas:

Negative impact on maintenance and MOPS as a consequence of TE changing focus

- TE to consider sub-contracting the maintenance function to improve its dedication to focus areas
- TE to evaluate the current maintenance regime in line with its envisaged role and develop a relevant approach.

Insufficient project management skills and experience to manage the ramp up of four OEMs

- TE to appoint a program manager with experience of similar sized and complexity projects.
- Contract rail engineers to assist with the production set-up and ramp-up activities.
- Empower experienced technicians to carry out routine project risk and monitoring activities.

Inadequacy of testing facilities at the Durban site

- Develop a transition plan for upgrading the Durban site operations to the required testing facility.
- Compile a capex plan for the procurement of the required test and weighing equipment.

Recommendations – TFR Identified Risks

The following mitigation recommendations are made to address the medium and high risk areas:

Inadequate resources to approve the designs for the 2 Diesel and 2 Electric locomotives

TFR's infrastructure unable to handle the delivery of greater than 300 locomotives per year

- Contract rail engineers to assist with the design activities
 - Second TE Engineers to assist in this phase of the project
-
- TFR to evaluate its infrastructure plan to develop a strategy to enable accommodation of the new locos.
 - TFR to consider engineering options to develop infrastructure conducive for the locos.
 - TFR to consider a dedicated network for the locos.

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APPENDIX 6A

Appendix 6A



CNR CONSORTIUM/UNINCORPORATED JOINT VENTURE

Ms Lindiwe Mdlotswe
Commodity Manager
Supply Chain
Transnet Freight Rail
Johannesburg

10 March 2014

Dear Lindiwe

465 new Diesel Locomotives for General Freight -- Cost Impact of Manufacturing in Durban

With reference to the TFR request relating to the CNR response for the cost impact of building the locomotives in Durban, we would like to point out that our original quotation is based upon building the locomotives in Koozespoort or Germiston. We understand from TE that the Koozespoort facility has already been allocated but CNR would like to request that before a final decision is made regarding this matter that we are granted site visits for both Durban and Germiston.

As regards the request for the cost impact of this decision, CNR would like to point out that our preliminary studies show that the cost of building the locomotive in Durban will be higher than the cost of building the locomotive in Germiston.

Yours sincerely

Rowlen von Gericke
On Behalf of CNR Consortium

Care of: Global House, 59 Tullagh Road, Kempton Park 1630
P.O. Box 10285, Aston Manor, Kempton Park, 1619

Tel: +27 11 230 1400
Fax: +27 11 236 3594
Email: Rowlen@globalgroups.org



CNR CONSORTIUM

Attention: Umdlwe Mdletshe
Transnet Freight Rail
Acquisition Council

11 March 2014

465 New Diesel Locomotives for General Freight – Impact of Locating in Durban

Dear Umdlwe and Garry

Further to our previous email in this regard. Following the request from TFR for CNR Consortium to consider the Durban facilities for manufacture of locomotives, the following calculations were made:

IMPACT OF MANUFACTURING IN DURBAN VS JOHANNESBURG

TRANSPORT COSTS			
	Saving	Extra Cost	Comment
Engine		R 8 000.00	Engine Imported but testing done in JHB
Propulsion System		R 16 000.00	ABB is located in JHB. 40% is imported portion, assembly in JHB
Brakes		R 8 000.00	Knorr Bremse located in JHB.
Chinese components supplier	R 8 000.00		Imported components from Dalian
Locomotive Gears		R 4 000.00	Based in JHB
Air Conditioner		R 4 000.00	Based in JHB
Wheels + Axles	R 8 000.00		Imported components
Refrigerator		R 500.00	Based in JHB
U-tubes and gear case	R 4 000.00		Rotacon based in Durban
Communications equipment		R 200.00	Located in JHB
Total	R 20 000.00	R 40 700.00	
Difference per locomotive		R 20 700.00	
Extra Cost on Locomotives		R 4 077 900.00	

Care of: Global House, 60 Tulbagh Road, Kempton Park 1530
P.O. Box 10285, Aston Manor, Kempton Park, 1519

Tel: +27 11 230 1900
Fax: +27 11 396 1594
Email: Rowlen@globalgroups.org

Imported Locomotive

Saving on Imported Locomotives (20)	R 1 000 000.00		Fully built locomotives
			Bogie, under-frame and
Saving on Kits (15)	R 285 000.00		body panels imported
Total	R 1 285 000.00		from Dalian
Total Extra Transport Costs		R 2 792 900.00	

Transport Cost is calculated based on 32ton at R19 000 and 28T at R16 000 per trip.

FLIGHTS AND ACCOMMODATION

Minimum of 4 people to fly (F) to Durban every week from JHB	R 1 320 000.00
Accommodation (A)	R 960 000.00
Extra F & A cost	R 2 280 000.00

Office Costs

New Office set up for 60 personnel

R 604 800.00

Total Extra Costs of locating in Durban

R 9 755 600.00

The above costs only relates to the measurable financial implications. Please bear in mind that there is always be a considerable amount of immeasurable financial losses that will be incurred due to relocating to Durban.

Furthermore, it will be very inconvenient and counterproductive to split our resources between Johannesburg and Durban.

For these reasons we request that the manufacturing should be done at Koedoespoort. Knowing the Koedoespoort facility well, I was wondering whether it will be possible to utilise the old Koedoespoort East Foundry facility.

The CNR Consortium is of the opinion that the project can be better managed and executed in the Koedoespoort facility given its proximity to the existing offices.

Kind regards

Rowlen von Gericks
On behalf of CNR Consortium / Unincorporated Joint Venture

APPENDIX 7

Appendix 7



Durban Locomotive Factory Relocation Proposal V2

CNR Rolling Stock South Africa

2015-2-1

Rolling Stock South Africa



Rolling Stock
South Africa

CNR Rolling Stock South Africa
China Construction Bank Building
95 Grayston Drive
Sandton
Johannesburg
2196
cnrssapm@163.com

CONTENT

1. Manufacture Process Chart	2
2. Technical Support.....	3
3. 3P Technical Support	3
4. Potential Cost Increased	3

DRAFT V2

Since Spet.15th of 2014, CNR RS SA has provided the technical supports to TE in positive according to the requirements. The following items have been made big progress.

1. Manufacture Process Chart

In 2014, the draft version of "Information of Process Chart, Working Procedure and Machinery, Jigs & Fixtures for each Station" was provided to TE.

Latterly, when TE visit in Dalian, CNR production line of diesel locomotive was shown and introduced in details to TE, including Carbody fabrication line and assembly line, bogie frame fabrication line and assembly line, Combo fabrication and assembly line, wheelset assembly line, engine test bench, locomotive final assembly line, load test bench and running test bench and etc.

As per the request made by TE during their visit in Dalian, CNR Dalian updated the draft data sheet by adding the procurement information of Machinery and Jigs & Fixtures, and labor hours at each station etc. In this document, it indicated the product and procedure for the items like material preparation, carbody, underframe, cab, sidewall, partition wall, side door wall, cover, bogie frame, fuel tank, coolant structure, water tank, cowcatcher, driver console, wheelset assembly, bogie assembly, locomotive assembly and test etc. Meanwhile, process flow chart, procedure, machinery, jigs & fixtures, labor time, as well as procurement



CNR Rolling Stock South Africa
 China Construction Bank Building
 55 Grayston Drive
 Sandton
 Johannesburg
 2196
 cnrtssapm@163.com

information of those jigs and fixtures like dimension, function, purchasing cycle etc. were indicated.

2. Technical support for Durban

In May of 2014, due to the new facilitate in Durban, we provided some suggestion on jigs and fixtures need to be equipped with in Durban to TE.

3.3P Technical Support

Currently, we are preparing the documents needed during 3P as per the request by TE. The experts from CNR will come once all the document are ready.

4. Potential Cost Increased

Therefore, start from less experience to mature manufacture, it needs a complicated procedure. Due to the tight schedule, the facility and staff in Durban could be challenge on the project execution.

It is estimated that it will get the cost increased, the cost will be more than R100,000,000, such as the following field:

- Transportation cost increased
- Human staff cost increased
- Technical support cost increased

this letter list some of the fields and estimated the additional cost, due to the manufacturing is not started, and the Durban situation and information of the site is not enough, the cost is draft but can be finalized during the execution in

China Construction Bank South Africa

CNR Rolling Stock
South Africa

CNR Rolling Stock South Africa
China Construction Bank Building
95 Grayston Drive
Sandton
Johannesburg
2196
cnrssapm@163.com

future.

CNR RS SA
February, 2015

南非项目德班搬迁
Proposal Estimated Cost Increase

序号 No.	名称 Description	增加金额 (总计) Increased amount (total)
1	增加运输费用 Increased logistics cost	65, 430, 000
2	增加德班建立办事处和旅行费用 Increased cost for setup facilities in Durban & travelling	29, 400, 000
3	全新、新设厂区的工艺布局技术指导, 技术支持费用 (比指导已有厂区需要等多的技术支持 和指导) Increased Cost on technical support & guide on brandnew process layout(compared with the KDS)	48, 600, 000
4	培训全新生产厂员工的难度和费用增加 (新生培训的深度和广度与既有熟练员 工不同) Difficulty and cost increased on training the new employees	31, 800, 000
5	供应商的机车生产现场服务成本增加 Increased cost for site service on site by supplier	47, 470, 000
6	我方延迟收到货款, 货款的时间价值 Increased Financial cost for postpone the delivery due to the relocation	96, 000, 000

曾加费用预算

used on Durban Relocation

备注 Remark
table1
<p>办事处房租：60万每年*7=420万；住宿房租（30人）：30万每月*12个月*7年=2520万兰特</p> <p>Office rental:600,000 Rand/year*7=4,200,000Rand;rental(30 persons): 300,000/month*12*7=25.2million Rand</p>
<p>800R（小时费率）*7.5小时*30人*270个工作日</p> <p>800R(hour rate)*7.5hours*30persons*270 working day</p>
<p>每台多10万兰特；212台合计=2100万兰特；（可以从培训TE人总数上验证一下）；培训总人数：</p> <p>100,000Rand per loco increased;21million rand total in 212 locomotives; (to be verified on TE traning)</p>
<p>现场服务按照采购总额（除TE）的10%计算，搬迁导致增长10%计算。</p> <p>On site service will be calculated according to 10%of procument amount(excludes TE), and the relocation will increase 10%.</p>

7	保险	2,726,851
	总计	318,700,000

APPENDIX 8

Appendix 8

BUSINESS
DEVELOPMENT
SERVICES
AGREEMENT

CNR ROLLING STOCK SOUTH
AFRICA PTY LTD.
(Registration No. 2014/016552/07)

with

BUSINESS EXPANSION
STRUCTURED PRODUCTS PTY
LTD.
(Registration No. 2009/020420/07)

AGREEMENT DATE: APRIL 25, 2015

This Agreement is entered into by and between the following parties:

BUSINESS EXPANSION STRUCTURED PRODUCTS PTY LTD (hereinafter referred to as "BES") (which expression includes its associates, subsidiaries, affiliates, successors and permitted assigns), a company duly incorporated and existing under the Companies Act in South Africa, and having its registered offices at 1st Floor, 24 Crescent Drive, Melrose Arch 2075, Johannesburg; duly authorised and represented by Mr. Mark Shaw

and

CNR ROLLING STOCK SOUTH AFRICA PTY LIMITED (hereinafter referred to as the "Company") (which expression includes its successors and permitted assigns), a company duly incorporated and existing under the Companies Act in South Africa, and having its office address at 3rd floor, 95 Grayston Drive, Sandton 2195, Johannesburg, South Africa, duly authorised and represented by the person signing this Agreement, duly authorised and represented by Mr. Gang Wang, signing this Agreement.

(Hereinafter, BES and the Company may be individually referred to as a "Party", and collectively as "the Parties".)

WHEREAS:

A. BES, a professional service advisory business that specialises in business enterprise optimisation using financial modelling, derivatives and engineering techniques, with its long standing relationships in the territory of South Africa (hereinafter "the Territory") has acquired a familiarity with regulatory, social, cultural and political framework whereby it is capable to closely co-ordinate with the designated authorities to comprehend the applicable Government policies, identify the opportunities of participation in various Government and Private projects, lend consultancy on participating in various tenders and bidding processes and thus facilitating trade of goods and services concerning such projects.

The COMPANY is a global company specialising in the manufacture of Locomotives and Spare Parts for the same, with a focus on emerging markets. The COMPANY has approached BES to provide advisory services in respect of the Project and for expanding their business in the Territory and help it in achieving their BES (Black Economic Empowerment) objectives in the Territory on a long-term basis.

B. The Parties have, after mutual discussions, acknowledged and agreed that they have suitable and complementary resources to jointly harness the opportunities in the Territory through this Business Development Services Agreement, whereby BES will play an active role in providing advisory services in respect of the Project, Business development and BES structuring and management in the Territory.

C. In view of the above-set background, the Parties have agreed to reduce in writing their mutual understanding and their respective fundamental interests, rights, duties, obligations and liabilities in relation to the agency, their respective roles in this regard, the terms and conditions on which the Parties would implement the agency relationship and certain other matters thereto.

1. Definitions and Interpretation

1.1. Definitions

Certain terms are defined within the recitals and within the body text of this Agreement. In addition, the following terms shall have the following meaning:

- "Affiliates" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such person.
- "Agency Commission" the difference between the price excluding VAT awarded to the Company by TFR and the Project Benchmark Costs of R350 million excluding VAT
- "Agreement" means this Agreement, including the recitals and schedules hereto, as the same may be varied or amended from time to time in writing by agreement of the Parties;
- "Agreement Date" shall mean and refer to APRIL 25, 2015; being the date of execution of this Agreement;
- "BEE" means Black Economic Empowerment as set out in the BEE Charter of the Republic of South Africa.
- "Business Day" means any day on which banking institutions in South Africa are open for business.
- "Force Majeure" means any of the following events or occurrences: (i) Acts of God, such as fires, floods, thunderstorms, earthquakes, unusually severe weather and natural catastrophes; (ii) civil disturbances, such as strikes, lock outs and riots; (iii) acts of aggression, such as explosions, wars, and terrorism which are not foreseen; or (iv) acts of government or actions of regulatory bodies which significantly inhibit or prohibit either Party from performing their obligations under this Agreement.
- "Nominee" means any juristic person or company that may be nominated by BEX with the prior written consent of CNR from time to time to continue with and fulfil the obligations of this Agreement and/or to provide the necessary services and any expertise required for executing the commercial aspects of this Agreement.
- "Person" includes any individual, company, corporation, firm, partnership, consortium, joint venture or association, whether a body corporate or an unincorporated association of persons.
- "Price" shall mean the amount paid by TFR for the implementation

	of the project
"Product"	means the Company's related products and Services.
"Project"	shall mean the change in scope whereby Transnet Engineering (TE) a division of Transnet SOC Limited requires the Company to change the location of the local manufacture programme from the TE KwaZuluport Gauteng facility to their Bay-Head Durban facility.
"Project Benchmark Costs"	shall mean R550m (Five hundred and eighty million Rand) excluding VAT
"Scope Deviation"	shall mean costs associated with the implementation of the Project
"Terkary"	means Republic of South Africa.
"Third Party"	means a person who is not a Party to this Agreement and does not include Affiliates of any of the Parties.
"TFN"	means Transnet Freight Rail, a division of Transnet SOC Limited

1.2 Interpretation

- 1.2.1 References to this Agreement or to any other instrument shall be a reference to this Agreement or that other instrument as amended, varied, novated, or substituted from time to time.
- 1.2.2 The headings in this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.2.3 References to Articles, Clauses and Schedules are references to articles, clauses and sub clauses and schedules to this Agreement.
- 1.2.4 Words importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and the neuter gender and vice versa.
- 1.2.5 Each of the representations and warranties provided in this Agreement are independent of other representations and warranties and unless the contrary is expressly stated, no Clause in this Agreement limits the extent or application of another Clause.
- 1.2.6 "In writing" includes any communication made by letter or fax or e-mail

1.2.7. The words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as limiting the generality of any preceding words.

1.2.8. References to a person shall be construed so as to include:

1.2.8.1. Individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organisation, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body (whether or not in each case having separate legal personality);

1.2.8.2. that person's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement; and

1.2.9. References to a person's representatives shall be to its officers, employees, legal or other professional advisers, sub-contractors, agents, attorneys and other duly authorised representatives.

1.2.10. References to statutory provisions shall be construed as references to those provisions as are respectively amended or re-enacted or as their application is modified by other provisions (whether before or after the date of this Agreement) from time to time and shall include any provisions of which they are re-enactments (whether with or without modification).

1.2.11. All warranties, representations, indemnities, covenants, guarantees, stipulations, undertakings, agreements and obligations given or entered into by more than one person are given or entered into severally unless otherwise specified.

1.2.12. In the event that the date on which any act or obligation specified in this Agreement to be performed falls on a day which is not a Business Day, then the date on which the act or obligation is to be effected or performed shall take place on the next Business Day.

1.2.13. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of the Parties, and there shall be no presumption that an ambiguity should be construed in favour of or against any Party solely as a result of such Party's actual or alleged role in the drafting of this Agreement.

2. Preamble

2.1. Whereas T2 requires the Company to change the location of the local manufacture programme from the T2 Koeboespoort Gaming facility to their Bay Head Durban facility;

2.2. And whereas the Company has approached SFX to assess and formulate the entire strategy and planning to quantify and benchmark the costs associated with the relocation as per Clause 2.1;

- 2.3. And whereas BEX has agreed to undertake the work at their sole risk and at no cost to the Company if the agreed Project Benchmark Costs are not recovered from Transnet Freight Rail (TFR).
- 2.4. After extensive research and negotiations with both the Company & TFR, BEX and the Company have agreed that the Project Benchmark Costs will be fixed at R560 million (Rands Five hundred and eighty million only) excluding VAT.
- 2.5. Since BEX has undertaken to negotiate and finalize the deal with TFR on a risk basis, it is agreed between both parties that BEX be entitled to an Agency Commission as detailed in Clause 6.

3. Scope and Purpose of the Agreement and key principles

- 3.1. The Parties have entered into this Agreement to record their mutual understanding as regards their relationship and the manner in which the Project shall be implemented through this Agreement.
- 3.2. The scope of this Agreement is the regulation of the rights and relationships of the Parties, both among themselves and with respect to Third Parties, with the aim of executing the Project and other services in the Territory.
- 3.3. In order to achieve their joint commercial objectives, the Parties shall operate this Agreement as per the terms and conditions set out herein.
- 3.4. Each Party agrees to co-operate with the other Party on a best effort basis.
- 3.5. Each Party hereby agrees and undertakes towards the other Party to perform and observe all of the provisions of this Agreement.
- 3.6. The Parties acknowledge that the broad parameters for the conduct of this Agreement (subject always to the terms and conditions of this Agreement) is to implement the Project in the Territory and to enhance the economic value of the Parties.

4. General Conditions of Appointment

- 4.1. The Company hereby appoints BEX to provide advisory and consulting services in respect of the Project and to aid Business Development and to assist in achieving the Company's BEE objectives in the Territory.
- 4.2. The Parties hereby agree and acknowledge that they are independent contractors. No partnership, joint venture or employment is created or implied by this Agreement.

5. Duties and Responsibilities of BEX

- 5.1. BEX shall provide advisory services in respect of the Project and will assist in the implementation of the processes related to the Project on a risk basis.
- 5.2. BEX shall assist the Company to achieve its objectives in the Territory.
- 5.3. BEX shall not make any representation on behalf of the Company except in conformity with express written permission from the Company.
- 5.4. BEX will have two years from the Agreement Date to implement the Project.
- 5.5. BEX will inform the Company timeously in writing if it wishes to appoint a nominee or assign the provisions of this Agreement. The appointment of such nominee or assignee shall be effected after the written consent of the Company.

6. Remuneration, payment terms etc.

- 6.1. For the Project Scope deviation (referred hereinabove), BEX shall assist the Company to negotiate the best possible price with TFR based on the Project Benchmark Cost of R550 million (Rands Five Hundred and Eighty million only) excluding VAT.
- 6.2. The Company agrees that BEX will be entitled to an agency commission equivalent to the difference between the price excluding VAT awarded to the Company by TFR and the Project Benchmark Cost of R550 million excluding VAT. For example if the price awarded is R550 million, then BEX will be entitled to an agency commission of R100 million (excluding VAT) i.e. R650m. less R550m.
- 6.3. The Company will be entitled to the Project Benchmark Cost of R550 Million irrespective of whether the total Project value is negotiated lower than the R550 million by TFR.
- 6.4. BEX shall be entitled to the agency commission irrespective of whether the Project Benchmark Cost arise from the supply of services, main product or any spare part or ancillary item thereto.
- 6.5. The agency commission as stated above will be due and payable in full as and when i) the Company and TFR has entered into an agreement that the Company will be awarded the Price more than the Project Benchmark Costs by TFR, and ii) the first payment of the Price is received by the Company.
- 6.6. The company shall pay BEX within 10 business days after from receipt of the invoice from BEX.

7. Term and Termination

- 7.1. This Agreement shall be effective from the Agreement Date and will remain valid for a period of two years and for such time that the Company remain eligible for the award of the Scope Deviation.
- 7.2. Once the agreement for the Scope Deviation has been signed by the Company, this Agreement shall remain in force until full payment due to BEX under this Agreement is made by the Company.
- 7.3. If either Party hereto commits a breach of this Agreement or defaults in the performance of its obligations, and if such default or breach is not rectified within 14 (fourteen) business days after the same has been called to the attention of the defaulting Party by a written notice from the other Party; then the non-defaulting Party, at its option, may declare a dispute and hereby consent to the arbitration being dealt with in terms of the expedited Rules of arbitration of AFSA within 30 days. The arbitration shall be determined in accordance with the provisions of South African law and the Parties submit to South African jurisdiction for the purpose of this arbitration.
- 7.4. Any expiration or termination of this Agreement pursuant to Clause 7.2 shall be without prejudice to any other rights or remedies to which a Party may be entitled hereunder or at law and shall not affect any accrued rights or liabilities of either Party.

8. Liability provisions

8.1. Each Party undertakes to cause its employees, agents, and Affiliates, as long as they are associated with terms of this Agreement, to respect and comply with this Agreement.

In any case, each Party undertakes to collaborate in good faith with each other to avoid or minimize any disadvantage or harm affecting the other Party.

8.2. The provisions of Clause 8 shall continue to apply following the expiration or termination of this Agreement and for a period of five (5) years thereafter.

9. Confidentiality

9.1. During the course of this Agreement, one Party (the "Discloser") may, on a case-by-case basis, disclose to the other Party (the "Recipient") certain Confidential Information all of which shall be regarded as confidential. "Confidential Information" means any information as the Discloser may from time to time provide (or have supplied or disclosed on its behalf) to the Recipient, including all financial or other information relating to its business affairs or the business affairs of the Affiliates, whether orally or in a written, physical or visual form, regarding the products, activities, including (without limitation) data, software systems, information technology, products, applications together with analyses, compilations, forecasts, studies or other documents prepared by the Discloser (including, but not limited to, lawyers, accountants, consultants and financial advisers) and/or its Representatives which contain or otherwise reflect information about the Discloser and/or its Affiliates.

9.2. The Recipient shall at all times during the term of this Agreement and for a period of five (5) years following its termination, hold all Confidential Information which it acquires from Discloser under the terms of this Agreement, or otherwise, in strict confidence and shall not disclose such information to any third party or duplicate, transfer, or use directly or indirectly, the Confidential Information other than in Recipient's performance of its obligations under this Agreement.

The foregoing restrictions shall not apply to any information which (i) is or becomes generally available to the public other than as a result of a breach of obligation by Recipient; or (ii) is lawfully acquired from a third party who owes no obligation of confidence in respect of the information; or (iii) Recipient is required to disclose by law (provided that Recipient shall assert the confidential nature of the information and give immediate written notice to Discloser and assist Discloser in obtaining a protective order against such disclosure).

9.3. Upon request of Discloser, or upon the expiration or any earlier termination of this Agreement, Recipient shall promptly return all copies of the Confidential Information in whatever form or media, to Discloser or, at the direction of Discloser, destroy the same. Recipient shall certify in writing to Discloser such return or destruction within ten (10) days of the date of Discloser's request.

3.4. Subject to all other terms of this agreement, this Agreement and its Annexes are also Confidential Information and either party shall not disclose, advertise or publish the terms or conditions of this Agreement or the Annexes without the prior written consent of the other party.

10. Miscellaneous

10.1. All notices required or permitted to be given under this Agreement shall be in writing, shall be given to the other Party and shall be deemed given to a Party when:

10.1.1. delivered to the appropriate address by hand and by email or by overnight courier service (costs prepaid);

in each case to the following addresses and marked to the attention of the person (by name or title) designated below (or to such other email address, facsimile number or person as a Party may designate by notice to the other Party):

BSX:

BSX Structured Products Pty Ltd

For the attention of: Mr. Mark Shaw

Address: 24 Cranford Drive, Melrose Arch 2075, Johannesburg and by email at: enquiries@bsxstructuredproducts.co.za

The Company:

CNR ROLLING STOCK PTY LTD.

For the attention of: Mr. Gang Wang

Address: 3rd Floor, 55 Graydon Drive, Sandton, 2199, Johannesburg

All correspondence, exchange of information, documents between the Parties, with Customers / third parties shall take place in English language.

10.2. No Party may assign any interest, benefit, right or obligation under this Agreement to any Person without having obtained the prior written consent of the other Party which consent shall not be unreasonably withheld. In the event of assignment as specified above, the assigning Party shall continue to guarantee the performance of the new participant under this Agreement and in any event of assignment, it shall also continue to be bound by the exclusivity and confidentiality provisions set forth herein.

10.3. If any provision of this Agreement is or becomes illegal, unenforceable or invalid under the law of any jurisdiction applicable to the Parties, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired thereby; provided, however, that if such severability materially changes the economic benefit of this Agreement to a Party, the Parties shall negotiate a equitable adjustment to the provisions of this Agreement in good faith.

10.4. This Agreement (including any annexes thereto) sets forth the full and complete understanding of the Parties as of the date of execution of this Agreement and supersedes all other prior negotiations, agreements, and understandings of the Parties with respect thereto. No Party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.

10.5. No waiver of any of the provisions of this Agreement shall be deemed to be or constitute a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver.

10.6. Neither this Agreement nor any of the terms hereof may be amended, supplemented, waived or discharged unless the Parties so agree in writing.

10.7. This Agreement may be executed in one or more duplicate counterparts and when executed by all of the Parties shall constitute a single binding agreement.

10.8. Neither Party hereto shall be liable for any failure to perform its obligations under this Agreement due to a Force Majeure event. In the event of Force Majeure the Parties shall evaluate the obligations affected by the Force Majeure event, and shall mutually agree in writing on the measures to be taken or on the effect of such Force Majeure event on the Parties' obligations hereunder. The Parties may agree that performance of a Party's obligations shall be suspended during the period of existence of such Force Majeure event as well as the period reasonably required thereafter to resume the performance of the obligation. The Parties shall use their best reasonable efforts to minimize the consequences of this Force Majeure. In the event of Force Majeure the Parties shall discuss and mutually agree on the continued co-operation between the parties, including the necessity of termination of this Agreement.

10.9. Except to the extent of indemnification obligations related to third Party claims, neither Party hereunder shall be liable for special, incidental, exemplary, indirect, punitive or consequential damages arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under contract, tort (including such Party's own negligence) or any other theory at law or in equity.

11. SEK Banking details

The Banking details will be mentioned in each invoice provided by SEK to the Company.

Any changes to the above banking details of SEK will be advised by SEK to the Company in writing. In the event of the Company receiving what appears to be an instruction from SEK amending the SEK banking details, the Company shall only be entitled to act upon such instruction if it was received in writing from, or confirmed in writing with, the signatory to this Agreement.

12. Binding Effect

With effect from the Agreement Date, this Agreement shall become unconditional and a legal, valid and binding obligation of each of the Parties.

13. Signature in counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement on the date and at the place mentioned below.

SIGNED AT PARKTOWN ON THIS 15th DAY OF APRIL 2015

For and on behalf of REX STRUCTURED PRODUCTS PTY LTD.

Name: MR. MARK SHAW Designation: Authorized Signatory

Signature: [Signature]

AS WITNESS:

1. [Signature]

SIGNED AT: [Signature] ON THIS 15th DAY OF APRIL 2015

For and on behalf of CHIR ROLLING STOCK SOUTH AFRICA PTY LTD.

Name: MR. GANG WANG Designation: Authorized Signatory

Signature: [Signature]

AS WITNESS:

[Signature]

Annexure - A

Details of Services to be provided by BEX to THE COMPANY in respect of the Project BEX, and its associates have significant relationships in the Territory BEX has agreed to provide the Company with the following services as part of its Advisory and Consulting Services on the Project:

1. Conduct detailed research on the costs associated with the Project on a risk basis
2. Negotiate and assist the Company to conclude the project at the minimum benchmark cost of R250 million excluding VAT.
3. Advise the Company on the regulatory, social, cultural and political framework in South Africa with respect to the Project.
4. In addition to the Project, identify various opportunities to participate in similar projects.
5. Closely co-ordinate with appropriate counterparties to advise on applicable Government policies and advise the Company on successful execution and implementation of the Project.
6. In addition to the Project, assist the Company in increasing their access to in Government and Private Projects in the Territory.
7. Assist the Company in relation to the Project to make a presentation. If requested by the Company, BEX will attend the meeting with the Company in regard to giving report, analysis, explanation and presentation to TFR.
8. Provide project plan, information, data, or documents relating to the accounting records or other necessary data, documents or analysis on the Project.

APPENDIX 9

Appendix 9



Hogan Lovells (South Africa) Inc.
22 Freedman Drive
Sandton, Johannesburg
PO Box 78333 Sandton City 2146
DX 7 Sandton Square
T +27 11 286 6900
F +27 11 286 6901
www.hoganlovells.com

Fred von Eckardstein
KPMG Inc

Per email: fred.voneckardstein@kpmg.co.za

rachel.kelly@hoganlovells.com;
vaughn.harrison@hoganlovells.com;
charles.you@hoganlovells.com; and
nikhil.bhagat@hoganlovells.com
D +27 11 775 6332

Our ref 4433868
Matter ref JOBURG

04 September 2017

Dear Fred

REPORTABLE IRREGULARITY: CRRG ROLLING STOCK SA (PTY) LTD ("OUR CLIENT")

1. INTRODUCTION

1.1 We refer to your letter of 12 June 2017 addressed to our client, your letters dated 12 June 2017 and 11 July 2017 addressed to the Independent Regulatory Board of Auditors and the meeting held on Monday 14 August 2017, and attended by me by way of a conference call link ("the meeting").

1.2 In the meeting, we discussed the alleged "reportable irregularity" arising from a proposal which our client prepared for Transnet SOC Limited ("Transnet") and a business development services agreement entered into between our client and Business Expansion Structured Products Proprietary Limited ("BEX").

1.3 We understand that, at this time and on the basis of information provided to you, you are of the view that the proposal and the agreement contain alleged irregularities for the following reasons:

- (a) the proposal significantly misrepresented to Transnet the cost of the relocation of a manufacturing facility from Pretoria to Durban; and
- (b) a payment made by our client to BEX appears to "lack sound commercial substance and purpose".

1.4 Following the discussions at the meeting, it appears to us that you have not been given all the information and context surrounding the proposal, and the agreement, that you need to properly assess these documents, and we undertook to liaise with our client, and

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gather information and documentation with a view to addressing the allegations you have raised, and which allegations are disputed by our client.

1.5 We will set out the further information that we have received from our client, below.

2. BACKGROUND AND RELATIONSHIP BETWEEN TRANSNET, OUR CLIENT AND BEX

Our client has instructed us as follows:

- 2.1 As you know, during March 2014, Transnet awarded contracts to four equipment manufacturers, including Bombardier Transportation South Africa ("Bombardier"), to provide locomotives, the majority of which are to be manufactured in Pretoria or Durban, and our client was awarded a contract to manufacture and supply 232 diesel locomotives.
- 2.2 Following the award of this contract to our client, Transnet approached both our client and Bombardier to request a variation to the original contract. The variation concerned the relocation of the Transnet locomotive manufacturing facility from Pretoria to Durban, and our client prepared a proposal and costing for this variation ("The Project").
- 2.3 We understand that our client and Bombardier were approached by Transnet as they are the primary users of the manufacturing facility, although a part of the space is also used by Transnet. Our client has no knowledge of whether or not Bombardier submitted a proposal to Transnet.
- 2.4 Our client, having been asked to provide a proposal to Transnet, felt obliged to respond. Accordingly, our client put together a brief proposal to Transnet, dated 28 January 2015, and a copy is attached as Annexure A.
- 2.5 As you will see from Annexure A, our client at this stage had only managed to put together a high-level proposal, which did not contain any breakdown of the costs of the Project. This proposal was discussed with a multidisciplinary team appointed by Transnet ("the Transnet Team") who advised that this proposal was not detailed enough as Transnet required more information and costing.
- 2.6 Our client then submitted a revised proposal to Transnet, which is dated 11 February 2015 and is attached as Annexure B. This proposal provided that "the cost will be more than R100,000,000" but did not provide any detailed break-down of the costs. At this stage, our client was not in a position to provide a detailed cost break-down, as a relocation of the type contemplated, was beyond its day to day expertise.
- 2.7 This revised proposal (Annexure B) was also discussed at a meeting between representatives of our client and the Transnet Team. Again, Transnet advised our client that the proposal was not comprehensive enough for them to properly consider.
- 2.8 It should also be noted that our client is a Chinese Headquartered Manufacturing Group and it is accordingly not familiar with local costing and conditions.
- 2.9 At this meeting, Transnet's Team advised our client to prepare a more professional proposal setting out *inter alia*:
- (a) what would be required to complete the relocation of the manufacturing facility and the implementation of the Project;
 - (b) all of the ancillary issues which would need to be considered as part of the relocation (for example, insurance, warehousing costs, financing etc); and
 - (c) a detailed breakdown of the various project components with a more detailed analysis of the costs comprising each component of the Project

- 2.10 In a further effort to meet Transnet's requirements, our client then compiled a more detailed cost estimate, which was finalised in March 2015, and a copy of this is attached as Annexure C. You will see from Annexure C that our client attempted to make a further and more detailed proposal. However, this cost estimate, while more detailed than what had previously been submitted to Transnet, remained nothing more than an estimate, on an uninformed basis, of the costs, estimated by our client's factory engineers, based on what they believed a similar project would cost in China. In preparing this submission, our client's factory engineers, failed to factor in the significantly higher costs applicable in South Africa (such as increased labour costs).
- 2.11 Once again, this more detailed cost estimate set out in Annexure C, was not satisfactory to Transnet.
- 2.12 Our client and BEX had originally met in 2014, shortly after our client was awarded the original contract by Transnet, at a railway exhibition. At that time, our client exchanged business cards with BEX.
- 2.13 Subsequently, BEX visited our client at their offices to see whether BEX could assist our client with its business and this meeting was initiated by BEX, not by our client.
- 2.14 At this meeting our client mentioned to BEX that our client had been asked to provide Transnet with a proposal for the relocation of Transnet's manufacturing facility and that our client had been experiencing difficulty in putting together a proposal which met Transnet's requirements.
- 2.15 BEX offered to assist our client in putting together the required proposal and a cost breakdown which would meet Transnet's requirements. Our client was of the view that if BEX could provide the skill and expertise required to put a satisfactory proposal together for Transnet, our client was prepared to engage with them.
- 2.16 BEX provided our client with a copy of its company profile, a copy of which is attached as Annexure D, which our client was comfortable with. As our client was under substantial time pressure to submit a detailed proposal to Transnet as Transnet's financial year end was approaching, and as our client was unable to provide a proposal in the form required by Transnet, it required BEX's services in order to be able to do so.
- 2.17 In accordance with our client's request, BEX then analysed the project, and carefully considered the costing and applicable models and methodologies, and confirmed with our client that the estimated breakeven cost of the Project would be R580 million. This is, of course, higher than the R318 million which our client had calculated but, as mentioned above, this figure was an approximation of what the project would cost if it were undertaken in China, without looking at what the costs in South Africa would be. The main drivers to which the increased costs can be attributed are:
- (a) labour costs;
 - (b) the impact of timing;
 - (c) hedging and risk management costs; and
 - (d) additional and material costs to be allocated to upgrading and renovating the Durban facility to ensure parity between it and the high quality of Transnet's Pretoria manufacturing facility.
- 2.18 Our client and BEX thereafter entered into a business development services agreement, pursuant to which BEX agreed to provide certain services in terms of the agreement attached as Annexure E

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- 2.19 With respect to the fee that BEX would receive for providing these services, our client did not want to take any risk itself in terms of having to absorb additional fees from BEX. Our client was in no way assured of being the successful project bidder and, had it agreed to pay BEX's fees upfront, it would have been out of pocket had it not been successful in its bid.
- 2.20 As our client needed BEX's services in order to properly respond to Transnet's request for proposal, our client agreed a risk-sharing arrangement with BEX. As you know, it was ultimately agreed (as recorded in the Business Services agreement) that inter alia:
- (a) BEX would assist our client in negotiating the "best possible price" with Transnet, based on the Project benchmark cost of R580 million (this being the minimum amount which our client would need to receive in order not to make a loss from the Project);
 - (b) BEX would be entitled to an "agency commission" equal to the difference between the price awarded by Transnet and the project benchmark cost;
 - (c) Our client would be guaranteed its R580 million — i.e. if the total price agreed to by Transnet was R580 million or less, our client would have been entitled to the full price to be paid by Transnet and BEX would not have received any fee for their services.
- 2.21 Our client was of the view at the time that Transnet would not agree to a project cost of R580 million and that the final project cost might be lower than this. Based on our clients prior business experience, that our client believed that Transnet would require a discount on this amount. Thus our client believed that the final project cost would be closer to, R580 million. Hence they believed there was very little risk for them in agreeing an "upside" fee arrangement with BEX.
- 2.22 As to why our client was prepared to undertake this project on a break-even basis, our client has advised that they were prepared to do so, for strategic reasons. Our client had already been awarded a contract to provide 232 locomotives to Transnet and hoped to secure future work in South Africa. Being prepared to undertake the relocation project on a cost-neutral basis could further assist our client in securing any such future work. In addition, our client is ultimately a State-owned company in China and its mandate and strategy is to encourage investment outside of China. Hence the focus was on trying to ensure that our client did not make a loss as a result of the implementation of the Project, rather than trying to make a profit, and our client approached the matter on a strategic long term basis. It is clear from the above that there are cultural differences in how Chinese companies and South African companies do business and which has not been factored in by you.
- 2.23 After consulting with BEX, our client then issued a further project proposal and costing to Transnet, attached as Annexure F. While our client, based on advice received from BEX, believed that its break-even cost for the project was R580 million, the proposal submitted to Transnet contained a project cost of R635 851 786 to provide for cost increases due to labour costs, hedging and etc. and caused by the lengthy period required to execute the Project, and further to enable our client to accommodate any reductions in our clients proposed Project cost, that might be required by Transnet, and without necessarily putting our client into a position where our client would make a loss on the Project.
- 2.24 Unavoidably, and due to a time extension by Transnet, a further proposal, marked Annexure G, was required to be submitted to Transnet in an amount of R719 090 548, but building in a discount that would reduce the project cost to R647 181 494, and

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Transnet accepted that the additional costs had arisen as a result of the extension by Transnet, and Transnet accepted the price and discount that our client had proposed.

- 2.25 Our client's proposal (Annexure G) was accepted by Transnet, and we attach Transnet's written acceptance as Annexure H. While our client is not privy to the facts on which Transnet based its decision to accept our client's proposal, it is likely that the time pressure that Transnet was under to initiate the relocation of the manufacturing facility and thereafter to start the Project as soon as possible may have played a part. Transnet itself refers to an "extremely tight delivery schedule" associated with this project (see Annexure I). Also, our client further assumed that Transnet would have considered bids from other parties for this project – particularly as our client was aware that Bombardier was approached to submit a proposal. Our client assumes that, in light of this, its proposal must have been favourable as compared to any other proposals that Transnet might have received, bearing in mind that our client's benchmark cost of R580 million was calculated on a breakeven basis, and that other bidders would not have submitted bids on this basis and would accordingly have built a profit margin into their bids. While our client anticipated that Transnet would push back on its proposal and try to reduce this, Transnet accepted that our client had already built in a 10% discount, and appeared comfortable with this.
- 2.26 Following Transnet's acceptance of our client's proposal, in an amount which was higher than what our client believed Transnet would agree to, our client issued an invoice to Transnet (see Annexure J) and BEX issued an invoice for its "fee" to our client – please see Annexure K.
- 2.27 We have asked our client as to whether, when the project price of R647 181 494 had been agreed to by Transnet, there had been any discussions with BEX about reducing the commission payable to BEX under the business development services agreement.
- 2.28 Our client has advised us that they did consider this and even, had a discussion with Mr Mark Shaw of BEX in which they raised their concerns that with hindsight the commission payable to BEX might be high. However, Mr Mark Shaw dismissed this, and on the basis that the fee or commission payable to BEX had already been contractually agreed. Our client then raised the issue with its parent company in China. The parent company asked what the likelihood of litigation would be if they tried to reduce the commission payable to BEX and our client advised that this was likely. On this basis, wishing to avoid protracted litigation and possible damage to its reputation, our client's parent company instructed our client not to pursue a claim or request for a reduction of the commission payable to BEX.
- 2.29 Ultimately, our client is of the view that, had they known at the outset that Transnet would have agreed to a project fee exceeding R580 million, they would not have been happy with nor agreed to the fee arrangements agreed with BEX as set out in the business development services agreement. At the time, our client was of the bona fide belief that the final project fee would be closer to R580 million, and did not contemplate that it could be significantly higher than this.
3. In conclusion, we trust that the above information provides you with a better context and understanding of the transactions which have been reported as alleged "material irregularities", and we reiterate that our client disputes that there were grounds to do so. Ultimately, BEX did receive a substantial commission for the services it provided to the company but, and as indicated above, there are commercial and bona fide reasons for this.
4. We further remind you of the so-called "business judgment rule" in terms of which it is presumed that in making a business decision, the directors of a company acted on an informed basis in good faith and in the honest belief that the action taken was in the best

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interests of the company. It is evident from the information provided to you that, at all relevant times, Our client's management acted in the best interests of the company, and with the requisite degree of care, skill and diligence in respect of its dealings with Transnet and BEX, and any allegation to suggest that our client and/or its directors acted irregularly or in breach of their fiduciary duties are unmeritorious and specifically denied. Our client expressly denies that they were party to improper dealings, and have advised us that the transactions referred to herein are *bona fide* arms-length transactions between willing contractors.

5. In light of what is detailed herein, our client is of the view that it would not be proper or correct for KPMG to qualify its current draft financial statements, nor revise our clients financial statements for the prior financial year.

Yours sincerely

Vaughn Harrison

Partner

A



Durban Locomotive Factory Relocation Proposal

CNR Rolling Stock South Africa

2015-1-28

CNR Rolling Stock South Africa

CNR Rolling Stock
South AfricaCNR Rolling Stock South Africa
China Construction Bank Building
95 Grayston Drive
Sandton
Johannesburg
2196
cnrssapm@163.com

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CNR Rolling Stock South Africa
 China Construction Bank Building
 95 Grayston Drive
 Sandton
 Johannesburg
 2196
 cnrssapm@163.com

TIMU DRAFT

Since Spet.15th of 2014, CNR RS SA has provided the technical supports to TE in positive according to the requirements. The following items have been made big progress.

1.Manufacture Process Chart

In 2014, the draft version of "Information of Process Chart, Working Procedure and Machinery, Jigs & Fixtures for each Station" was provided to TE.

Latterly, when TE visit in Dalian, CNR production line of diesel locomotive was shown and introduced in details to TE, including Carbody fabrication line and assembly line, bogie frame fabrication line and assembly line, Combo fabrication and assembly line, wheelset assembly line, engine test bench, locomotive final assembly line, load test bench and running test bench and etc.

As per the request made by TE during their visit in Dalian, CNR Dalian updated the draft data sheet by adding the procurement information of Machinery and Jigs & Fixtures, and labor hours at each station etc. In this document, it indicated the product and procedure for the items like material preparation, carbody, underframe, cab, sidewall, partition wall, side door wall, cover, bogie frame, fuel tank, coolant structure, water tank, cowcatcher, driver console, wheelset assembly, bogie assembly, locomotive assembly and test etc. Meanwhile, process flow chart, procedure, machinery, jigs & fixtures, labor time, as well as procurement



CNR Rolling Stock South Africa
 China Construction Bank Building
 95 Grayston Drive
 Sandton
 Johannesburg
 2196
cnrssapm@163.com

Information of those jigs and fixtures like dimension, function, purchasing cycle etc. were indicated.

2. Technical support for Durban

In May of 2014, due to the new facilitate in Durban, we provided some suggestion on jigs and fixtures need to be equipped with in Durban to TE.

3.3P Technical Support.

Currently, we are preparing the documents needed during 3P as per the request by TE. The experts from CNR will come once all the document are ready.

4. Potential Cost Increased

Therefore, start from less experience to mature manufacture. it needs a complicated procedure. Due to the tight schedule, the facility and staff in Durban could be challenge on the project execution.

It is estimated that it will get the cost increased, this letter list some of the fields, it is draft but can be finalized during the execution in future.

CNR RS SA
 January 28, 2015

B

CNR Rolling Stock South Africa (Pty) Ltd 2014/01/27

CNR Rolling Stock
South Africa

Durban Locomotive Factory Relocation Proposal V2

CNR Rolling Stock South Africa

2015-2-1

Rolling Stock South Africa

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South Africa

CNR Rolling Stock South Africa
China Construction Bank Building
95 Grayston Drive
Sandton
Johannesburg
2196
cnrssapm@163.com

CONTENT

1. Manufacture Process Chart2

2. Technical Support.....3

3. 3P Technical Support.....3

4. Potential Cost Increased3

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China Construction Bank Building
95 Grayston Drive
Sandton
Johannesburg
2196
cnr@sapm@163.com

DRAFT V2

Since Spet.15th of 2014, CNR RS SA has provided the technical supports to TE in positive according to the requirements. The following items have been made big progress.

1. Manufacture Process Chart

In 2014, the draft version of "Information of Process Chart, Working Procedure and Machinery, Jigs & Fixtures for each Station" was provided to TE.

Latterly, when TE visit in Dalian, CNR production line of diesel locomotive was shown and introduced in details to TE, including Carbody fabrication line and assembly line, bogie frame fabrication line and assembly line, Combo fabrication and assembly line, wheelset assembly line, engine test bench, locomotive final assembly line, load test bench and running test bench and etc.

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Therefore, start from less experience to mature manufacture, it needs a complicated procedure. Due to the tight schedule, the facility and staff in Durban could be challenge on the project execution.

It is estimated that it will get the cost increased, the cost will be more than R100,000,000, such as the following field:

- Transportation cost increased
- Human staff cost increased
- Technical support cost increased

this letter list some of the fields and estimated the additional cost, due to the manufacturing is not started, and the Durban situation and information of the site is not enough, the cost is draft but can be finalized during the execution in

CNR Rolling Stock South Africa

CNR Rolling Stock
South Africa

CNR Rolling Stock South Africa
China Construction Bank Building
95 Grayson Drive
Sandton
Johannesburg
2196
cnrssapm@163.com

future.

CNR RS SA
February, 2015

南非项目德班搬迁
Proposal Estimated Cost Increa

序号 No.	名称 Description	增加金额 (总计) Increased amount (total)
1	增加运输费用 Increased logistics cost	65, 430, 000
2	增加德班建立办事处和旅行费用 Increased cost for setup facilities in Durban & travelling	29, 400, 000
3	全新、新设厂区的工艺布局技术指导, 技术支持费用 (比指导已有厂区需要等多的技术支持 和指导) Increased Cost on technical support & guide on brandnew process layout(compared with the KDS)	48, 600, 000
4	培训全新生产厂员工的难度和费用增加 (新生培训的深度和广度与既有熟练员 工不同) Difficulty and cost increased on traning the new employees	31, 800, 000
5	供应商的机车生产现场服务成本增加 increased cost for site service on site by supplier	47, 470, 000
6	我方延迟收到货款, 货款的时间价值 Increased Financial cost for postpone the delivery due to the relocation	96, 000, 000

增加费用预算

used on Durban Relocation

备注 Remark
table1
<p>办事处房租：60万每年*7=420万；住宿房租（30人）：30万每月*12个月*7年=2520万兰特</p> <p>Office rental:600,000 Rand/year*7=4,200,000Rand;rental(30 persons): 300,000/month*12*7=25.2million Rand</p>
<p>800R（小时费率）*7.5小时*30人*270个工作日</p> <p>800R(hour rate)*7.5hours*30persons*270 working day</p>
<p>每台多10万兰特；212台合计=2100万兰特；（可以从培训TE人总数上验证一下）；培训总人数：</p> <p>100,000Rand per loco increased;21million rand total in 212 locomotives; (to be verified on TE training)</p>
<p>现场服务按照采购总额（除TE）的10%计算，搬迁导致增长10%计算。</p> <p>On site service will be calculated according to 10%of procurement amount(excludes TE), and the relocation will increase 10%.</p>

7	保险	2,726,851
	总计	318,700,000

D

BEX Structured Products (Pty) Ltd

ABOUT BEX:

BEX Structured Products ("BEX") is a professional service advisory business that specialises in business enterprise optimisation using financial modelling, derivatives and engineering techniques.

BEX works with the executives of leading South African and multinational corporations to solve their most important, complex and recurring challenges; and to exploit their opportunities. In so doing we are able to add sustainable, verifiable and significant value to clients.

Where appropriate BEX will advise on capital raising utilizing either debt or equity funding. In this regard BEX has significant experience in funding all aspects of industrial, financial, insurance, telecoms and marketing businesses as well as having participated or advised in transactions in the mining and property sectors.

OUR EDGE:

We differentiate ourselves by always employing rigorous financial techniques and technologies, fused with an intimate understanding of the practical business context and detail. It is through this fusion that we are able to advise our clients on a course of action that is value enhancing and cost effective and at the same time feasible to implement. This enables them to practically attain their objectives in the most efficient and effective manner.

Merely being 'strategically' or 'directionally' correct is insufficient for us. We operate in a world of deliberate precision, and absolute accuracy. Our task is to embrace complexity and then refine it into objective clarity.

BEX operates through an established network of professional partners to deliver client focused solutions thus providing access to some of South Africa's leading corporate financiers, engineers, mathematicians, actuarial scientists and software programmers, working seamlessly across their respective disciplines in order to deliver advice to clients that will result in significant and tangible

We define optimisation as:

A rigorous scientific process designed to discover the configuration of components of a business system (enterprise and/or industry) that will result in greatest achievement of the desired outcome or objective function.

OUR CLIENTS

Some of the Optimisation projects that BEX and our partners have been involved in historically:

Within the Long Term Asset Optimisation Realm:

Client	Engagement Summary
Major Mining Multi-Commodity Conglomerate	Development of probabilistic capacity models for the validation of production plans and business cases for new investments
Major Mining Multi-Commodity Conglomerate	New Mining Technologies In Rock Cutting - Scenarios were designed to formulate business cases for different rock cutting technologies relative to other conventional mining methods
Major Platinum Producer	Modelling, optimisation and the implementation of new mining technologies and methods in the mining industry, Financial Analysis, Strategy, Stochastic scheduling & analysis (risk Management), extensive layout design & analysis of New Mining Technologies, Implementation of New Mining Technologies & Mining Methods within the Mining Industry, development of a Management Operating Systems for Underground Mines, Operational Time Studies, Analysis & Mining Method, Optimisation, Mining Method Visualisations.
Major Platinum Producer	Probabilistic analysis of underground operations' production schedules using Monte Carlo techniques to validate their long term plans.
Major Global Gold Producer	Production scenario planning for several key mines.
Major Platinum Producer	Half level optimisation and costing.
Major South African Gold Producer	Life of Mine scenarios - the development and implementation of detailed NPV and cash flow models focused on evaluating multiple what-if scenarios for their competent persons report at all their Underground Gold operations.
World Leader In Alloying Metals	Opex modelling of a new investment in South Africa of the French based company.
Major Open Pit Platinum Mine	Expansion Validation - Using stochastic discrete event simulation, Cymet tested the feasibility of a 20% expansion of the mine. The purpose was to determine whether the mine could deliver sufficient material to support the planned plant expansion. Our team determined the confidence level associated with the target, and recommended specific interventions to raise the confidence to an acceptable 80% level. As a result, the mine now plans to use stochastic discrete event simulation to validate their short-term plans as well.

OUR WORK:

Examples of different optimisation scopes:

Capital Optimisation

The objective functions here could be Maximise Value (NPV); or Maximise Returns (ROCE, ROI, etc.) or Maximise Capital Efficiency (economic profit); or minimise Risk. And the constraints would typically include – capital (funding), availability of investment pipeline, etc.

Asset Optimisation

Asset Optimisation occurs after the investment decision has been taken (during the capital optimisation stage) and the problems tackled here refer to how the assets (plant and equipment) can be configured to achieve the desired objective function.

Examples of sometimes-conflicting objective functions here include goals such as – maximising asset life, ensuring the lowest unit cost, or yielding the greatest return, highest short-term profitability etc. Examples in this realm would include – the design and layout (of a plant, a mine, a logistics network); the allocation and scheduling of assets, etc.

Resource Optimisation

This realm of optimisation is the most operational / granular and occurs once the assets have been decided upon and configured during the asset optimisation exercises.

Resource optimisation refers to how resources are organised around the assets in order to for example – minimise unit cost, or minimise total cost, or increase margin, or maximise profits, etc.

In other words the asset configuration and physical capacity becomes the constraint around which resources must be organised. Examples of decisions in this realm include – resource type, quantum and allocation, production schedule, etc.

Within the Operational Resource Optimisation Realm:

Client	Engagement Summary
A Leading Global Export Coal Group	Capacity analysis for Load and Haul operations using Discrete Event Simulation to establish unit cost reductions of 20%.
A Leading Global Export Coal Group	Development of fleet management diagnostics using Android devices to assist in parking haul trucks.
Major Platinum Producer	Design of an underground mechanised mining management operating system for piloting new mining methods and technologies.
Major Diamond Producer	Value Driver Tree Implementation and support for operational diagnostics purposes of an open pit mine.
Major Mining Multi-Commodity Conglomerate	Development of a virtual reality centre to deliver enterprise wide experiential learning to 1,500 people per year.
South African Ferro Chrome Producer	Production and Budgeting model - development and implementation of budgeting model for a Ferro Chrome processing plant.
Major Diamond Producer	Implementation of a plant model to track operational progress, activity based costing, scenario analysis and blend optimisation.
Large Copper Operation	Developed a model allowing the planners at a large open cast copper mine to schedule trucks and shovels that would allow for maximum production efficiency and allow the planners to quickly optimise the value chain on a shift level basis across the value chain.
Leading Iron Ore Producer	Built a capacity analysis model for an iron ore mine that allowed them to identify constraints and opportunities to increase production by 15%.
Major Platinum Producer	Development and implementation of detailed OPEX cash flow model focused on evaluating multiple what-if scenario for new projects.
Major New South American Iron Ore Operation	Mining simulation - The operation had developed a production ramp-up plan for their new processing facility. The question was, what would be the performance requirements to meet this plan with adequate confidence. Using stochastic discrete event simulation techniques, Cyst Analytics determined the correct fleet sizing to deliver ore with 80% confidence. Additionally, we showed the incremental benefits of additional equipment. The mine continues to use the model to validate its short-term planning.
Major New South American Iron Ore Operation	Plant simulation - In conjunction with the mining simulation, the operation required a plant simulation model that would validate the production ramp-up plan and also quantify the likely impact on production of various risks that the operation had identified. Using equation-based modelling and Monte Carlo techniques, Cyst Analytics delivered a system that would fulfil this role. The operation continues to use this model to test their ramp-up strategies and steady-state delivery expectations.

Within the Capital Raising Realm:

BEX has successfully been involved in capital raising for privately owned and Public Companies across a number of sectors and industries. Our success in this area of business is a result of our long-standing and trusted relationships with financial institutions and "High Net Worth" family offices both in South Africa and Europe.

CONTACT US:

Office Address:
BEX Structured Products (Pty) Ltd:
1st Floor, 24 Crescent Drive,
Melrose Arch,
2076

Postal Address:
BEX Structured Products (Pty) Ltd
P.O Box 302
Highlands North,
2037

Contact:
Email: enquiries@bexstructuredproducts.co.za
Telephone: + 27 11 684 1701
Telefax: + 27 086 586 0643

E

**BUSINESS
DEVELOPMENT
SERVICES
AGREEMENT**

**CNR ROLLING STOCK SOUTH
AFRICA PTY LTD.**
(Registration No. 2014/016892/07)

with

**BUSINESS EXPANSION
STRUCTURED PRODUCTS PTY
LTD.**
(Registration No. 2009/020420/07)

AGREEMENT DATE: APRIL 25, 2015

2 *[Signature]*

This Agreement is entered into by and between the following parties:

BUSINESS EXPANSION STRUCTURED PRODUCTS PTY LTD (hereinafter, referred to as "BEX") (which expression includes its associates, subsidiaries, affiliates, successors and permitted assigns), a company duly incorporated and existing under the Companies Act in South Africa, and having its registered offices at 1st Floor, 24 Crescent Drive, Melrose Arch 2076, Johannesburg, duly authorised and represented by Mr. Mark Shaw

and

CNR ROLLING STOCK SOUTH AFRICA PTY LIMITED (hereinafter referred to, as the "Company") (which expression includes its successors and permitted assignees), a company duly incorporated and existing under the Companies Act in South Africa, and having its office address at 3rd floor, 95 Grayston Drive, Sandton 2196, Johannesburg, South Africa, duly authorised and represented by the person signing this Agreement, duly authorised and represented by Mr. Gang Wang, signing this Agreement.

(Hereinafter, BEX and the Company may be individually referred to as a "Party", and collectively as "the Parties".)

WHEREAS:

A. BEX, a professional service advisory business that specialises in business enterprise optimisation using financial modelling, derivatives and engineering techniques, with its long-standing relationships in the territory of South Africa (hereinafter "The Territory") has acquired a familiarity with regulatory, social, cultural and political framework whereby it is capable to closely co-ordinate with the designated authorities to comprehend the applicable Government policies, identify the opportunities of participation in various Government and Private projects, lend consultancy on participating in various tenders and bidding processes and thus facilitating trade of goods and services concerning such projects.

The COMPANY is a global company specializing in the manufacture of Locomotives and Spare Parts for the same, with a focus on emerging markets. The COMPANY has approached BEX to provide advisory services in respect of the Project and for expanding their business in the Territory and help it in achieving their BEE (Black Economic Empowerment) objectives in the Territory on a long-term basis.

B. The Parties have, after mutual discussions, acknowledged and agreed that they have suitable and complementary resources to jointly harness the opportunities in the Territory through this Business Development Services Agreement, whereby BEX will play an active role in providing advisory services in respect of the Project, Business development and BEE structuring and management in the Territory.

C. In view of the above-set background, the Parties have agreed to reduce in writing their mutual understanding and their respective fundamental interests, rights, duties, obligations and liabilities in relation to the agency, their respective roles in this regard, the terms and conditions on which the Parties would implement the agency relationship and certain other matters thereto.

1. Definitions and Interpretation

1.1. Definitions

Certain terms are defined within the recitals and within the body text of this Agreement. In addition, the following terms shall have the following meaning:

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such person.

"Agency Commission" the difference between the price excluding VAT awarded to the Company by TFR and the Project Benchmark Costs of R580 million excluding VAT

"Agreement" means this Agreement, including the recitals and schedules hereto, as the same may be varied or amended from time to time in writing by agreement of the Parties;

"Agreement Date" shall mean and refer to APRIL 25, 2015, being the date of execution of this Agreement;

"BEE" means Black Economic Empowerment as set out in the BEE Charter of the Republic of South Africa.

"Business Day" means any day on which banking institutions in South Africa are open for business.

"Force Majeure" means any of the following events or occurrences: (i) Acts of God, such as fires, floods, thunderstorms, earthquakes, unusually severe weather and natural catastrophes; (ii) civil disturbances, such as strikes, lock outs and riots; (iii) acts of aggression, such as explosions, wars, and terrorism which are not foreseen; or (iv) acts of government or actions of regulatory bodies which significantly inhibit or prohibit either Party from performing their obligations under this Agreement.

"Nominee" means any juristic person or company that may be nominated by BEX with the prior written consent of CNR from time to time to continue with and fulfil the obligations of this Agreement and/or to provide the necessary services and any expertise required for executing the commercial aspects of this Agreement.

"Person" includes any individual, company, corporation, firm, partnership, consortium, joint venture or association, whether a body corporate or an unincorporated association of persons.

"Price" shall mean the amount paid by TFR for the implementation

	of the project
"Product"	means the Company's related products and Services.
"Project"	shall mean the change in scope whereby Transnet Engineering (TE) a division of Transnet SOC Limited requires the Company to change the location of the local manufacture programme from the TE Koedoespoort Gauteng facility to their Bay-Head Durban facility.
"Project Benchmark Costs"	shall mean R580m (Five hundred and eighty million Rand) excluding VAT
"Scope Deviation"	shall mean costs associated with the Implementation of the Project
"Territory"	means Republic of South Africa.
"Third Party"	means a person who is not a party to this Agreement and does not include Affiliates of any of the Parties.
"TFR"	means Transnet Freight Rail, a division of Transnet SOC Limited

1.2. Interpretation

- 1.2.1. References to this Agreement or to any other instrument shall be a reference to this Agreement or that other instrument as amended, varied, novated, or substituted from time to time.
- 1.2.2. The headings in this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.2.3. References to Recitals, Clauses and Schedules are references to recitals, clauses and sub clauses and schedules to this Agreement.
- 1.2.4. Words importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and the neuter gender and vice versa.
- 1.2.5. Each of the representations and warranties provided in this Agreement are independent of other representations and warranties and unless the contrary is expressly stated, no Clause in this Agreement limits the extent or application of another Clause.
- 1.2.6. "In writing" includes any communication made by letter or fax or e-mail.

1.2.7. The words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as limiting the generality of any preceding words.

1.2.8. References to a person shall be construed so as to include:

1.2.8.1. individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organization, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body (whether or not in each case having separate legal personality);

1.2.8.2. that person's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement; and

1.2.9. References to a person's representatives shall be to its officers, employees, legal or other professional advisers, sub-contractors, agents, attorneys and other duly authorized representatives.

1.2.10. References to statutory provisions shall be construed as references to those provisions as are respectively amended or re-enacted or as their application is modified by other provisions (whether before or after the date of this Agreement) from time to time and shall include any provisions of which they are re-enactments (whether with or without modification).

1.2.11. All warranties, representations, indemnities, covenants, guarantees, stipulations, undertakings, agreements and obligations given or entered into by more than one person are given or entered into severally unless otherwise specified.

1.2.12. In the event that the date on which any act or obligation specified in this Agreement to be performed falls on a day which is not a Business Day, then the date on which the act or obligation is to be effected or performed shall take place on the next Business Day.

1.2.13. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of the Parties, and there shall be no presumption that an ambiguity should be construed in favour of or against any Party solely as a result of such Party's actual or alleged role in the drafting of this Agreement.

2. Preamble

2.1. Whereas TE requires the Company to change the location of the local manufacture programme from the TE Koedoespoort Gauteng facility to their Bay-Head Durban facility.

2.2. And whereas the Company has approached BEX to assess and formulate the entire strategy and planning to quantify and benchmark the costs associated with the relocation as per Clause 2.1.

- 2.3. And whereas BEX has agreed to undertake the work at their sole risk and at no cost to the Company if the agreed Project Benchmark Costs are not recovered from Transnet Freight Rail (TFR).
- 2.4. After extensive research and negotiations with both the Company & TFR, BEX and the Company have agreed that the Project Benchmark Costs will be fixed at R580 million (Rands Five hundred and eighty million only) excluding VAT.
- 2.5. Since BEX has undertaken to negotiate and finalize the deal with TFR on a risk basis, It is agreed between both parties that BEX be entitled to an Agency Commission as detailed in Clause 6.

3. Scope and Purpose of the Agreement and key principles

- 3.1. The Parties have entered into this Agreement to record their mutual understanding as regards their relationship and the manner in which the Project shall be implemented through this Agreement.
- 3.2. The scope of this Agreement is the regulation of the rights and relationships of the Parties, both among themselves and with respect to Third Parties, with the aim of executing the Project and other services in the Territory.
- 3.3. In order to achieve their joint commercial objectives, the Parties shall operate this Agreement as per the terms and conditions set out herein.
- 3.4. Each Party agrees to co-operate with the other Party on a best effort basis.
- 3.5. Each Party hereby agrees and undertakes towards the other Party to perform and observe all of the provisions of this Agreement.
- 3.6. The Parties acknowledge that the broad parameters for the conduct of this Agreement (subject always to the terms and conditions of this Agreement) is to implement the Project in the Territory and to enhance the economic value of the Parties.

4. General Conditions of appointment

- 4.1. The Company hereby appoints BEX to provide advisory and consulting services in respect of the Project and to aid Business Development and to assist in achieving the Company's BEE objectives in the Territory.
- 4.2. The Parties hereby agree and acknowledge that they are independent contractors. No partnership, joint venture or employment is created or implied by this Agreement.

5. Duties and Responsibilities of BEX

- 5.1. BEX shall provide advisory services in respect of the Project and will assist in the implementation of the processes related to the Project on a risk basis.
- 5.2. BEX shall assist the Company to achieve its objectives in the Territory.
- 5.3. BEX shall not make any representation on behalf of the Company except in conformity with express written permission from the Company.
- 5.4. BEX will have two years from the Agreement Date to implement the Project.
- 5.5. BEX will inform the Company timeously in writing if it wishes to appoint a nominee or assign the provisions of this Agreement. The appointment of such nominee or assignee shall be effected after the written consent of the Company.

6. Remuneration, payment terms etc.

- 6.1. For the Project Scope deviation (referred hereinabove), BEX shall assist the Company to negotiate the best possible price with TFR based on the Project Benchmark Cost of R580 million (Rands Five Hundred and Eighty million only) excluding VAT.
- 6.2. The Company agrees that BEX will be entitled to an agency commission equivalent to the difference between the price excluding VAT awarded to the Company by TFR and the Project Benchmark Cost of R580 million excluding VAT. For example if the price awarded is R680 million, then BEX will be entitled to an agency commission of R100 million (excluding VAT) i.e. R680m less R580m.
- 6.3. The Company will be entitled to the Project Benchmark Cost of R580 Million Irrespective of whether the total Project value is negotiated lower than the R680 million by TFR.
- 6.4. BEX shall be entitled to the agency commission irrespective of whether the Project Benchmark Cost arise from the supply of services, main product or any spare part or ancillary item thereto.
- 6.5. The agency commission as stated above will be due and payable in full as and when i) the Company and TFR has entered into an agreement that the Company will be awarded the Price more than the Project Benchmark Costs by TFR, and ii) the first payment of the Price is received by the Company.
- 6.6. The company shall pay BEX within 10 business days after from receipt of the invoice from BEX.

7. Term and Termination

- 7.1. This Agreement shall be effective from the Agreement Date and will remain valid for a period of two years and for such time that the Company remain eligible for the award of the Scope Deviation.
- 7.2. Once the agreement for the Scope Deviation has been signed by the Company, this Agreement shall remain in force until full payment due to BEX under this Agreement is made by the Company.
- 7.3. If either Party hereto commits a breach of this Agreement or defaults in the performance of its obligations, and if such default or breach is not rectified within 14 (fourteen) business days after the same has been called to the attention of the defaulting Party by a written notice from the other Party; then the non-defaulting Party at its option, may declare a dispute and hereby consent to the arbitration being dealt with in terms of the expedited Rules of arbitration of AFSA within 30 days. The arbitration shall be determined in accordance with the provisions of South African law and the Parties submit to South African jurisdiction for the purpose of this arbitration.
- 7.4. Any expiration or termination of this Agreement pursuant to Clause 7.2 shall be without prejudice to any other rights or remedies to which a Party may be entitled hereunder or at law and shall not affect any accrued rights or liabilities of either Party.

8. Liability provisions

8.1. Each Party undertakes to cause its employees, agents, and Affiliates, as long as they are associated with terms of this Agreement, to respect and comply with this Agreement.

In any case, each Party undertakes to collaborate in good faith with each other to avoid or minimize any disadvantage or harm affecting the other Party.

8.2. The provisions of Clause 8 shall continue to apply following the expiration or termination of this Agreement and for a period of five (5) years thereafter.

9. Confidentiality

9.1. During the course of this Agreement, one Party (the "Discloser") may, on a case-by-case basis, disclose to the other Party (the "Recipient") certain Confidential Information all of which shall be regarded as confidential. "Confidential Information" means any information as the Discloser may from time to time provide (or have supplied or disclosed on its behalf) to the Recipient, including all financial or other information relating to its business affairs or the business affairs of the Affiliates, whether orally or in a written, physical or visual form, regarding the products, activities, including (without limitation) data, software systems, information technology, products, applications together with analyses, compilations, forecasts, studies or other documents prepared by the Discloser (including, but not limited to, lawyers, accountants, consultants and financial advisers) and/or its Representatives which contain or otherwise reflect information about the Discloser and/or its Affiliates.

9.2. The Recipient shall at all times during the term of this Agreement and for a period of five (5) years following its termination, hold all Confidential Information which it acquires from Discloser under the terms of this Agreement, or otherwise, in strict confidence and shall not disclose such information to any third party or duplicate, transfer, or use directly or indirectly, the Confidential Information other than in Recipient's performance of its obligations under this Agreement.

The foregoing restrictions shall not apply to any information which: (i) is or becomes generally available to the public other than as a result of a breach of obligation by Recipient; or (ii) is lawfully acquired from a third party who owes no obligation of confidence in respect of the information; or (iii) Recipient is required to disclose by law (provided that Recipient shall assert the confidential nature of the information and give immediate written notice to Discloser and assist Discloser in obtaining a protective order against such disclosure).

9.3. Upon request of Discloser, or upon the expiration or any earlier termination of this Agreement, Recipient shall promptly return all copies of the Confidential Information in whatever form or media, to Discloser or, at the direction of Discloser, destroy the same. Recipient shall certify in writing to Discloser such return or destruction within ten (10) days of the date of Discloser's request.

- 9.4. Subject to all other terms of this agreement, this Agreement and its Annexes are also Confidential Information and either party shall not disclose, advertise or publish the terms or conditions of this Agreement or the Annexes without the prior written consent of the other party.

10. Miscellaneous

- 10.1. All notices required or permitted to be given under this Agreement shall be in writing, shall be given to the other Party and shall be deemed given to a Party when:

- 10.1.1. delivered to the appropriate address by hand and by email or by overnight courier service (costs prepaid);

in each case to the following addresses and marked to the attention of the person (by name or title) designated below (or to such other email address, facsimile number or person as a Party may designate by notice to the other Party):

BEX:

BEX Structured Products Pty Ltd

For the attention of: Mr. Mark Shaw

Address: 24 Crescent Drive, Melrose Arch 2076, Johannesburg and by email at enquiries@bexstructuredproducts.co.za

The Company:

ENR ROLLING STOCK PTY LTD.

For the attention of: Mr. Gang Wang

Address: 3rd Floor, 95 Grayston Drive, Sandton, 2196, Johannesburg

All correspondence, exchange of information, documents between the Parties, with Customers / third parties shall take place in English language.

- 10.2. No Party may assign any interest, benefit, right or obligation under this Agreement to any Person without having obtained the prior written consent of the other Party which consent shall not be unreasonably withheld. In the event of assignment as specified above, the assigning Party shall continue to guarantee the performance of the new participant under this Agreement and in any event of assignment, it shall also continue to be bound by the confidentiality and confidentiality provisions set forth herein.

- 10.3. If any provision of this Agreement is or becomes illegal, unenforceable or invalid under the law of any jurisdiction applicable to the Parties, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired thereby; provided, however, that if such severability materially changes the economic benefits of this Agreement to a Party, the Parties shall negotiate an equitable adjustment in the provisions of this Agreement in good faith.

BEX Structured Products

Analysis of Cost Increase

for

Locomotive Delivery

and

Locomotive Factory Relocation

from

Pretoria, Gauteng to Durban, Kwa-Zulu Natal

in terms of

Manufacturing Facility Relocation for Class 450 Locomotives
Supply Project

Executive Summary

We have been requested to analyse the Cost Increase for the Locomotive Delivery and Locomotive Factory relocation in terms of Manufacturing Facility Relocation for Class 15D Locomotives Supply Project. The decision to relocate from Pretoria, Gauteng to Durban, Kwa-Zulu Natal will cost an Estimated R536m.

Description	Cost (R)	Percentage
Labour costs	54 957 333	9%
Material costs	178 822 793	33%
Logistical costs	6 420 941	1%
Technical support	70 000 000	11%
Transportation	73 794 745	13%
Delta ID Warehouse costs	74 981 245	12%
Other costs	171 557 588	27%
Total	835 851 705	100%

Introduction

In order to be able to relocate the entire operation of manufacturing, production, assembly and servicing from Pretoria to Durban, there are several incremental costs, risks and material changes that will need to be considered.

These considerations can be broken down into:

- Labour costs
- Material costs
- Operational and logistical effects
- Technical support
- Physical transportation of materials and resources
- Incremental warehousing costs
- Financing and risk costs due to time constraints and delays

Each of these areas carry a substantial weight on the total cost of relocation, considering the move from a skilled factory with high-end technology in a nationally central location to an environment where locomotive manufacturing skills are limited and supply of manufacturing engineers is limited. Added to that, being the largest industrial port in South Africa, industrial property is highly sought after, especially in and around railway areas due to the high traffic on the railway lines between Durban and Johannesburg.

The largest non-operational and logistical cost faced is also the 4-month delay in production, which is placing substantial currency hedging risk, import and inflationary risk, insurance, and training costs.

All in all, there will also be ancillary benefits in using the same team to relocate as will be running the day-to-day operations in Durban. This will minimise team friction, hand-over wastage and delays, lack of accountability and a host of other operational issues.

Conclusion of both of the above should, therefore, continue, highlighting the detailed cost analysis of the relocation project.

Cost Breakdown

The total cost implications of the relocation and the inherent costs of relocating manufacture to Durban from Pretoria amount to an estimated R636m. Importantly, this amounts to less than 10% of the total Class ASD locomotive manufacturing project. The attached outline details and explains the R636m.

Labour Costs

Total cost R54.4m 9% of relocation costs

The amount is broken down below. This is 9% of total relocation cost.

Manufacturing costs, amounting to R38.3m, relate to the added size of each team that will be required in order to complete each locomotive build, due to the lack of skills and experience in Durban. The average team size per locomotive (101.27) will need to increase to 127.5 in order to maintain production levels of 12 locomotives per month, which is imperative for the success of the project. The increase in team size accounting for the R38.3m over the period of production is available on request.

Quality assurance relates to the increase in supervision labour required to inspect and monitor production of locomotives due to the lack of experience in the new Durban factory. An additional 8 specialists will be required to mentor and supervise the production of 12 locomotives per month, with each supervisor monitoring the production of up to 2 locomotives at a time. This additional cost amounts to R4.6m over the period.

Customer Service Team (CST) will need to increase marginally to account for the increase in pressure derived from dealing with more supplier and client issues from a remote location. This will require an additional 5 agents and the setting up of a CST infrastructure sufficient to manage the CST requirements. This will total R8.1m over the period.

Program management for the relocation and new operation will require an additional 3 senior managers over the move and the initial production phase. This will total R3.4m over move and the initial production phase.

Labour Costs	Manufacturing related costs	(Avg Cost per Emp * Num Durban Emp Required) - (Avg Cost per Emp * Num Pretoria Emp Required)	38 230 000
		Num Supervisors * Cost per Supervisor	4 540 000
	QA	Additional Emp * Cost	8 064 000
	Customer service		
	Program mgt	Senior Managers Req * Cost Per Manager	3 383 333
Total			54 367 333

Material Costs

Total cost R178.8m: 18% of relocation costs

Additional material costs amount to R178.8m as a result of the relocation. This has the largest impact on relocation, amounting to 18% of relocation cost.

Inflationary costs equating to R162.1m will be incurred, based on a 3-month delay. This is calculated using the South African inflation rate of 5.5%pa, decomposed to 1.8% over the 4 months.

Incremental estimated procurement costs of R16.6m. Considering that certain raw materials will not be available in South African warehouses at the outset of the project, and considering the target of 12 locomotives per month, we estimate 3 months' storage to various warehouse suppliers. This cost is also estimated to be incurred over the 4-month delay.

Material Cost	Inflation due to schedule shift	4-month Inflation + Total Project Cost	162 064 173
	Additional procurement costs	Raw Materials + 4 months Financing Cost + % of Stock on Hand for 3 Months	16 758 622
Total			178 822 793

Operational & Logistics Costs

Total cost R6.4m: 1% of relocation costs

Impact of changes to logistics and operations will amount to R6.4m. This is 1% of total relocation cost.

Administrative costs to rework logistics will be required, as the roll-out and execution of the relocation and final manufacturing production will be affected by the change of the

A new environment will require to be thoroughly tested in order to maintain the required level of quality and delivery. This will amount to R475K.

Additional staff travel costs due to the move will amount to an estimated R2m.

Higher inventory requirements will be required due to the distance from Gauteng. This will result in a cost of R2.2m.

Logistics Costs	Admin costs to re-work logistics		1 731 158
	Cost 2m in new environment	As per Fixed	174 576
	Additional travel costs	Quotation	2 024 410
	Higher inventory cost of capital		2 190 797
Total			5 420 941

Technical Support

Total cost R70m: 13% of relocation costs

Additional technical support will be required, amounting to R70m. This is 13% of total relocation cost.

The additional technical support comprises the additional technical and engineering teams that will need to be available on the ground beyond the initial 24-month production phase.

These specialised teams will be in addition to the existing teams. This is due to the lack of expertise in maintenance and post-production servicing currently available in Durban. This will amount to R24.5m.

There will also be an increased cost of on-site service by suppliers due to the increase in travel and relocation of Gauteng-based suppliers. This is estimated at R45.5m over the pre- and post-production periods.

Technical Support	Increased cost of tech support Engineering	As per Fixed Quotation	17 500 000
	Increased cost of on-site service by suppliers		7 000 000
			45 500 000
Total			70 000 000

Transportation

Total cost R79.8m: 15% of relocation costs

Physical transportation from Pretoria to Durban will amount to R79.8m. This is 15% of total relocation cost.

There will be a R567k cost saving to being based in Durban due to proximity to an industrial port.

Physical transportation of assembly parts of locomotives is estimated at R50.4m, explained as follows: the cost of road logistics in South Africa is estimated, on (average) 5% of pre-transport costs. Assuming the project is transporting R1b worth of raw materials. The total is thus estimated at R50.4m.

Short-term insurance on the value of transported goods will amount to R22.5m, based on industry-level Goods In-Transit insurance premiums of between 0.2% and 0.8% of value.

Transport protection, express shipments (for time-sensitive delivery), Trucks for handover and testing goods when received are directly inherited costs of the relocation amounting to incremental costs of R7.6m.

Transportation - International shipments	As per Fixed Quotation	567,104
Car body - Durban		
Bogie - Durban		
Traction Chain - Durban	% Cost of Road Logistics * Cost of Raw Total Materials	50,400,000
Delta supply chain - Durban		
Insurance	Insurance Premium % * Total Insurable Value	22,500,000
Transport protection		3,243,231
Express shipments		895,427
Truck for handover	As per Fixed Quotation	1,492,978
Locus testing		1,790,851
Total		79,794,785

Incremental Warehousing Costs

Total cost R74.9m: 12% of relocation costs

Additional warehousing costs will amount to R74.9m, which is 12% of total relocation cost.

As a result of the scarcity of prime industrial factories in Durban, the cost per square metre is substantially higher than Pretoria by between R35/sqm-R55/sqm. This will result in an increase in lease cost of R16.8m over the long-term period.

Fencing, security and office furniture of R300k

Based on an estimated office space of ~850sqm.

The project necessitates that ~5-15% of total factory space is used for shelving and storage. This will result in an additional cost of R11.2m. This is based on a calculated build cost of R33,200/sqm.

Additional forklifts and stacking trucks will be required that would not have been as necessary or as costly in Pretoria. This will amount to 20 forklifts and trucks in total, at a cost of R5.3m.

Additional delivery vehicles and (new) systems to be implemented in the new factory will amount to R7m.

Additional staff & personnel will be required, incurring a substantial relocation cost to bring in skilled labour from Gauteng (~90 personnel). With incentive salaries and a relocation incentive, this amounts to R24.5m.

Due to the lack of experience of the new teams, external labour and professional consulting/supervisory teams will need to be brought in. Four of these engineering consultants will be needed during the primary production phase, costing R5.8m.

Delta to warehouse costs	Additional Lease costs	Incremental Cost Per Sqm * Total Sqm	16 800 000
	Fencing/Security	As per Fixed Quotation	110 395
	Civil works		
	upgrades/office construction	Office Sqm * Rate per Sqm	9 927 000
	Office & Warehouse furniture	As per Fixed Quotation	188 899
	Pallets & Shelving	% of Sqm * Cost per Sqm	11 200 000
	Local forklifts/stacker trucks	(Cost per Truck * Num Trucks) * (Cost per Forklift * Num Forklifts)	5 300 000
	Additional delivery vehicles	As per Fixed Quotation	3 924 552
	Technology & Inventory systems	As per Fixed Quotation	3 131 999
	Additional staff & personnel	(Team To Be Relocated * Salary Increase) + Once-off Relocation Incentive	24 503 400
	Extra outside labour & services	Engineer Consulting Fees * Num Engineers	5 800 000
Total			74 888 245

Financing & Risk Costs

Total cost R171.6m, 27% of relocation costs

Financing costs are the second biggest cost to the relocation, amounting to R171.6m, or ~27% of total

Labour inflation due to the 4-month delay and the additional required resources will amount to R3.7m, based on 5.5%pa CPI.

Finance cost as a result of rolling over forward currency (USD) contracts are estimated at R63m. The buy and sell spread on forward contracts equals 2x ZAR 0.12.

Bond/debt instrument costs increase will amount to R18m based on cash flow risk and upfront payments.

Contingency risk of 4% on assumptions, amounting to R25.9m.

There will be increased insurance costs amounting to R2.8m due to the relocation and new teams involved.

Training costs of additional teams and new staff will be required, amounting to R0.6m based on industry standard of 6% training costs.

There is a risk provision of 9%, amounting to R5.5m. This risk is primarily focused around the pressure the relocation will put on the final locomotive production project. The overall effect on a large scale relocation, with new teams, staff, specialists, expertise and a less-known environment will create substantial risk in meeting deliverables and timelines.

Finance Costs	Labour Inflation original contract	Additional Staff Costs * CPI	3 643 790
	Finance costs on forward contracts	4% Premium * 2 * ZAR 0.12 Spread on USD	63 000 000
	Bond costs increase	Duties * Total Value Added	18 000 000
	Contingency	4% on Cost	25 867 593
	Increased insurance costs	As per fixed Quotation	2 750 000
	Increased training costs	and 20% training costs	3 587 623
	Risk provision increase project	Additional Staff 9% on Cost	54 708 576
Total			171 557 588

Costing Summary

The above-mentioned breakdown, detailed in the attached cost spreadsheet, outlines the need for the further investment of R635m for the relocation of operations and manufacture to Durban. Although this is a marginal cost in terms of the total project, it should be treated as material to the final project production. In order to not impact on the quality of service, manufacture and delivery of this crucial element of the total locomotive project, it makes sound business sense to maintain the same team throughout the relocation and manufacture, allowing the seamless handover between the two phases, and maintaining the level of skill and experience throughout.

The above breakdown should address any issues pertaining to the costs of the relocation. If not, please do not hesitate to contact us for further details, relating to any or all of the summarised figures.

References & Sources

Labour Costs

Based on manufacturing and engineering market standard rates, and applied to skill requirements of different roles in relocation and final project.

Material Costs

Based on actual projected manufacturing project costings.

Transportation Costs

Industry quotations applied to actual project expectations.

Financing Costs

Inflation as per SARB CPI projections.

Forward Contracts as per standard quoted forward contract spreads and rates.

Risk & Contingency premium derived from financial expert analyses detailing risk profiles in manufacturing in South Africa.

Industrial Property Costs

Based on leading property market experts, with primary and secondary research conducted to compare analysis.

1. Increasing the team size does not make sense considering the learning curve will mitigate this requirement within a short time. RE: The team size was increased to compensate for the increased number of inexperienced personnel in Durban.

2. Negotiating with suppliers will eliminate the inflationary cost related to the 4 additional months. In any case material costs generally don't increase on a monthly basis. Thus the impact should not be as large as 1.8%. Also 1.8% for 4 months does not equal 5.5% but rather 7.2% which is excessive.

RE: The SARB annual inflation rate is 5.5% this has been calculated based on 4 mths / 12 mths to account for the 4 month delay, which is in fact 5 months now.

3. From the explanation provided, the incremental cost of procurement does not relate to the move to Durban. This should not be charged. In any case 9% interest is excessive. RE:

4. The additional technical support requirement in Durban does not make sense. The cost of this technical support should have been included in the original price.

RE: This in relation to Durban, new facilities are to set-up and staff trained. CNR has to contribute more technical support as a greater percentage of the project will be based on foreign vs local manufacture.

5. On site service by technicians should have been included in the original price. R 31.5m for travel and relocation seems excessive.

RE: Most of suppliers of CNR are located in JHB. Now the manufacture site is relocated to Durban, the suppliers in JHB have to travel to Durban for on-site service as well as to train up the unskilled staff in Durban. All these costs were not planned as part of the original price and therefore are additional.

6. Can the transport not be done by TPR via rail containers? If so then insurance costs would also be minimal as would be internally insured.

RE:

7. R 11200 per m for shelving seems excessive?

RE: This was based on quotations received for the required shelving and related warehouse components.

8. Has consideration been given to 1st or 1st R property for the warehousing?

RE: The warehouse of TE was not considered. As per the agreement, the warehousing is planned to be rented by CNR and the warehousing of TE should be managed by TE itself at the cost of TE itself, this is not included into this proposal.

9. Why the additional forklifts?

RE: The workshops and facility areas are increased owing to increase in import component.

10. How much is the incentive and relocation cost per staff member?

11. Labour inflation does not increase on a monthly basis. The impact could possibly only be at the end of the project.

RE: Annual inflation rate has been applied for the relevant period as per standard calculations of this nature.

12. Labour inflation rate applied at 6.5 % for the full year, whereas it should only be for 4 months (Cell E23 in 'Staff' sheet).

RE: fair point (mistake in formula) the impact of changing for this is about R3m.

13. Contingency risk of 4 % and risk provision of 9 % is unexplained and seems to be additional profit. This seems excessive.

RE: fixed percentages used based on market standards for projects of this nature.

14. Obtain a detailed list of suppliers being used in Durban versus those in JHB.

15. The cost of the final 1000 km contingency allowance does not relate to the move to Durban (Cell E23 'staff'). This should not be charged as it should have been included in the original contract.

RE: Based on the cost of the additional 20 staff members needed over the 4 year project period owing to the relocation to DBN.

16. Labour inflation is double counted (ref cell D7 & cell E23 'staff').

RE: cell D7 is part of the workings only to demonstrate the assumptions used wrt labour and material related costs. ONLY the calculation in cell E23 from the staff schedule relating to labour inflation has been used in calculating the cost increase based on the original contract.

Key References

South African Reserve Bank	www.resbank.co.za	Macro-economic analysis on
Stats SA	www.statsa.gov.za	trends, growth in
Fin24	www.fin24.com	manufacture, currency risk
JSE News	www.jse.co.za	inflation and interest

Transportation References

Department of Transport	www.transport.gov.za
Durban Clearing	www.durbanclearing.co.za
Road Freight Logistics	www.rflogistics.co.za
South African Railways	www.southafricanrailways.co.za

Finance Costs

South African Reserve Bank	www.resbank.co.za	
Consulting with various finance experts		consulting
Standard Bank		
SASFIN		
Bidvest Bank		

Labour Related Research

SA Board for People Practices	
EVA Solutions	www.evasolutions.co.za
Exceed HR Consulting	www.exceed.co.za

Property Research

Seeff Property Agency	www.seeff.co.za	agency
Property24	www.property24.com	agency
Standard Bank Property		banking portfolio assistance
Nedbank Preferred Property Guide		banking portfolio assistance
FNB Property		banking portfolio assistance
Industrial Listings	www.industriallistings.co.za	
Commercial News	www.commercialnews.co.za	

Manufacture Facts

Industry experts in manufacture		consulting
Industry experts in mining & efficiencies		consulting
Industry experts in cost optimisation		consulting
Trading Economics	www.tradingeconomics.co.za	
Manufacturing Circle	www.manufacturingcircle.co.za	

ANALYSIS OF COST INCREASE

Costs	Costs	% of Total Relocation	Notes
Labour Costs	R 54 967 533	100%	
Manufacture the related costs	R 38 280 000	69%	
Increase quality standards	R 4 640 000	8%	
Customer service	R 4 064 000	7%	
Program management	R 2 383 533	4%	
Material Cost	R 176 322 753	303%	
Infraction due to schedule shift	R 952 054 173	1725%	
Additional procurement costs	R 26 258 624	48%	
Logistics Costs	R 8 420 541	15%	
Admin costs to re-work logistics	R 3 731 358	44%	
Dry run in new environment	R 174 575	2%	
Additional travel costs	R 2 024 410	24%	
Higher inventory - cost of storage	R 2 590 797	31%	
Technical Support	R 76 000 000	138%	
Increased rate of tech support	R 37 500 000	68%	
Engineering	R 7 000 000	13%	
Increased cost of on-site services by suppliers	R 31 500 000	57%	
Transportation	R 79 794 785	145%	
International shipments	R 567 104	1%	
Car boot, Delta, Jackson Chain, Delta Supply chain insurance	R 30 400 000	36%	
Express shipments	R 22 500 000	27%	
Truck for handling	R 5 343 234	6%	
Truck for handling	R 895 427	1%	
Truck for handling	R 1 492 974	2%	
Logistics	R 1 790 253	2%	
Delta to warehouse costs	R 74 555 243	135%	
Additional Lease Costs	R 18 800 000	25%	
Fencing/Security	R 110 395	0%	
Civil works upgrade office construction	R 3 947 000	5%	
Office & warehouse furniture	R 388 899	0%	
Racks & Shelving	R 11 200 000	15%	
Local forklifts/stacker trucks	R 3 300 000	4%	
Additional delivery vehicles	R 3 924 852	5%	
Technology & inventory systems	R 9 133 299	12%	
Additional staff & personnel	R 24 508 400	33%	
Extra outside labour & services	R 5 800 000	8%	
Other Costs	R 171 557 688	312%	
Labour inflation original contract	R 3 643 730	7%	
Increased costs on forward contracts	R 69 000 000	126%	
Bandwidth increase	R 18 000 000	33%	
Contingency	R 25 887 529	47%	
Increased insurance costs	R 4 735 000	9%	
Increased training costs	R 3 527 625	6%	
Risk provision increase project	R 54 708 675	100%	
TOTAL	R 635 851 786		

Global Variables	
Diesel Locomotives	232 locomotives
Locomotive Weight	200 tons
Project Value	9,000,000,000
SA Value	5,850,000,000 65%
Delay	4 mths

Inflation	
Annual Inflation	5.5% SARB CPI
4 months Inflation	1.8%
Total Cost	9 000 000 000
Inflation	162 064 173

Additional Cost	
Raw materials	1 000 000 000
Interest	9% pa
Cost	108 000 000
% on hand	16%
	16 758 671

Assumptions & Variables	
Items per Trip	25
Total Loads	252
Loads per Month	22
Working on Lotz per Ton	300
Number of Months	19
Personnel	
Unskilled	9
Skilled	12
Managers	3
Avg Cost per Employee	
Unskilled	17,500
Skilled	40,000
Managers	20,000
Calculated Avg	25,000
Total Costs per Team	19,800
Total Cost per	485,000
Total Cost per	5,800,000
Increased Training Costs	
Additional Staff	1,000,000
Manufacturing Related costs	16,200,000
Additional Training	2,700,000
Training Total	3,587,000
Annual Employee Cost	
1 Year MBA	700,000
%	40,000
QA & Inspections	
Number of Loads per	12
Load per Supervisor	2
Number of Supervisors	6
Cost per Supervisor per	10,000
	4,640,000

25% Portion of Total Costs for Labour	
9,000,000,000 Total Value	
300,000,000	
9,300,000,000 Costs	
2,300,000,000 Labour	
39,700,722 Labour Inflation	
3,051,903 Calculated Inflation	
2,805,279.1 Total Original Labour Cost	
33,101 Total FTE (over period)	
Extra costs for labour & services	
Engineering Costs	500,000
Per	500,000
Pulled	1,145,000
Number of Exper.	
Total	1,500,000
Labour inflation original contract	
Additional Paytime	1,500,000
Inflation	1,500,000
Total Cost	3,500,000
Long Term Maintenance representing	
Years	1,000,000
Avg Salary	1,000,000
Number of Engines	10
Weighting	10,000,000
Tech Support	5
Engineers	1
Suppliers	7
Customer Service (Increase in F)	
Additional Team	12,000
Cost	5,000,000

When Changes Due To Inflation Change	
Unskilled	20%
Skilled	25%
Managers	30%
Per 1000	25%
Direct Labour per Load	40,000
Total Cost	11,800,000
Cost	11,800,000
Additional Staff & Personnel	
Population %	20%
Total Staff	900
Additional Team	80
Salary Growth	15%
Population Cost	100,000
Total Cost	17,800,000
Additional Staff	
Incremental Salary	72
Total Cost	15,800,000
Grand Total	24,900,000
Programme Development	
Staff per hour for Maintenance	200,000 per hr
Staff	16,800 per hr
Total	3,127,776
Number	8
Total Cost	25,800,000

Bond cost increase	
Total Value	9 000 000 000
Value Added (margin)	20%
Total Value Added	1 800 000 000
Duty	1%
Duty Amount	18 000 000

Forward Contract Cost	
Imported Value	9 150 000 000
12c Spread on Rand	9.12
Paying Double for Buy-Sell	0.24 Rand to the USD
R/USD	12 ZAR/USD
Additional Cost %	2%
Total Cost	63 000 000

Insurance on Transportation	
Standard Insurance	200 000
Insurance	500
	0.25%
Value	9 000 000 000
Insurance	22 500 000

Additional Lease Costs

	600 000 Rpa		
Industrial Rent Pta	350 000	10 000 sqm	35
Industrial Rent Durban	550 000	10 000 sqm	55
Dirt	200 000		
	16 800 000		

Racks & Shelving

	10% of sqm	
	10 000 sqm	
	11 200 cost per sqm	
	11 200 000	

Small Office

	850 sqm	
	55 R/sqm	
	46 750	

Local forklifts/stacker trucks

	15	120 000 lifts	
		700 000 trucks	
		5 300 000	

Car body, Bogie, Traction Chain, Delta Supply Chain		
Cost of Road Logistics	5%	of Total Costs
Total Raw Materials	40%	of Costs
Total Imported Value	3 150 000 000	original cost
Margin	20%	
Total Costs	2 520 000 000	
Raw Materials from Costs	1 008 000 000	
Logistics on Materials	50 400 000	

CNR Rolling Stock South Africa (Pty) Ltd (reg 2014/015892/07) s/a

CNR Rolling Stock South Africa

CNR Rolling Stock South Africa
China Construction Bank Building
95 Grayston Drive
2196 Sandton Johannesburg

Executive Summary

We have been requested to analyse the Cost Increase for the Locomotive Delivery and Locomotive Factory relocation in terms of Manufacturing Facility Relocation for Class 45D Locomotives Supply Project. The decision to relocate from Pretoria, Gauteng to Durban, Kwa-Zulu Natal will cost an estimated R719 090 548.

On this amount we happy to offer a settlement discount of 10% amounting to R71 909 054
Therefore the reduced amount due to CNR after deducting the settlement discount amounts to R647 181 494.

In order to align the balance of the payment with the project execution, the settlement discount assumes the following settlement terms.

- ❖ 50% payable within 14 days of signature and the balance R323 590 747
- ❖ 50% payable in 24 equal instalments of R13 482 948 ("the relocation payment") commencing the end of the first month that the project commences
- ❖ Therefore CNR RS SA will invoice for 24 monthly instalments of R13 482 948
- ❖ Please note that the relocation payment will be Invoiced separately from the milestone payment invoice as per the Locomotive Supply Agreement for the manufacture of the 212 locomotives ("the LSA"), which will be paid as per the document approved by Transnet. In addition, the relocation payment should not reduce nor increase or affect the milestone payment stipulated in the LSA.

Description	Cost (R)	% of total
Labour costs	34 357 333	5%
Material costs	223 982 441	31%
Logistical costs	6 420 941	1%
Technical support	70 000 000	10%
Transportation	94 194 785	13%
Delta to Warehouse costs	75 650 745	10%
Other costs	194 474 302	27%
Total	719 090 548	100%

Due to the tight time for preparation, there are some elements which affect this Durban relocation project, we reserve the opportunity to give the clarification.

2

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95 Grayston Drive
2195 Sandton Johannesburg

Introduction

In order to be able to relocate the entire operation of manufacturing, production, assembly and servicing from Pretoria to Durban, there are several incremental costs, risks and material changes that will need to be considered.

During the execution of this project, in order to complete the technology transferring, manufacturing, training, testing and maintenance tasks for this locomotive project successfully, as well as the empowerment of the black economy, the manufacturing facilities are relocated from Pretoria to Durban. Thus this proposal is submitted. This proposal is seen as the project document as per the contract.

These considerations can be broken down into:

- Labour costs
- Material costs
- Operational and logistical effects
- Technical support
- Physical transportation of materials and resources
- Incremental warehousing costs
- Financing and risk costs due to time constraints and delays.

Each of these areas carry a substantial weight on the total cost of relocation, considering the move from a skilled factory with high-end technology in a nationally-central location to an environment where locomotive manufacturing skills are limited and supply of manufacturing engineers is limited. Added to that, being the largest industrial port in South Africa, industrial property is highly sought after, especially in and around railway areas due to the high traffic on the railway lines between Durban and Johannesburg.

The largest non-operational and logistical cost faced is also the 5-month delay in production of entire 232 locomotive, which is placing substantial currency-hedging risk, import and inflationary risk, insurance, and training costs.

All-in-all, there will also be ancillary benefits in using the same team to relocate as will be running the day-to-day operations in Durban. This will minimise team friction, hand-over wastage and delays, lack of accountability and a host of expertise-related risks.

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Below is a breakdown of each of

the above-mentioned sections, justifying the detailed cost analysis of the relocation project

Cost Breakdown

The total cost implications of the relocation and the inherent costs of relocating manufacture to Durban from Pretoria amount to an estimated R719m. Importantly, this amounts to less than 10% of the total Class 45D locomotive manufacturing project. The attached outline details and explains the R719m.

Labour Costs

Total cost R54.4m; 8% of relocation costs

The amount is broken down below. This is 8% of total relocation cost.

- Manufacturing costs, amounting to R38.3m, relate to the added size of each team that will be required in order to complete each locomotive build. Due to the lack of skills and experience in Durban, the average team size per locomotive (of 25) will need to be increased to 31 (i.e. 6 additional mentorships from CNR) in order to maintain production levels of 12 locomotives per month, which is imperative for the success of the project. The increase in team size accounting for the R38.3m over the period of production is available on request.
- Quality assurance relates to the increase in supervision labour required to inspect and monitor production of locomotives due to the lack of experience in the new Durban factory. An additional 6 specialists from CNR will be required to mentor and supervise the production of 12 locomotives per month, with each supervisor monitoring the production of up to 2 locomotives at a time. This additional cost amounts to R4.6m over the period.
- Customer service team (CST) will need to increase marginally to account for the increase in pressure derived from dealing with more supplier and client issues from a remote location. This will require an additional 8 agents and the setting up of a CST infrastructure sufficient to manage the CST requirements. This will total R8.1m over the period.
- Program management for the relocation and new operation will require an additional 3 senior managers due the substantial increase in team size, logistical complexity and supervision. This will amount to an additional R3.4m over move and the initial production phase.

Labour Costs	Manufacturing related costs	(Avg Cost per Emp * Num Durban Emp Required) - (Avg Cost per Emp * Num Pretoria Emp Required)	38 280 000
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	QA	Num Supervisors * Cost per Supervisor	4 640 000
	Customer service	Additional Emp * Cost	8 064 000
	Program mgt	Senior Managers Req * Cost Per Manager	3 383 333
Total			54 367 333

Material Costs

Total cost R224m: 31% of relocation costs

Additional material costs amount to R203m as a result of the relocation. This has the largest impact on relocation, amounting to ~30% of relocation cost.

- Inflationary costs equating to R203m will be incurred, based on a 5-month delay. This is calculated using the South African inflation rate of 5.5%pa, decomposed to 2.3% over the 5 months.
- Incremental estimated procurement costs of R21m. Considering that certain raw materials will not be available in South African warehouses at the outset of the project, and considering the target of 12 locomotives per month, we estimate 3 months' storage to various warehouse suppliers will cost approximately 9% per annum over the 5-month delay.

Material Cost	Inflation due to schedule shift	5-month Inflation * Total Project Cost	203 034 165
	Additional procurement costs	Raw Materials * 5 months Financing Cost * % of Stock on Hand for 3 Months	20 948 276
Total			223 982 441

Operational & Logistics Costs

Total cost R6.4m: <1% of relocation costs

Impact of changes to logistics and operations will amount to R6.4m. This is ~<1% of total relocation cost.

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- Administrative costs to

re-work logistics will be required, as the roll-out and execution of the relocation and final manufacturing project will need to be altered. This amounts to R1.7m.

- A new environment will require to be thoroughly tested in order to maintain the required level of quality and delivery. This will amount to R475k.
- Additional staff travel costs due to the move will amount to an estimated R2m.
- Higher inventory requirements will be required due to the distance from Gauteng. This will result in a cost of R2.2m.

Logistics Costs	Admin costs to re-work logistics	As per Fixed Quotation	1 731 158
	Dry run in new environment		474 576
	Additional travel costs		2 024 410
	Higher inventory - cost of capital		2 190 797
Total			6 420 941

Technical Support

Total cost R70m: 10% of relocation costs

Additional technical support will be required, amounting to R70m. This is 10% of total relocation cost.

- The additional technical support comprises the additional technical and engineering teams that will need to be available on the ground beyond the initial ~19month production phase. These specialised teams will be in addition to the requirement from the Pretoria plant due to the lack of expertise in maintenance and post-production servicing currently available in Durban. This will amount to R38.5m.
- There will also be an increased cost of on-site service by suppliers due to the increase in travel and relocation of Gauteng-based suppliers. This is estimated at R31.5m over the pre- and post-production periods.

Technical Support	Increased cost of tech support	As per Fixed Quotation	28 000 000
	Engineering		10 500 000
	Increased cost of on-site service by local small business supplier		31 500 000

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Total	70 000 000
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Transportation

Total cost R94.2m: 13% of relocation costs

Physical transportation from Pretoria to Durban will amount to R94.2m. This is ~10% of total relocation cost.

- There will be a R567k cost saving to being based in Durban due to proximity to an industrial port.
- Physical transportation of assembly parts of locomotives is estimated at R64.8m, explained as follows: the cost of road logistics in South Africa is estimated at (average) 5% of pre-transport costs. Assuming the project is transporting ~R1.3b worth of raw materials. The total is thus estimated at R64.8m.
- Short-term insurance on the value of transported goods will amount to R22.5m, based on industry-level Goods In Transit Insurance premiums of between 0.2% and 0.8% of value.
- Transport protection, express shipments (for time-sensitive delivery), Trucks for handover and Testing goods when received are directly inherited costs of the relocation, amounting to incremental costs of R7.5m.

Transportation	International shipments	As per Fixed Quotation	-567 104
	Engine - Durban		64 800 000
	Crane System - Durban		
	Delta supply chain - Durban	% Cost of Road Logistics * Cost of Raw Local Materials	
	Insurance	Insurance Premium % * Total Insurable Value	22 500 000
	Transport protection		3 283 231
	Express shipments	As per Fixed Quotation	895 427
	Truck for handover		1 492 378
	Locos testing		1 790 853
Total			94 194 785

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 China Construction Bank Building
 86 Grayston Drive
 2196 Sandton Johannesburg

Incremental

Warehousing Costs

Total cost R75.7m: 10% of relocation costs

Additional warehousing costs will amount to R75.7m, which is ~10% of total relocation cost.

- As a result of the scarcity of prime industrial factories in Durban, the cost per square metre is substantially higher than Pretoria by between R35/sqm-R55/sqm. This will result in an increase in lease cost of R16.8m over the long-term period.
- Fencing, security and office furniture of R300k.
- Office construction and civil works upgrades will amount to R3.9m, based on estimated office space of ~850sqm.
- The project necessitates that ~5-15% of total factory space is used for shelving and storage. This will result in an additional cost of R12m. This is based on a calculated build cost of R11,200/sqm.
- Additional forklifts and stacking trucks will be required that would not have been as necessary or as costly in Pretoria. This will amount to 20 forklifts and trucks in total, at a cost of R5.3m.
- Additional delivery vehicles and (new) systems to be implemented in the new factory will amount to R7m.
- Additional staff & personnel will be required, incurring a substantial relocation cost to bring in skilled labour from Gauteng (~90 personnel). With incentive salaries and a relocation incentive, this amounts to R7.5m.
- Due to the lack of experience of the new teams, external labour and professional consulting/supervisory teams will need to be brought in. Four of these engineering consultants will be needed during the primary production phase, costing R5.8m.

Delta to warehouse costs	Additional Lease costs	Incremental Cost Per Sqm * Total Sqm	
	Fencing/Security	As per Fixed Quotation	16 800 000
	Civil works upgrades/office construction	Office Sqm * Rate per Sqm	110 395
	Office & warehouse furniture	As per Fixed Quotation	3 927 000
	Racks & Shelving	% of Sqm * Cost per Sqm	188 899
	Local forklifts/stacker	(Cost per Truck * Num Trucks) + (Cost	11 962 500
			5 300 000

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trucks	per Forklift * Num Forklifts)	
Additional delivery vehicles	As per Fixed Quotation	3 924 552
Technology & inventory systems	As per Fixed Quotation	3 133 999
Additional staff & personnel	(Team To Be Relocated * Salary Increase) + Once-off Relocation Incentive	24 503 400
Extra outside labour & services	Engineer Consulting Fees * Num Engineers	5 800 000
Total		75 650 745

Financing & Risk Costs

Total cost R194m: 27% of relocation costs

Financing costs are the second biggest cost to the relocation, amounting to R194m, or ~27% of total relocation cost.

- Labour inflation due to the 5-month delay and the additional required resources amounts to R1.8m, based on 5.5%pa CPI.
- Finance cost as a result of rolling over forward currency (USD) contracts are estimated at R87m. The buy and sell spread on forward contracts equals 2 x ZAR 0.12.
- Bond /debt instrument costs increase will amount to R18m based on cash flow risk and upfront payments.
- Contingency risk of 4% on assumptions, amounting to R25.9m.
- There will be increased insurance costs amounting to R2.8m due to the relocation and new teams involved.
- Training costs of additional teams and new staff will be required, amounting to R3.6m, based on industry standard or 6% training costs.
- There is a risk provision of 9%, amounting to R54.7m. This risk is primarily focused around the pressure the relocation will put on the final locomotive production project. The overall effect on a large-scale relocation, with new teams, staff, specialists, expertise and a less-known environment will create substantial risk in meeting deliverables and timelines.

Finance Costs	Labour inflation original contract	Additional Staff Costs * CPI	1 810 405
	Finance costs on forward contracts	% Premium * 2 *ZAR 0.12 Spread on USD	87 750 000
	Bond costs increase	Duties * Total Value Added	18 000 000

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95 Grayston Drive
2196 Sandton Johannesburg

	Contingency	4% on Cost	25 867 599
	Increased insurance costs	As per Fixed Quotation	2 750 000
	Increased training costs	Std % Training Cost * Value of Additional Staff	3 587 623
	Risk provision increase project	9% on Cost	54 708 676
Total			194 474 302

Costing Summary

The above-mentioned breakdown, detailed in the attached cost spread-sheet, outlines the need for the further investment of R719m for the relocation of operations and manufacture to Durban. Any costs attributable to TE with regards to the Durban relocation have not been taken into account in the cost of R 719m.

Although this is a marginal cost in terms of the total project, it should be treated as material to the final project production. In order to not impact on the quality of service, manufacture and delivery of this crucial element of the total locomotive project, it makes sound business sense to maintain the same teams throughout the relocation and manufacture, allowing the seamless handover between the two phases, and maintaining the level of skill and experience throughout.

The above breakdown should address any issues pertaining to the costs of the relocation taking into account a 5month delay. If not, please do not hesitate to contact us for further details, relating to any or all of the summarised figures.

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China Construction Bank Building
95 Grayston Drive
2196 Sandton Johannesburg

Definition

1. TRANSNET SOC LTD (acting through its Transnet Freight Rail division), a public company incorporated in South Africa (registration number 1990/000900/30) and referred to in Section 2 of the Legal Succession to the South African Transport Services Act, No 9 of 1989 (the Company);
2. CNR RS SA, a company registered under the laws of South Africa (registration number 2014/016892/07) and, subject to a name change, to be known and registered as CNR ROLLING STOCK SOUTH AFRICA PROPRIETARY LIMITED (the Contractor);
3. TE, means Transnet SOC Limited acting through its TRANSNET ENGINEERING Division (registration number 1990/000900/30) (the "Subcontractor");
4. Local Supplier, means the suppliers in South Africa other than TE;
5. Locomotive, means collectively or individually, the locomotives to be manufactured and supplied to the Company by the Contractor in accordance with this Agreement, with each individual locomotive being identified by its vehicle number;
6. Training, means the training to be provided by the Contractor to the Company personnel in accordance with Part 12 (Training) of Schedule 3 (Agreement Management);

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CNR Rolling Stock South Africa
China Construction Bank Building
96 Grayston Drive
2196 Sandton Johannesburg



Mr. Jeff Wang

Chief Executive Officer

CNR Rolling Stock (Pty) South Africa

Mr. Anoj Singh

Chief Financial Officer

Transnet SOC Limited

Contact Detail

Jeff Wang (CEO)

Tel: 27 61 9846361(SA)

0086 13940991125(CHINA)

Mail Add.: luckwq@163.com

Communication Manager

Jane Dong

Tel: 27 61 9847989(SA)

0086 13889583808 (CHINA)

Mail Add: cnrssapm@163.com

Boke

Tel: 27 61 8849195(SA)

0086 15941159206 (CHINA)

Mail Add: boka_qiao@163.com

CNR Rolling Stock South Africa

CNR Rolling Stock South Africa
China Construction Bank Building
95 Graydon Drive
2198 Sandton Johannesburg
cnr22a@cnr163.com

		Costs	% of Total Relocation	Notes
Labour Costs		R 54,367,333		
Manufacturing cost increase	R 38,280,000		5%	19
Increase quality assurance	R 4,640,000		1%	3
Customer service	R 8,064,000		1%	3
Program management	R 3,383,333		0%	3
Material Cost		R 223,682,441		
Inflation due to schedule shift	R 203,034,165			2
Additional procurement costs	R 20,948,276		3%	2
Logistics Costs		R 6,420,941		
Admin costs to re-work logistics	R 1,731,158			
Dry run in new environment	R 474,578			Fixed Quotation
Additional travel costs	R 2,024,410			Fixed Quotation
Higher inventory - cost of capital	R 2,190,797			Fixed Quotation
Technical Support		R 70,000,000		
Increased cost of tech support	R 28,000,000		4%	3
Engineering	R 10,500,000		1%	3
Increased cost of on-site service by suppliers	R 31,500,000		4%	3
Transportation		R 94,194,785		
International shipments	R 567,104			Fixed Quotation
Parts Transportation to Durban	R 64,800,000			6
Insurance	R 22,500,000		3%	4
Transport protection	R 3,283,231		0%	Fixed Quotation
Express shipments	R 895,427		0%	Fixed Quotation
Truck for handover	R 1,492,378		0%	Fixed Quotation
Locomotives testing	R 1,790,853		0%	Fixed Quotation
Delta to warehouse costs		R 75,650,745		
Additional Lease costs	R 16,800,000		2%	5
Fencing/Security	R 110,395		0%	Fixed Quotation
Civil works upgrades/office constr	R 3,927,000		1%	6
Office & warehouse furniture	R 188,899		0%	Fixed Quotation
Racks & Shelving	R 11,962,500		2%	5
Local forklifts/stacker trucks	R 3,000,000		1%	3
Additional delivery vehicles	R 3,924,652		1%	Fixed Quotation
Additional staff & personnel	R 24,603,400		3%	3
Extra outside labour & services	R 5,800,000		1%	3
Other Costs		R 194,474,302		
Labour inflation original contract	R 1,810,405			3
Finance costs on forward contracts	R 87,750,000			4
Bond costs increase	R 18,000,000		3%	4
Contingency	R 25,867,599		4%	Contingency Risk - Fixed %
Increased insurance costs	R 2,750,000		0%	Fixed Quotation
Increased training costs	R 3,687,623		0%	3
Risk provision increase project	R 54,708,576		8%	Standard Risk - Fixed %
Total		R 719,090,545		

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95 Grayson Drive
2199 Sandton Johannesburg
cnsrsepm@163.com

Global Variables	
Diesel Locomotive	232 locomotives
Locomotive Weight	200 tons
Project Value	9,000,000,000
SA Value	4,950,000,000
Delay	5 mths

Own & Variables		
Loco	25	
Month	232	
Locos per month	12	
Months	300	
	19	
Per Loco		
per Employee	17,500	
	10,000	
	20,000	
	35,000	
	19,800	
per Team	495,000	
per	5,940,000	

Training Costs	24,503,400
Staff	38,280,000
ring Related cost	62,783,400
Training	6%
Total	3,587,623
Employee Cost	700,000
	40,000
	6%

Inexperience	12
Locos per	
Supervisor	2
from CNR	5
Supervisors	40,000
Supervisor per	4,640,000

35% Portion of Total costs for labour	
9,000,000,000	Total Value
6,300,000,000	30% Margin
2,700,000,000	Costs
49,733,370	Labour Inflation

5,311,503	Calculated Inflation
223,620,675	Total Original Labour Cost
11,309	Total FTE (over period)

Extra outside labour & services	
Engineering Consulting	900,000
Period	75,000
Number of Experts	1,450,000
Total	5,800,000

Labour inflation in original contract	
Additional Payments	40,250,733
Inflation	2.3%
Total Cost	1,810,405

Long Term Maintenance - Consulting	
Years	4
Avg Salary	1,000,000
Number of Engineers	20
Weighting	70,000,000 per
CNR Tech Support	8
CNR Engineers	3
Local Small Business Supplier	9

Customer Service (increase in #)	8
Additional tea	12,000
Cost	8,064,000

Mix Change Due To Inexperience & CNR Additional skill training/mentorship Support	
	Old
Unskilled	5
Skilled	17
Managers	3
Per Loco	25
Direct Labour per Loco	495,000
Total Cost	114,840,000
Diff	98,280,000

Additional staff & personnel	
Relocation %	30%
Total CNR Team	300
Relocated Team	90
Salary Growth	25%
Relocation Cost	100,000
Total Cost	17,613,000
Additional CNR Staff	72
Incremental Salary	25%
Total Cost	6,890,400
Grand Total	24,503,400

Program management	
Senior Manager for Relocation	700,000 per
Total	58,333 per
Number	1,127,778
Total Cost	3,383,333

CNR Refrig Stock South Africa
 China Construction Bank Building
 95 Grayston Drive
 2168 Sadollon Johannesburg
 cnrs@ppm@1@3.com

Insurance on Transportation	
Standard Insurance	20,000,000
Insurance	50,000
	0.25%
Value	9,000,000,000
Insurance	22,500,000

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2196 Sandton Johannesburg
cnrssa@143.com

Additional Lease costs

	600,000	R pa	
Industrial Rent Pta	150,000	5,000	sqm
Industrial Rent Dur	350,000	5,000	sqm
Diff	200,000		
	16,800,000		

Racks & Shelving

	17% of sqm
5,000	sqm
14,500	cost per sqm
11,962,500	

Small Office

850	sqm
55	R/sqm
3,927,000	

Local forklifts/stacker trucks

#	R	
15	120,000	lifts
5	700,000	trucks
	5,300,000	

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cncr@sapa@163.com

Parts Transportation to Durban		
Cost of Road Logistics		5% of Total Costs
Total Imported Material		40% of Costs
Total Imported Value	4,050,000,000	<i>original cost</i>
Margin		20%
Total Costs	3,240,000,000	
Materials from Costs	1,296,000,000	
Logistics on Materials	64,800,000	

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China Construction Bank Building
95 Grayston Drive
2196 Sandton Johannesburg

Key References

South African Reserve Bank	www.resbank.co.za	Macro-economic analysis on trends, growth in manufacture, currency risk, inflation and interest movements and general market speculation on risk.
Stats SA	www.statsa.gov.za	
Fin24	www.fin24.com	
JSE News	www.jse.co.za	

Transportation References

Department of Transport	www.transport.gov.za
Durban Clearing	www.durbanclearing.co.za
Road Freight Logistics	www.rfllogistics.co.za
South African Railways	www.southafricanrailways.co.za

Finance Costs

South African Reserve Bank	www.resbank.co.za	consulting
Consulting with various finance experts		
Standard Bank		
SASFin		
Bidvest Bank		

Labour Related Research

SA Board for People Practices	
EVA Solutions	www.evasolutions.co.za
Exceed HR Consulting	www.exceed.co.za

Property Research

Seelf Property Agency	www.seelf.co.za	agency
Property24	www.property24.com	non-agency
Standard Bank Property		banking portfolio assistance
Nedbank Preferred Property Guide		banking portfolio assistance
FNB Property		banking portfolio assistance
Industrial Listings	www.industrialistings.co.za	
SA Commercial Property News	www.sacommercialpropnews.co.za	

Factory & Materials Costs

Industry experts in manufacture		consulting
Industry experts in mining & efficiencies		consulting
Industry experts in cost-optimisation		consulting
Tradition Economics	www.traditioneconomics.co.za	
Manufacturing Circle	www.manufacturingcircle.co.za	

Siyabonga Gama, Acting Group Chief Executive

TRANSNET



Mr Jeff Wring
CNR Rolling Stock South Africa
95 Grayston Drive
Sandton
Johannesburg
2196

Dear Sir,

Variation order to finalise the relocation of the construction of 233 Class 45D locomotives by CNR Rolling Stock South Africa (CNR) to TES facilities in Durban

Your proposal dated July 2015 regarding the above refers.

This letter serves to confirm the acceptance of the Variation Order issued by Transnet in accordance Paragraph 2, Schedule 3, Part 7 clause no.2 (Company Proposed Variations) of the Locomotive Supply Agreement between Transnet SOC Limited and CNR Rolling Stock South Africa dated 17 March 2014.

Accepted Variation Order is as follows:

1. TFR Class 45D: Locomotive Supply Agreement - Durban Variation Order for an amount of R647 181 494.00.
2. Proposed payment terms as follows:
 - 50% payable within 14 days of signature amounting to R323 590 747.00. The remainder, being 50% payable in 24 equal instalments of R13 482 948.00 ("the relocation payment") commencing the end of the first month that the project commences provided that the project is on track.
 - Therefore CNR RS SA will invoice for 24 monthly instalments of R13 482 948.00.

Kindly submit detailed invoicing based on the variation order and payment terms stipulated.

Yours Sincerely,


Siyabonga Gama
Acting Group Chief Executive
Date: 26/10/2015

Transnet SOC Ltd
Registration Number
1950/000900/30

Capitec Centre
159 Commissioner Parlovow, Johannesburg
Street
Johannesburg
2001

P.O. Box 72501

Parlovow, Johannesburg
South Africa, 2122
T +27 11 308 3001
F +27 11 308 2638

Directors: LC Mabasa (Chairperson) D Molefe* (Group Chief Executive) Y Fokas GJ Maholele PEO Mufhega N Mooka ZA Noddes VM Nkomo
MR Solake SO Shone BG Steynman PG Williams A Singh* (Group Chief Financial Officer)
Executive
Group Company Secretary: ANC Caba

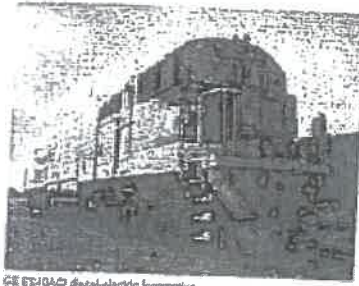
www.transnet.co.za

Transnet: 1,064 locomotives, \$5 billion

*Nasdaq, March 17, 2014

Transnet: 1,064 locomotives, \$5 billion

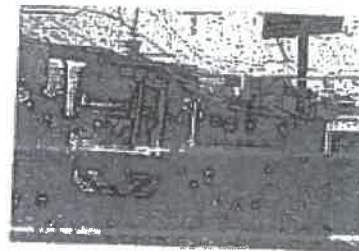
*Nasdaq, March 17, 2014



GE ES40AC diesel-electric locomotive

Transnet, South Africa's state-owned freight transport and logistics company, on March 17, 2014 awarded US\$4.7 billion in contracts for 1,064 locomotives to four global original equipment manufacturers—General Electric South Africa Technologies (a unit of U.S.-based GE Transportation), CNR Rolling Stock South Africa (Pty.) Ltd., CSR Zhuzhou Electric Locomotive, and Bombardier Transportation South Africa. The acquisition is the largest-ever locomotive supply contract in South Africa's history and the single-biggest investment initiative by a South African corporation.

The majority of the locomotives will be deployed in Transnet's Freight Rail GFB (General Freight Business) division, which does not include the company's dedicated heavy-haul lines for iron ore and coal. Transnet said it expects Freight Rail, which accounts for roughly 50% of the company's revenue and capital expenditure requirements, to grow its volumes to 350 million tonnes from the current 307 million tonnes. Just over 60% of the growth is expected to come from GFB.



The locomotive acquisition is divided among the four builders as follows: GE will produce 233 Evolution Series GE ES40AC diesel-electric locomotives for the Transnet Freight Rail network. This is in addition to the 143 locomotives that Transnet has ordered from GE since 2010. CNR Rolling Stock South Africa will supply 232 diesel-electric locomotives. CSR Zhuzhou Electric Locomotive and Bombardier Transportation South Africa will supply 599 electric locomotives.

In line with South Africa's commitment to boost its manufacturing capacity, all the locomotives except 70 will be built at plants in Klerksburg, Pretoria, and Durban operated by Transnet Engineering. Transnet's engineering, manufacturing, and rolling stock maintenance division, Transnet Engineering's role in the agreement has been defined "to ensure that it transforms into an OEM over time," the company said. Transnet Engineering will share approximately 16% of the total build program, about one-third of which will be for the GE ES40AC diesel-electric locomotives. The agreement also includes a clause to ensure capital capability for locomotives and related products, as well as drive South Africa's regional integration objectives. In total, the localization elements are expected to contribute over US\$8.4 billion to the South

African economy.

The contracts have stringent local content, skills development, and training commitments as dictated by the Supplier Development Programme, a government initiative led by the Ministry of Public Enterprises, whose main goal is to localize the production of imported machinery and equipment.

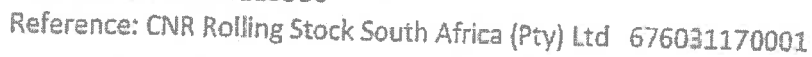
Transnet said the four suppliers have complied with and exceeded the minimum local content criteria for rolling stock of 60% for electric locomotives and 55% for diesel locomotives. "Once all these locomotives are delivered, Transnet would have met all the rolling stock requirements needed to successfully execute our Market Demand Strategy, our record-breaking US\$28.7 billion infrastructure investment program," said Transnet Group Chief Executive Brian Molefe. He added that the contracts "mark a significant milestone in our company's history together with substantial socio-economic benefits for South Africa: The drive to modernize our fleet is intended to improve locomotive reliability and availability. This will improve customer satisfaction, ultimately leading to our crucial goal of road-to-rail migration of cargo in line with government's objectives, and transform the South African rail industry by growing existing small businesses and creating new ones. We are going to create and preserve approximately 30 000 jobs."

The core components of GE's 233 ES40AC locomotives, including the engines, will be made in the U.S., with final assembly occurring at a facility in South Africa. "This technology will help Transnet lower fuel and maintenance costs over the long run," said General Electric South Africa President and CEO Tim Schwenker. "GE South Africa Technologies is honored to be awarded the opportunity to partner with Transnet in revitalizing South Africa's rail sector. Over the past five years, GE South Africa Technologies has delivered more than 115,000 hours of training, more than 35% manufacturing of local content, social upliftment in communities, and technology transfer."

Transnet's contract awards followed a public tender process overseen by its Board of Directors through a subcommittee of independent directors. In addition, Transnet Internal Audit monitored the bid evaluations to ensure that the process complied with South Africa's Public Finance Management Act.

The bid evaluation process had six stages involving Broad Based Black Economic Empowerment and Supplier Development; technical ability (including details of technical offers from the potential suppliers); and commercial. The latter included pricing, total cost of ownership and contractual terms, and compliance to the supply agreement.

The final locomotive is expected to roll off the production line within three and a half years. "In other words, all the locomotives will be ready to go by 2017," said Molefe. Commenting on the rationale for splitting the work among four suppliers, Molefe said, "Ability to stick to an extremely tight delivery schedule was one of the key considerations in assessment of the bids. It is our view that no single supplier would have the capacity of resources to deliver within the timelines we had envisaged."



K

Business Expansion Structured Products (Pty) Ltd

1st Floor

24 Crescent Drive

Melrose Arch

2078

VAT 4740258254

Date

07/09/15

Page

1

Document No

NA10082

CNR Rolling Stock South Africa (Pty) Ltd

3rd Floor

55 Grayston Drive

Sandton

2196

VAT 4560255242

Attn: Allen Lee - CNR Rolling Stock South Africa (Pty) Ltd

3rd Floor, 55 Grayston Drive

Sandton

Email: lyong@cnr.co.za

Account Your Reference

Tax Exempt

CNR001

N

Exclusive

Code

Description

Ex VAT Price

1000000

Ref Agency commission with respect to the project scope deviation associated with the TE Koedoespoort Gauteng facility to their Bay-Head Durban facility

Total agency commission

The price awarded to CNR by TFR for the Project Scope deviation ZAR

547,181,494.00

Less: the project benchmark cost per the Business Services Agreement between CNR and BEX dated 23 April 2015 ZAR

580,000,000.00

Total agency commission due to BEX (ex VAT) ZAR

57,181,494.00

Work performed in terms of Scope Deviation in terms of Business Services Agreement - Business enterprise organization and advisory services including:

a) Conduct detailed market research and produce a comprehensive cost analysis with detailed explanations with regard to changing the location of Transport engineering's local manufacture programme from the TE Koedoespoort Gauteng facility to their Bay-Head Durban facility on a risk basis (the Project)

c) Advise on the social, cultural and political framework in South Africa and to identify various opportunities to participate in similar projects

d) To co-ordinate with appropriate counterparts to advise on applicable Government policies with regard to the successful execution and implementation of the Project

Standard Bank

Rosebank Branch Code

004303

Account Number 002 054 833

Payable upon presentation

Discount @	0.00%	0.00
Amount Excl Tax		57,181,494.00
Tax		9,405,409.15
Total		76,586,903.15

APPENDIX 10



2. On the 17 March 2014, Transnet SOC limited, acting through its Transnet Freight Rail Division (Transnet Freight Rail), entered into various locomotive supply agreements with CSR, CNR, GE and BT after negotiations which started in February 2014.
3. During negotiations BT and CNR were informed that they will use the Durban Transnet Engineering (TE) facility for the construction of the locomotives which were allocated to them. The Durban facility and the move were introduced to both CNR and BT after the tender had closed and evaluations were done.
4. CNR and TE have completed the detailed assessments in terms of the move to Durban and have submitted a joint quotation for the move to Durban.
5. Refer to Annexure AA for the detailed report of the assessment and Annexure A for updated costing.
6. A team will be constituted to negotiate the commercial terms and conditions of the relocation programme.
7. The team will comprise:
 - a) Group Chief Financial Officer
 - b) Chief Executive: TE
 - c) Group Head: ISCM
 - d) Group Executive: Legal & Compliance

8. The team will determine an approach that will yield benefits for both Transnet and the OEMs by:
 - a) Quantifying different negotiations levers and the reasons for a revised pricing and associated impacts.
 - b) Review the accuracy and assumptions in the models to inform the negotiation.
9. Final outcomes will be approved by the GCE in terms of the Board approved delegation of authority for the 1064 transaction.
10. The final outcomes will result in an amendment to the original contracts which will require GCE sign off.
11. The negotiation and final outcome will be subject to the TIA High value tender process as it was an original requirement of the Board of Directors.

MOTIVATION:

12. CNR's original offer to Transnet and the signed contract was based on use of Koedoespoort for final assembly and testing of the locomotives.
13. In order to be able to move operations from Koedoespoort to Durban, there are a following considerations that will drive cost:
 - o Labour costs
 - o Material costs
 - o Operational and logistical effects
 - o Technical support
 - o Physical transportation of materials and resources
 - o Incremental warehousing costs
 - o Financing and risk costs due to time constraints and delays.
14. Each of these areas carry a substantial weight on the total cost of relocation, considering the move from a skilled factory with high-end technology in a nationally-central location to an environment where locomotive manufacturing skills are limited and supply of manufacturing engineers is limited. Added to that, being the largest industrial port in South Africa, industrial property is highly sought after, especially in and around railway areas due to the high traffic on the railway lines between Durban and Johannesburg.
15. The largest non-operational and logistical cost faced is also the 4-month delay in production, which is placing substantial currency-hedging risk, import and inflationary risk, insurance, and training costs.
16. Over and above the costs associated with the move to Durban, there will also be ancillary benefits in using the same team to relocate as it will be running the day-to-day operations in Durban. This will minimise team friction, hand-over wastage and delays, lack of accountability and a host of expertise-related risks

BUDGET IMPLICATIONS:

17. The Board at its meeting of 28 May 2014 approved an amount of R4,9 billion in contingencies as part of the revised ETC.

18. The contingencies budget were to cover the following items:

- a) Capital spares beyond the warranty period,
- b) Variation orders and options (such as electronically controlled pneumatic braking and wire distributed power etc.),
- c) Relocation of the programme to TEs Durban facilities.

19. The current status of the utilisation of the contingencies budget is as follows:

Description	R billion
Contingencies approved	4,954
Variation orders approved to date	(1,200)
Relocation of BT	(634)
Relocation of CNR	(670)
Unutilised portion of contingencies	2,450

20. Consequently an amount of R669 784 286 is part of the contingencies budget, included in the final approved ETC the project.

DELEGATION OF AUTHORITY:

21. On 24 January 2014, at a Special meeting of the Board of Directors, it was resolved that the DOA be given to the GCE to sign, approve and conclude all necessary documents to give effect to the resolution approving the acquisition of the 1064 locomotives (Annexure B).

22. As a result of the Board of Directors approving the 1064 locomotive transaction and subsequent increase in ETC, together with the delegation of authority granted to the GCE, the GCE has the authority to approve variation orders which will include the move to Durban.

23. Annexure B contains a memo from the Group Executive: Legal & Compliance that confirms that the GCE has the delegation to exercise this option.

RECOMMENDATION:

24. Request the Group Chief Executive (GCE) to approve the following:
- The team to negotiate the relocation to Durban with CNR.
 - Variation order in order to finalise the relocation of the programme for the construction of 233 Class 45D locomotives to Durban to a maximum value of R669 784 286. Separate submission has been prepared for BT.
 - Letter to be issued to CNR to commence negotiation for the relocation of the programme.

Compiled by:

Recommended/Not recommended

SEE ATTACHED

Lindiwe Mdletshe
Senior Manager: Strategic
Sourcing Locomotives
Transnet Freight Rail
Date:

SEE ATTACHED

Ravir Nair
Acting Chief Executive
Transnet Freight Rail
Date:

Recommended/ Not recommended

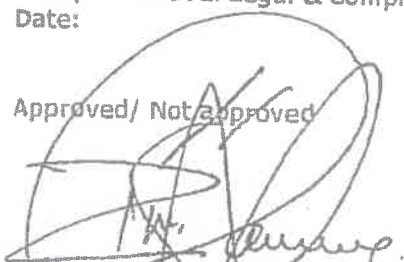
Recommended/ ~~Not recommended~~SEE ATTACHED

Ndiphiwe Silinga
Group Executive: Legal & Compliance
Date:



Anoj Singh
Group Chief Financial Officer
Date: 26/06/15

Approved/ Not approved


Siyabonga Gama
Acting Group Chief Executive
Date: 2015-06-09

RECOMMENDATION:

21. Request the Group Chief Executive (GCE) to approve the following:

- a) The team to negotiate the relocation to Durban with CNR.
- b) Variation order in order to finalise the relocation of the programme for the construction of 233 Class 45D locomotives to Durban to a maximum value of R 635 851 786.
- c) Letter to be issued to CNR to commence negotiation for the relocation of the programme.

Compiled by:



Lindiwe Moletshe
Senior Manager: Strategic
Sourcing Locomotives
Transnet Freight Rail
Date: 19/05/2015

Recommended/Not recommended



Ravir Nair
Acting Chief Executive
Transnet Freight Rail
Date:

Recommended/Not recommended



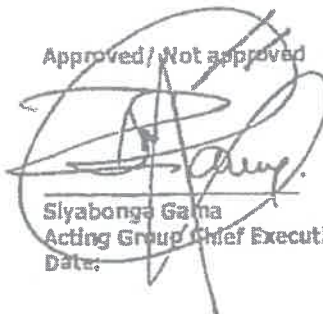
Ndiphiwe Silianga
Group Executive: Legal & Compliance
Date: 19/05/2015

Recommended/Not recommended



Anoj Singh
Group Chief Financial Officer
Date: 19/05/2015


Approved/Not approved



Siyabonga Gama
Acting Group Chief Executive
Date:

④ Approved on the basis that the limit in 3 is not exceeded & I am informed of final negotiation outcomes.

- I need clarity on
- ① Does this apply to both CNR & BT?
 - ② The Amount referred to R635M is still under negotiation
 - ③ How does this relate to the delegation by the AdC/Board for me to deal with this matter as there is no reference to it in this memo?



APPENDIX 11

Appendix 11

Mncedisi Ndlovu

From: Garry Pita Transnet Corporate JHB <Garry.Pita@transnet.net>
Sent: 20 June 2015 12:08
To: Thamsanqa.Jiyane@transnet.net; Anoj.Singh@transnet.net;
 Lindiwe.Mdletshe@transnet.net; Yousuf.Laher@transnet.net;
 Ndiphiwe.Silinga@transnet.net
Subject: CNR comments

Dear all

Below please find my comments and questions for CNR. I have not received the BT proposal as yet and can't comment other than what I raised yesterday. I am heading off to family function away for the rest of the weekend but can't be contacted on my phone.

- There is no mention of SD or ED, for all contracts we normally either keep the percentage of contract value the sMe or make it higher depending on the change. I suggest keep it the same % of the now greater contract value as the change is created due to our choice;
- Yusuf to check whether there were any contingencies in initial offer as if there was then it must be taken into account in this calculation. I've they knew we were going to send them to Dbn so maybe they already priced some of this risk in initial offer;
- get list of suppliers they are using in Gauteng and total material they expect from them as they say they moving R1.3bn material but doesn't make sense as they don't have many suppliers set up as yet per my info. They need to prove the R1.3bn expected value;
- Page 3 talks of limited manufacturing skills and engineers in the area but the plant is situated in Bayhead where there are many manufacturing companies and an abundance of engineers. They also talk of the same team having to move to Dbn yet charge on a number of occasions for more labour and skills but they sending the same people so why charge for this on more than one occasion;
- R54.4m added size of team for labour and QA and CST, TE need to advise if the team in KZN has such low skill to justify this additional labour from OEM?
- R178.8m for material is significant. The inflationary % used is 5.5% which they say is CPI yet CPI is 4.5%. Additionally they say they use 1.8% per month for 4 months which adds to 7.2%, why? They also say it's multiplied by total project cost. Why total project cost and not just material and if it's material it should be R1.3bn as per page 7 of 12. This number. Is surely overstated by some margin;
- the second part of material costs being R16.8m storage would be incurred if it was Dbn or KDS so should not be an additional cost unless I'm missing something;
- technical support in my mind already has some charge in the additional labour charge for engineers and additional QA yet they charge R38.5m for additional support and especially for maintenance and post production? Why maintenance and post production?
- under technical the additional cost of on site service is high, again list of suppliers and how this. Is broken up as seems excessive;
- transportation is in my mind a key area as they have not given Transnet the benefit of the imported material not having to be transported to KDS. They charge R94.2m for additional transport and advise its for the 55% local content, yet they have 45% imported which won't have any travel costs once it's reached port, we need this benefit back estimated at close R90m if you use their logic;

- Yusuf to check assumptions they have used or possibly pwc like transport costs, average CPI, insurance costs, shelving and storage per square meter costs which seem extremely excessive;
- transport also include loco testing for R1.8m but what is the additional cost that wouldn't have been incurred in KDS?
- warehousing, TE to check this as I recall them asking TE to do warehousing in initial bid so if they charging extra her then ate should charge them extra bed on their numbers like R55/ sqm vs R35/sqm in KDS, which seems excessive and needs to be checked. They also charge for fencing and security and office furniture, why is that additional over KDS? Same goes with additional trucks and forklifts, why more in Dbn vs KDS for the same work, doesn't make sense?
- under warehousing R11 200/sqm for shelving and storage is ridiculous and impossible, need to fix this.
- again they charge for additional staff of 90 under warehousing costing R24.5m plus R5.8m for engineers, this is now the third time they charge for additional people?
- Yusuf to check financing costs and hedging numbers. Also industry standard for training is 3% not 6% so R3.6m is overstated. Contingency must be talked out, this is fixed price;

Regards
Garry

Sent from my iPad

APPENDIX 12

Appendix 12

Nkululeko Sibiyi Transnet Freight Rail JHB

From: Yousuf Laher Transnet Freight Rail JHB
Sent: 04 May 2017 02:17 PM
To: Lindiwe Mdletshe Transnet Freight Rail JHB
Subject: FW: CNR Proposal

Mail below as requested.

Best Regards
 Yousuf Laher CA(SA)

From: Yousuf Laher Transnet Freight Rail JHB
Sent: 03 July 2015 02:31 PM
To: Lindiwe Mdletshe Transnet Freight Rail JHB <Lindiwe.Mdletshe@transnet.net>
 ; Emma Molotsane (emolotsane@tia-snk.co.za) (emolotsane@tia-snk.co.za) <emolotsane@tia-snk.co.za>
Subject: FW: CNR Proposal

Resend.

Best Regards
 Yousuf Laher CA(SA)

From: Yousuf Laher Transnet Freight Rail JHB
Sent: 21 June 2015 06:41 PM
To: Lindiwe Mdletshe Transnet Freight Rail JHB
Cc: Anoj Singh Corporate JHB; Garry Pita Transnet Corporate JHB; Thamsanqa Jiyane Transnet Engineering PTA; Ndiphiwe Silinga Transnet Corporate JHB
Subject: RE: CNR Proposal

Dear all, my comments as follows:

1. Increasing the team size does not make sense considering the learning curve will mitigate this requirement within a short time
2. Negotiating with suppliers will eliminate the inflationary cost related to the 4 additional months. In any case material costs generally don't increase on a monthly basis, thus the impact should not be as large as 1.8 %. Also 1.8 % for 4 months does not equal 5.5 % but rather 7.2 % which is excessive.
3. From the explanation provided, the incremental cost of procurement does not relate to the move to Durban. This should not be charged. In any case 9 % interest is excessive.
4. The additional technical support requirement in Durban does not make sense. The cost of this technical support should have been included in the original price.
5. On site service by technicians should have been included in the original price. R 31.5 m for travel and relocation seems excessive.
6. Can the transport not be done by TFR via rail containers? If so then insurance costs would also be minimal as would be internally insured.
7. R 11200 psm for shelving seems excessive? SCS can research this.
8. Has consideration been given to TP or TFR property for the warehousing?
9. Why the additional forklifts?
10. How much is the incentive and relocation cost per staff member?
11. Labour inflation does not increase on a monthly basis. The impact could possibly only be at the end of the project.
12. Labour inflation rate applied at 5.5 % for the full year, whereas it should only be for 4 months (Cell E23 in "Staff" sheet)

13. The additional cost to rollover the hedge must be checked by treasury
14. Additional bond costs must be checked by treasury
15. Contingency risk of 4 % and risk provision of 9 % is unexplained and seems to be additional profit. This seems excessive.
16. Obtain a detailed list of suppliers being used in Durban versus those in JHB.
17. The cost of the long term maintenance consulting does not relate to the move to Durban (Cell E29 "staff"). This should not be charged as it should have been included in the original contract.
18. Labour inflation is double counted (ref cell D7 & cell E23 "staff")

Best Regards
Yousuf Laher CA(SA)

From: Lindiwe Mdletshe Transnet Freight Rail JHB
Sent: 20 June 2015 01:12 PM
To: Yousuf Laher Transnet Freight Rail JHB
Cc: Anoj Singh Corporate JHB
Subject: CNR Proposal

Hi Yousuf,

Please find attached CNR proposal FYA.

Regards

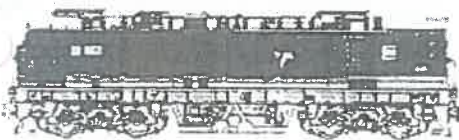
TRANSNET



Lindiwe Mdletshe
 Snr Manager: Strategic Sourcing (Locomotives)
 Supply Chain Services
 Transnet Freight Rail

☎ 011 584 0620
 011 773 0832
www.transnet.net

☎ 083 2683365
 ✉ Lindiwe.Mdletshe@transnet.net



APPENDIX 13

Appendix 13

Nkululeko Sibiya Transnet Freight Rail JHB

From: Yousuf Laher Transnet Freight Rail JHB
Sent: 04 May 2017 02:16 PM
To: Lindiwe Mdletshe Transnet Freight Rail JHB
Subject: FW: Manufacturing Facility Relocation for Class 45D Locomotives Supply Project

Mail below as requested.

Best Regards
 Yousuf Laher CA(SA)

From: Yousuf Laher Transnet Freight Rail JHB
Sent: 25 June 2015 10:12 AM
To: Lindiwe Mdletshe Transnet Freight Rail JHB <Lindiwe.Mdletshe@transnet.net>
Cc: Emma Molotsane (emolotsane@tia-snk.co.za) <emolotsane@tia-snk.co.za>; Anoj Singh Corporate JHB <Anoj.Singh@transnet.net>; Thamsanqa Jiyane Transnet Engineering PTA <Thamsanqa.Jiyane@transnet.net>; Garry Pita Transnet Corporate JHB <Garry.Pita@transnet.net>; Ndiphiwe Silinga Transnet Corporate JHB <Ndiphiwe.Silinga@transnet.net>
Subject: RE: Manufacturing Facility Relocation for Class 45D Locomotives Supply Project

Hi Lindiwe, their proposal has not changed from the previous submission except for their new offer on payment terms.

As such the comments per my mail over the weekend would still apply.

Their payment terms offer needs to be considered in light of Transnets cash flow situation, for which treasury must advise.

Best Regards
 Yousuf Laher CA(SA)

From: Lindiwe Mdletshe Transnet Freight Rail JHB
Sent: 23 June 2015 04:13 PM
To: Anoj Singh Corporate JHB; Thamsanqa Jiyane Transnet Engineering PTA; Garry Pita Transnet Corporate JHB; Ndiphiwe Silinga Transnet Corporate JHB; Yousuf Laher Transnet Freight Rail JHB
Cc: Emma Molotsane (emolotsane@tia-snk.co.za)
Subject: FW: Manufacturing Facility Relocation for Class 45D Locomotives Supply Project

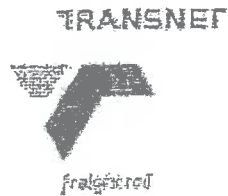
Good day,

Please find attached revised CNR proposal for your review and comments.

Please note that both meetings that were scheduled to take place today, 23 June 2015 were postponed.

BT's proposal is still outstanding. They are having an alignment session this afternoon and they will revert back to us today with an indication on when the "revised proposal" will be submitted to Transnet.

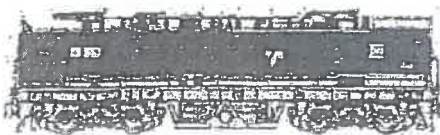
Kind Regards



Lindiwe Mdletshe
Snr Manager: Strategic Sourcing (Locomotives)
Supply Chain Services
Transnet Freight Rail

011 584 0620
011 773 0832
www.transnet.net

083 2683365
✉ Lindiwe.Mdletshe@transnet.net



From: Jane Dong [<mailto:cnrrssapm@163.com>]
Sent: 23 June 2015 02:58 PM
To: Lindiwe Mdletshe Transnet Freight Rail JHB
Cc: 王刚 (南非公司); 于涛 (南非公司); Jane
Subject: Manufacturing Facility Relocation for Class 45D Locomotives Supply Project

Hi Lindiwe,

As requested, I attached the revised proposal behind for your reference.

Once you confirmed the meeting time, just let me know.

Appreciated.

Regards,

2015-06-23

Jane Dong

Communication Manager & Project Manager CNR Rolling Stock South Africa(Pty)Ltd.
Add : 3rd Floor, 95 Grayston Drive, Sandton, 2196, Johannesburg, South Africa

Cell: +86 138 8958 3608 (CHINA) +27 61 984 7989 (SA)
Tel: +86 411 84197600 (CHINA) +27 10 007 2316(SA)
E-mail: cnrrssapm@163.com
Web: www.chinacnr.com

APPENDIX 14

Appendix 14

Mapula Machaba

From: Garry Pita Transnet Corporate JHB
Sent: Tuesday, 14 July 2015 11:28 AM
To: Lindiwe.Mdletshe@transnet.net
Cc: Anoj.Singh@transnet.net; ThamsanqaJiyane@transnet.net; Ndiphiwe.Silinga@transnet.net; emolotsane@tia-snk.co.za
Subject: Re: TFR Class 23E, BT/TFR/00608: Locomotive Supply Agreement - Durban Variation Order
Attachments: image002.jpg; image004.jpg; image002.jpg; image004.jpg

Thank you

Ndiphiwe, can I ask that you please review the legal clauses and caveats raised in both proposals, especially in the BT offer. They raised some clauses which might have a significant impact. Please advise so that we can sign this off ASAP.

Best regards
Garry

Sent from my iPad

On 10 Jul 2015, at 4:14 PM, Lindiwe Mdletshe Transnet Freight Rail JHB <Lindiwe.Mdletshe@transnet.net> wrote:

Hi Garry,
 I will prepare as requested and circulate for comments by Monday.
 Kind Regards

Lindiwe Mdletshe
 Snr Manager: Strategic Sourcing (Locomotives)
 Supply Chain Services
 Transnet Freight Rail

011 584 0620 083 2683365
 011 773 0832 ✉ Lindiwe.Mdletshe@transnet.net
www.transnet.net

From: Garry Pita Transnet Corporate JHB
Sent: 10 July 2015 03:46 PM
To: Lindiwe Mdletshe Transnet Freight Rail JHB
Cc: Anoj Singh Corporate JHB; Thamsanqa Jiyane Transnet Engineering PTA; Ndiphiwe Silinga Transnet Corporate JHB; Emma Molotsane (emolotsane@tia-snk.co.za)
Subject: RE: TFR Class 23E, BT/TFR/00608: Locomotive Supply Agreement - Durban Variation Order
 Hi Lindiwe
 Feedback from the meeting this morning is that BT will be sending us another letter providing further clarity on their offer. This is expected on Monday.

Can I ask that you update all the documentation ie memo for us to send to the acting GCE for approval of CNR and BT proposals and letter from GCE to CNR and BT accepting proposals

in order to save time. Should the team copied be happy with the proposals we can then effect sign off quickly. Please also ensure that the TIA sign off from Emma is included in the memo.

Best regards

Garry Pita
Group Chief Supply Chain Officer

Transnet SOC Ltd

(011)308 1282 083 447 1209

(011)308 2601 garry.pita@transnet.net

www.transnet.net

From: Lindiwe Mdletshe Transnet Freight Rail JHB

Sent: 07 July 2015 01:57 PM

To: ramon.perez_perez@es.transport.bombardier.com; Frikkie Harris Transnet Freight Rail JHB

Cc: Anoj Singh Corporate JHB; Thamsanqa Jiyane Transnet Engineering PTA; Garry Pita Transnet Corporate JHB; aubrey Lekwane; mathias.papritz@de.transport.bombardier.com; dobri.makhubela@za.transport.bombardier.com; david.anglin@de.transport.bombardier.com

Subject: RE: TFR Class 23E, BT/TFR/00608: Locomotive Supply Agreement - Durban Variation Order

Dear Ramon.

We acknowledge receipt of your letter.

As indicated in our last meeting, Transnet will require \pm 14 business days to respond to your proposal.

Kind regards

Lindiwe Mdletshe

Snr Manager: Strategic Sourcing (Locomotives)

Supply Chain Services

Transnet Freight Rail

☎ 011 584 0620 083 2683365

011 773 0832 ✉ Lindiwe.Mdletshe@transnet.net

www.transnet.net

From: ramon.perez_perez@es.transport.bombardier.com
[mailto:ramon.perez_perez@es.transport.bombardier.com]

Sent: 07 July 2015 12:29 PM

To: Lindiwe Mdletshe Transnet Freight Rail JHB; Frikkie Harris Transnet Freight Rail JHB

Cc: Anoj Singh Corporate JHB; Thamsanqa Jiyane Transnet Engineering PTA; Garry Pita Transnet Corporate JHB; aubrey Lekwane; mathias.papritz@de.transport.bombardier.com; dobri.makhubela@za.transport.bombardier.com; david.anglin@de.transport.bombardier.com

Subject: TFR Class 23E, BT/TFR/00608: Locomotive Supply Agreement - Durban Variation Order

Dear Lindiwe, Dear Frikkie,

Please find enclosed our letter on the matter of the subject.
(See attached file: *BT_TFR_C_15_0053.pdf*)

Best regards

Ramón Pérez
Project Manager - Locomotives
Bombardier Transportation

Tel. +41 443182776 / Mobile: +41 791505910
ramon.perez_perez@es.transport.bombardier.com

APPENDIX 15

Appendix 15

Transnet SOC Ltd
Registration
Number
1390/000900/30

Carlton Centre
150 Commissioner
Str.
Johannesburg
2001

P.O. Box 72501
Parkview
South Africa, 2122
T +27 11 308 2309
F +27 11 308 2312

TRANSNET



MEMORANDUM

To: Siyabonga Gama, Acting Group Chief Executive

From: Ravi Nair Acting Chief Executive: Transnet Freight Rail

SUBJECT: REQUEST FOR ACTING GCE TO APPROVE THE RELOCATION OF BOMBARDIER TRANSPORTATION SA TO TE'S FACILITIES IN DURBAN FOR THE MANUFACTURE OF 240 23E ELECTRIC LOCOMOTIVES

PURPOSE:

1. Request the Acting Group Chief Executive (GCE) to:
 - a) Note the final outcome of the negotiation for the relocation to Durban with Bombardier Transportation SA (BT);
 - b) Approve variation order for the relocation to Durban to a maximum value of R 618 457 125.00 with BT and
 - c) Sign-off a letter to be issued to BT to accept their final proposal.

BACKGROUND:

2. On the 17 March 2014, Transnet SOC limited, acting through its Transnet Freight Rail Division (Transnet Freight Rail), entered into various locomotive supply agreements with CSR, CNR, GE and BT after negotiations which started in February 2014.
3. During negotiations BT and CNR were informed that they will use the Durban Transnet Engineering (TE) facility for the construction of the locomotives which were allocated to them. The Durban facility and the move were introduced to both CNR and BT after the tender had closed and evaluations were done.
4. On the 10 June 2015, AGCE approved the team to negotiate the relocation to DBN with Bombardier Transportation SA (BT).
5. T&A was present during the negotiation and are in the process of finalizing their report.

MOTIVATION:

6. Bombardier's final offer to Transnet is an additional discount of 2,5% and the following cost which has been absorbed:
 - a) Further price escalation
 - b) Financing cost of own additional efforts, suppliers and already accumulated stock and
 - c) Claims from the suppliers that BT has already rescheduled and delayed

A) Further price escalation

- The cost of the further price escalation of material/ labour and other expenses were evaluated at 4% due to the additional time for deliver
- 2,5% was due to the increase of the Euro/ Rand ratio over the last year since the instruction to change TE facility was received from TFR and since BT submitted the first Notice of Company Proposed Variation on the subject.
- The additional financing cost due to our ongoing expenses on internal efforts and cost from our suppliers in addition to the logistics and warehousing cost (negative Cash Flow) create an additional 2,5% (two and half) of the costs.
- In addition to the escalation mentioned above, claims from the suppliers were costed at 1% (one percent).

If the Variation Order is not issued by 24 July 2015, the value of BT's Notice of Company Proposed Variation Order will increase by 20%.

BT's current offer represents a total discount of 32,5% (thirty two and half percent) when taking into consideration the indicated potential price increase of approximately 20% (twenty percent) in instances where by the Notice of Company Proposed Variation or the VO is not approved by TFR by 24 July 2015 (validity of BT's offer). The 32,5% (thirty two and half percent) is the sum of the 10% absorbed cost of further price escalation, the abovementioned 20% increased price after the 24 July 2015 and a further 2,5% discount given by BT.

7. The following payment terms have been proposed by BT in accordance with Section 1.2 of Schedule 1 (Pricing and Payment Terms) of the Locomotive Supply Agreement:

- The first two milestones (The Effective Date and 6 months after Effective Date) amounting to a combined total of 18% of the Total Contract Price of all Locomotives have already been achieved, due and will be invoiced by BT once the VO is issued. The third Milestone Payment to the value of 9% of the Total Contract Price of all Locomotives will be due 17 Months after Effective Date and will be invoiced accordingly.

C. Current

1. Definition - TE Facility

As it reads currently

"Koedoespoort, Gauteng,"

Amendment to Definition - TE Facility

"Durban, Kwa-Zulu Natal"

2. Clause 9.1.1

As it reads currently clause 9.1.1

"If the Acceptance of a Locomotive occurs after its Scheduled Acceptance Date (a Delay), the Contractor shall (subject to Clause 9.2 (Delay Penalty Cap), pay a Delay Penalty to the Company in respect of that Delayed Locomotive at the Applicable Rate. A Delay Penalty grace period of 3 months shall apply to the initial 6 (six) Locomotives Scheduled Acceptance Date".

Amendment to clause 9.1.1

"If the Acceptance of a Locomotive occurs after its Scheduled Acceptance Date (a Delay), the Contractor shall (subject to Clause 9.2 (Delay Penalty Cap), pay a Delay Penalty to the Company in respect of that Delayed Locomotive at the Applicable Rate. A Delay Penalty grace period of 3 (three) months shall apply to the initial 35 (thirty-five) Locomotives Scheduled Acceptance Date. An additional grace period of 2 (two) months shall apply to the remainder of the Fleet"

BUDGET IMPLICATIONS:

9. The Board at its meeting of 28 May 2014 approved an amount of R4,9 billion in contingencies as part of the revised ETC.
10. The contingencies budget were to cover the following items:
 - a) Capital spares beyond the warranty period,
 - b) Variation orders and options (such as electronically controlled pneumatic braking and wire distributed power etc.),
 - c) Relocation of the programme to TE's Durban facilities.
11. The current status of the utilisation of the contingencies budget is as follows:

Description	R-billion
Contingencies approved	4,954
Variation orders approved to date	1,200
Relocation of BT	618
Relocation of CNR	647
Unutilised portion of contingencies	2,519

12. Consequently an amount of R 618 457 125.00 is part of the contingencies budget, included in the final approved ETC the project.

RECOMMENDATION:


13. Request the Acting Group Chief Executive (AGCE) to:

- a) Note the final outcome of the negotiation for the relocation to Durban with Bombardier Transportation SA (BT);
- b) Approve variation order for the relocation to Durban to a maximum value of R 618 457 125.00 with BT and
- c) Sign-off a letter to be issued to BT to accept their final proposal.


Compiled by:


 Lindiwe Mdletshe
 Senior Manager: Strategic
 Sourcing Locomotives
 Transnet Freight Rail
 Date:


~~Recommended/Not recommended~~


 Ravi Nair
 Acting Chief Executive
 Transnet Freight Rail
 Date: 22/07/2015

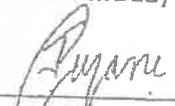
~~Recommended/Not recommended~~


 Ndiphiwe Silinga
 Group Executive: Legal & Compliance
 Date: 22/07/2015


~~Recommended/Not recommended~~


 Anoj Singh
 Group Chief Financial Officer
 Date: 22/07/15

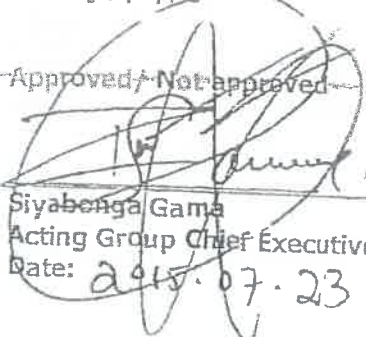
~~Recommended/Not recommended~~


 Thamsanqa Jiyane
 Chief Executive, TE
 Date: 22/07/15

~~Recommended/Not recommended~~


 Garry Pita
 Group Chief Procurement Officer
 Date: 22/7/15

~~Approved/Not approved~~


 Siyabonga Gama
 Acting Group Chief Executive
 Date: 2015.07.23

APPENDIX 16

Appendix 16

Transnet SOC Ltd
Registration
Number
1990/000900/30

Carlton Centre
150 Commissioner
Str.
Johannesburg
2001

P.O. Box 72501
Parkview
South Africa, 2122
T +27 11 308 2309
F +27 11 308 2312

TRANSNET



MEMORANDUM

To: Siyabonga Gama, Acting Group Chief Executive

From: Ravi Nair Acting Chief Executive: Transnet Freight Rail

SUBJECT: REQUEST FOR ACTING GCE TO APPROVE THE RELOCATION OF CNR ROLLING STOCK SOUTH AFRICA (CNR) TO TE'S FACILITIES IN DURBAN FOR THE MANUFACTURE OF 233 CLASS 45D ELECTRIC LOCOMOTIVES

PURPOSE:

1. Request the Acting Group Chief Executive (GCE) to:
 - a) Note the final outcome of the negotiation for the relocation to Durban with CNR;
 - b) Approve variation order for the relocation to Durban to a maximum value of R 647 181 494.00 with CNR and
 - c) Sign-off a letter to be issued to CNR to accept their final proposal.

BACKGROUND:

2. On the 17 March 2014, Transnet SOC limited, acting through its Transnet Freight Rail Division (Transnet Freight Rail), entered into various locomotive supply agreements with CSR, CNR, GE and BT after negotiations which started in February 2014.
3. During negotiations BT and CNR were informed that they will use the Durban Transnet Engineering (TE) facility for the construction of the locomotives which were allocated to them. The Durban facility and the move were introduced to both CNR and BT after the tender had closed and evaluations were done.
4. On the 10 June 2015, AGCE approved the team to negotiate the relocation to DBN with CNR
5. TIA was present during the negotiation and are in the process of finalizing their report.

MOTIVATION:

6. CNR's final offer to Transnet is R647 181 494.00 which has been absorbed:

The primary drivers of this increase are inflation and finance costs detailed below.

- a) **Inflation costs** increased from R166m to R204m (increase of approximately R38m).

- b) **Finance costs on forward Contract** increased from R81m to R88m (increase of approximately R7m).
- c) **Interest on stock holdings** would increase from R16m to R21m (increase of approximately R5m).

Therefore total project costs has increase from R669m to R719m (increase of approximately R50m).

The new project relocation cost estimate amounts to R719 090 548.00. On this price CNR's offer's a 10% settlement discount amounting to R71 909 054.00. This results in a revised project relocation cost of R647 181 494.00.

7. Any further delays in commencing the project beyond 5 months will have further cost implications that will have to be taken into consideration.
8. The Following payments terms have been proposed by CNR:
- 50% payable within 14 days of signature amounting to R323 590 747.00. The remainder, being 50% payable in 24 equal instalments of R13 482 948.00 ("the relocation payment") commencing the end of the first month that the project commences provided that the project is on track.
 - Therefore CNR RS SA will invoice for 24 monthly instalments of R13 482 948.00
 - Transnet is currently holding cash of approximately R4 billion with a cost of carry of approximately 4%, which provides supports for taking advantage of the discount based on the proposed payment regime.
9. Refer to Annexure A for the final detailed proposal.

BUDGET IMPLICATIONS:

10. The Board at its meeting of 28 May 2014 approved an amount of R4,9 billion in contingencies as part of the revised ETC.
11. The contingencies budget were to cover the following items:
- a) Capital spares beyond the warranty period
 - b) Variation orders and options (such as electronically controlled pneumatic braking and wire distributed power etc.),
 - c) Relocation of the programme to TEs Durban facilities.

12. The current status of the utilisation of the contingencies budget is as follows:

Description	R billion
Contingencies approved	4,954
Variation orders approved to date	1,200
Relocation of BT	618
Relocation of CNR	647
Unutilised portion of contingencies	2,519

13. Consequently an amount of R647 181 494.00 is part of the contingencies budget, included in the final approved ETC the project.

RECOMMENDATION:

14. Request the Acting Group Chief Executive (AGCE) to:
- Note the final outcome of the negotiation for the relocation to Durban with CNR;
 - Approve variation order for the relocation to Durban to a maximum value of R 647 181 494. with CNR and
 - Sign-off a letter to be issued to CNR to accept their final proposal.

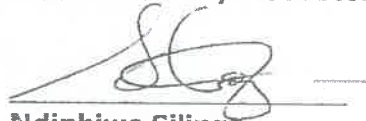
Compiled by:


 Lindiwe Mdletshe
 Senior Manager: Strategic
 Sourcing Locomotives
 Transnet Freight Rail
 Date:


~~Recommended / Not recommended~~


 Ravi Nair
 Acting Chief Executive
 Transnet Freight Rail
 Date: 22/07/2015


~~Recommended / Not recommended~~


 Ndiphiwe Silinga
 Group Executive: Legal & Compliance
 Date: 22/07/2015


~~Recommended / Not recommended~~


 Anoj Singh
 Group Chief Financial Officer
 Date: 22/07/15

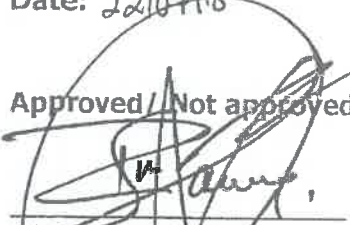
~~Recommended / Not recommended~~


 Thamsanga Jiyane
 Chief Executive: TE
 Date: 22/07/15

~~Recommended / Not recommended~~


 Garry Pita
 Group Chief Procurement Officer
 Date: 22/7/15

~~Approved / Not approved~~


 Siyabonga Gama
 Acting Group Chief Executive
 Date: 2015-07-23

APPENDIX 17

Private & Confidential



Bombardier Transportation South Africa (Pty) Ltd
 Att: Mr. Ludger Delbeck
 22 Milky Way Avenue
 Linbro Business Park
 Sandton
 South Africa
 2146

Corporate Office
 Transnet Engineering
 160 Lynette Street
 Kilner Park
 Pretoria
 South Africa
 0186

Our Ref: STM_CD_KLP_TQ 578

23 September 2014

Dear Mr. Ludger Delbeck

QUOTATION TO BOMBARDIER TRANSPORTATION SOUTH AFRICA (PTY) LTD ("BT") FOR THE SUPPLY OF A SPECIFIED SCOPE OF WORK IN SUPPORT OF THE TRANSNET FREIGHT RAIL ("TFR") TENDER TFRAC-HO-8608 FOR THE SUPPLY OF 599 NEW DUAL VOLTAGE ELECTRIC LOCOMOTIVES ("LOCOMOTIVES") FOR THE GENERAL FREIGHT BUSINESS ("GFB")

Transnet SOC Ltd, acting through its Operating Division, Transnet Engineering ("TE") would like to thank you for the opportunity to provide you with our proposed pricing in respect of the above-mentioned contract should the delivery schedule be delayed by a possible 3 months as a result of the location of the BT production line at TE's Durban facility.

Our price is based on the already agreed upon contractual terms in the mutually signed Agreement number CS_LS_KLP_AGM-BT001, the only variation being the possible rescheduling of the delivery schedule to commence 3 months later than the original plans. Our revised fixed pricing based on the above is reflected in the table below:

DESCRIPTION	QUANTITY	FIXED PRICE PER LOCOMOTIVE	TOTAL PRICE
Specified scope of work for the Locomotives	240	R 3 224 805	R 773 953 200

Transnet SOC Ltd
 Registration Number
 1990/000900/30

160 Lynette Street
 Kilner Park
 Pretoria
 0186

PO Box 15912
 Lynn East
 Pretoria, 0039
 T +27 12 391 1301
 F +27 12 391 1342

Directors: ME Mkwana (Chairman) B Molefe* (Group Chief Executive) A Farucchi Y Forbes MD Gazendam NP Mnxasana N Moola NR Njeke IB Skosana E Tshabalala DLJ Tshepe A Singh* (Group Chief Financial Officer)
 *Executive

www.transnet.net

Group Company Secretary: ANC Ceba

We trust that you find the above in order.

Kind regards



22-Sep-2016

Mr Andile Silo

Acting Chief Operating Officer

Transnet Engineering – a division of Transnet SOC Ltd.

TRANSNET



To:
Mr Siyabonga Gama
Group Chief Executive
Transnet SOC Ltd

SUBJECT:

**HVT- NEGOTIATIONS FOR DURBAN RELOCATION (CNR: CNR CONSORTIUM AND BT;
BOMBARDIER)**

For your approval/signature

COMMENTS / NOTES:

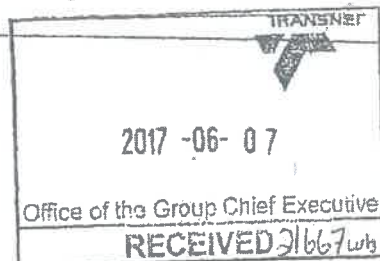
Eddie Thomas/ Etany Pite,

*Kindly ensure that all information that
was required for the HVT report is
to produced is made available to the
CAE in order for the HVT to finalize
its report.*

2017.06.08.

From: Ms Mmathabo Sukati
Chief Audit Executive
Date: 7 June 2017

For collection, please contact Thobeka- 4217



Transnet SOC Ltd
Registration
Number
1990/000900/30

Carlton Centre
150 Commissioner
Str. Johannesburg
2001

P.O. Box 72501
Parkview
South Africa, 2122
T +27 11 308 2253
F +27 11 308 1269

TRANSNET



MEMORANDUM

www.transnet.net

To: Siyabonga Gama, Group Chief Executive

From: Transnet Internal Audit

Subject: HVT – Negotiations for Durban Relocation (CNR: CNR Consortium and BT: Bombardier)

BACKGROUND:

1. Transnet Internal Audit (TIA) received a series of invitations from Transnet Freight Rail (TFR) to attend the Durban Relocations Negotiations as part of the extended HVT process.

PURPOSE:

2. The purposes of the meetings was for TIA to observe the processes followed during the meetings of the relocations negotiations and provide assurance that the process followed was compliant with the PPM requirements.

The meeting invites were received post the Negotiations and Evaluations gateways for the 1064 project, which TIA was involved in as part of the HVTP gateway review process. The final reports for both the Evaluations and Negotiations gateways were issued as required per the HVT methodology.

DISCUSSION:

3. Observations

The following sequence of events are TIA's observations in relation to the Durban Relocation Negotiations. These are limited to the extent of the information shared with TIA during the respective meetings.

* 19 June 2015

The meeting was held at OR Tambo International Airport. In attendance were the following bidders:

- BT: Bombardier
- CNR: CNR Consortium

At the meeting, the Transnet Group Chief Financial Officer (GCFO) requested both bidders to submit their proposals for the cost implications of manufacturing out of Durban. A follow up meeting was then scheduled for 23 June 2015 for further negotiations.

▪ **Event Conclusion:**

TIA noted no deviations to the PPM requirements.



▪ **23 June 2015**

TIA was copied in an email sent by the TFR SCM Senior Manager to Transnet Management with the CNR proposal attached for Transnet Management to review and comment. The email further mentioned the postponement of the meeting scheduled for the day as well as that BT's proposal was still outstanding. At this stage, TIA did not review the proposal, as this is not required per the TIA HVT methodology.

▪ **Event Conclusion:**

No work was performed by TIA at this stage, thus we cannot conclude on the adequacy of the proposal document.



▪ **25 June 2015**

TIA was copied in an email from the TFR Finance Executive, addressed to the TFR SCM Senior Manager with comments from his review.

▪ **Event Conclusion:**

No work was performed by TIA at this stage, as TIA is required to be present at an evaluation sitting where the proposal is evaluated by Management. TIA would then conclude on whether the process followed is in line with the PPM.



▪ **8 July 2015**

TIA received an invite for a follow up meeting with TFR Management and Bidders. This meeting was scheduled for 10 July 2015.

▪ **Event Conclusion:**

No work was performed by TIA at this stage, as TIA is required to be present at an evaluation sitting where the proposal is evaluated by Management. TIA would then conclude on whether the process followed is in line with the PPM.



▪ **10 July 2015**

A meeting was scheduled for 10 July 2015 with BT.

An email was forwarded to TIA by the GCSCO with the BT proposal attached. On the same day TIA was copied in an email from GCSCO addressed to the TFR Senior Manager. In the email, the GCSCO requests the following from the TFR Senior Manager:

- to update the memo which should be sent to the Acting Group Chief Executive (AGCE) for approval of the CNR and BT proposals
- to update letters from AGCE to CNR and BT for approval accepting their proposals in order to save time.

He further requested the following:

- that should the management team copied in the email be satisfied with the proposals, management can then effect urgent sign off; and
- the TFR Senior Manager to ensure that TIA's sign off is included in the memo.

TIA was however, not provided any documentation i.e. memo, letters etc for review, even after subsequent informal follow up with the TFR Senior Manager.

▪ **Event Conclusion:**

No work was performed by TIA at this stage, as TIA was not invited to a negotiation sitting to provide assurance on the negotiation process.

* ▪ **14 July 2015**

TIA was copied an email on 14 July 2015, from the GCSCO, to Group Legal, requesting their review of the legal clauses and caveats in both proposals.

▪ **Event Conclusion:**

No work was performed by TIA at this stage. TIA is not expected to provide assurance on requests for Legal reviews.

* ▪ **15 July 2015**

On the 15 July 2015, TIA was copied in an email from the TFR SCM Senior Manager informing CNR that their request for an extension was denied and that their responses were required by the 16 July 2015 at 12h00.

▪ **Event Conclusion:**

No work was performed by TIA at this stage. TIA was not informed when the bidder was requesting an extension.

* ▪ **16 July 2015**

On the 16 July 2015 CNR copied TIA in an email addressed to the TFR Senior Manager, requesting an extension.

No other communication or documentation was received from Management regarding the Durban Relocation Negotiations.

▪ **Event Conclusion:**

No work was performed by TIA at this stage. TIA did not receive a request to review the reasons for extension.

FINANCIAL IMPLICATIONS:

4. N/A

BUDGET:

5. N/A

*CONCLUSION:

6. TIA was not invited for subsequent negotiation meetings where negotiations on relocation costs were discussed with the bidders in attendance, as required per the HVT methodology.
7. Despite the GCSCO's request for TIA to sign off on the memo that was to be sent to the AGCE for approval, TIA was not provided with the memo or the outcome of the negotiations or the letters of acceptance of the proposals ^{to} by the AGCE.
8. Based on TIA's limited involvement in the process indicated above, a formal report to indicate adequacy and/ or effectiveness of the processes undertaken in the Durban Relocation negotiations could not be produced.

Compiled by:



Emma Molotsane

TIA HVT Manager

Date: 7/06/2017

Supported by:



Thato Mahlamvu

TIA SKX Account Lead

Date: 07/06/2017

Noted by:



Mmathabo Sukati

Chief Audit Executive

Date:

Noted by:



Siyabonga Gama

Group Chief Executive

Date: 2017-06-08

In a letter to Alice, on 23 July, reference is made to the effect that the HVT report is being finalized. I would like that the HVT report is produced. Further all information required for same must be made available to the CAE.

APPENDIX 18

TRANSNET



Appendix 18

To: .
Mr Siyabonga Gama
Group Chief Executive
Transnet SOC Ltd

SUBJECT:

**HVT- NEGOTIATIONS FOR DURBAN RELOCATION (CNR: CNR CONSORTIUM AND BT;
BOMBARDIER)**

For your approval/signature

COMMENTS / NOTES:

Eddie Thomas/ Clarry Pite,

*Kindly ensure that all information that
was required for the HVT report is
now produced is made available to the
CAE in order for the HVT to finalize
its report.*

2017.06.08

From: Ms Mmathabo Sukati
Chief Audit Executive
Date: 7 June 2017

For collection, please contact Thobeka- 4217

TRANSNET
2017 -06- 07
Office of the Group Chief Executive
RECEIVED 2017/06/07

Transnet SOC Ltd
Registration
Number
1999/000900/30

Carlton Centre
150 Commissioner
Str. Johannesburg
2001

P.O. Box 72501
Parkview
South Africa, 2122
T +27 11 308 2253
F +27 11 308 1269

TRANSNET



MEMORANDUM

www.transnet.net

To: Siyabonga Gama, Group Chief Executive
From: Transnet Internal Audit
Subject: HVT – Negotiations for Durban Relocation (CNR: CNR Consortium and BT: Bombardier)

BACKGROUND:

1. Transnet Internal Audit (TIA) received a series of invitations from Transnet Freight Rail (TFR) to attend the Durban Relocations Negotiations as part of the extended HVT process.

PURPOSE:

2. The purposes of the meetings was for TIA to observe the processes followed during the meetings of the relocations negotiations and provide assurance that the process followed was compliant with the PPM requirements.

The meeting invites were received post the Negotiations and Evaluations gateways for the 1064 project, which TIA was involved in as part of the HVTP gateway review process. The final reports for both the Evaluations and Negotiations gateways were issued as required per the HVT methodology.

DISCUSSION:

3. Observations

The following sequence of events are TIA's observations in relation to the Durban Relocation Negotiations. These are limited to the extent of the information shared with TIA during the respective meetings.

* 19 June 2015

The meeting was held at OR Tambo International Airport. In attendance were the following bidders:

- BT: Bombardier
- CNR: CNR Consortium

At the meeting, the Transnet Group Chief Financial Officer (GCFO) requested both bidders to submit their proposals for the cost implications of manufacturing out of Durban. A follow up meeting was then scheduled for 23 June 2015 for further negotiations.

▪ Event Conclusion:

TIA noted no deviations to the PPM requirements.

* ▪ 23 June 2015

TIA was copied in an email sent by the TFR SCM Senior Manager to Transnet Management with the CNR proposal attached for Transnet Management to review and comment. The email further mentioned the postponement of the meeting scheduled for the day as well as that BTs proposal was still outstanding. At this stage, TIA did not review the proposal, as this is not required per the TIA HVT methodology.

▪ Event Conclusion:

No work was performed by TIA at this stage, thus we cannot conclude on the adequacy of the proposal document.

* ▪ 25 June 2015

TIA was copied in an email from the TFR Finance Executive, addressed to the TFR SCM Senior Manager with comments from his review.

▪ Event Conclusion:

No work was performed by TIA at this stage, as TIA is required to be present at an evaluation sitting where the proposal is evaluated by Management. TIA would then conclude on whether the process followed is in line with the PPM.

* ▪ 8 July 2015

TIA received an invite for a follow up meeting with TFR Management and Bidders. This meeting was scheduled for 10 July 2015.

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No work was performed by TIA at this stage, as TIA is required to be present at an evaluation sitting where the proposal is evaluated by Management. TIA would then conclude on whether the process followed is in line with the PPM.

* ▪ 10 July 2015

A meeting was scheduled for 10 July 2015 with BT.

An email was forwarded to TIA by the GCSCO with the BT proposal attached. On the same day TIA was copied in an email from GCSCO addressed to the TFR Senior Manager. In the email, the GCSCO requests the following from the TFR Senior Manager:

- to update the memo which should be sent to the Acting Group Chief Executive (AGCE) for approval of the CNR and BT proposals
- to update letters from AGCE to CNR and BT for approval accepting their proposals in order to save time.

He further requested the following:

FINANCIAL IMPLICATIONS:

4. N/A

BUDGET:

5. N/A

*CONCLUSION:

6. TIA was not invited for subsequent negotiation meetings where negotiations on relocation costs were discussed with the bidders in attendance, as required per the HVT methodology.
7. Despite the GCSCO's request for TIA to sign off on the memo that was to be sent to the AGCE for approval, TIA was not provided with the memo or the outcome of the negotiations or the letters of acceptance of the proposals ~~by~~ the AGCE.
8. Based on TIA's limited involvement in the process indicated above, a formal report to indicate adequacy and/ or effectiveness of the processes undertaken in the Durban Relocation negotiations could not be produced.

Compiled by:



Emma Molotsane

TIA HVT Manager

Date: 7/06/2017

Supported by:



Thabo Mahlamvu

TIA SIX Account Lead

Date: 07/06/2017

Noted by:



Mmathabo Sukati

Chief Audit Executive

Date:

Noted by:



Siyabonga Gama

Group Chief Executive

Date: 26/7.06.08

In a letter to Abek, on 23 July, reference is made to the effect that the HVT report is being finalized. I would like that the HVT report is produced. Further all information required for same must be made available to the CAE.

APPENDIX 19

Appendix 19



- TO :** ACCOUNTING OFFICERS OF ALL NATIONAL DEPARTMENTS
AND CONSTITUTIONAL INSTITUTIONS
- :** ACCOUNTING AUTHORITIES OF ALL SCHEDULE 3A AND 3C
PUBLIC ENTITIES
- :** HEAD OFFICIALS OF ALL PROVINCIAL TREASURIES

NATIONAL TREASURY INSTRUCTION NOTE ON ENHANCING COMPLIANCE MONITORING AND IMPROVING TRANSPARENCY AND ACCOUNTABILITY IN SUPPLY CHAIN MANAGEMENT

1 PURPOSE

- 1.1 This instruction note aims to improve accountability and provide supply chain management directives to accounting officers of departments and constitutional institutions and to accounting authorities of public entities listed in Schedules 3A and 3C to the Public Finance Management Act (PFMA), 1999 to ensure value for money in the procurement of goods, works and/or services. This instruction note also aims to improve transparency and combat fraud in institutions.
- 1.2 Departments, constitutional institutions and Schedule 3A and 3C public entities shall hereafter be referred to as institutions in this instruction note.

2 BACKGROUND

- 2.1 The Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) promotes economy, efficiency, effectiveness and transparency in the use of state resources and one of its key objectives is to eliminate waste and corruption in the use of public assets.

- 2.2 It has, however, come to light that improper supply chain management practices at institutions are seriously undermining sound financial management, weakening the spirit and ethos of the PFMA and ultimately eroding scarce resources that are intended to improve service delivery. These improper practices include the circumvention of official competitive bidding processes in order to, among others, enter into contractual commitments or incur expenditure at the end of a financial year so that the surrender of unspent voted funds may be avoided.
- 2.3 It is therefore imperative that accounting officers and accounting authorities establish mechanisms to urgently identify the risks and weaknesses facing their respective institution's supply chain management environments with the aim of developing strategies to mitigate against these risks and weaknesses.
- 2.4 The identified risks and weaknesses also provide valuable information to the relevant treasuries to introduce support interventions and, if needed, to issue guidelines that would enhance supply chain management compliance.
- 2.5 It must be emphasized that the relevant treasuries are committed to assisting departments, constitutional institutions and public entities to improve the status of their financial management.
- 2.6 Government is unswerving in its stance to combat and prevent corruption to the extent that tackling corruption effectively has been elevated as an output in one of the twelve (12) outcomes that Government has agreed on as a key focus of work.
- 2.7 The Minister of Finance has therefore established a Multi-Agency Working Group (MAWG) to coordinate and investigate corruption related supply chain management practices.
- 2.8 The measures in paragraph 3 below are therefore intended to provide accounting officers and accounting authorities with directives to improve accountability and transparency and to ensure value for money in the procurement of goods, works and/or services.

3 MEASURES TO ENHANCE COMPLIANCE MONITORING AND IMPROVE ACCOUNTABILITY AND TRANSPARENCY

- 3.1 **Submission of Procurement Plans in respect of advertised competitive bids (Demand Management)**
 - 3.1.1. Accounting officers of departments and constitutional institutions must submit to the relevant treasury by 30 April of each year, a procurement plan containing all planned procurement for the financial year in respect of the procurement of goods, works and/or services which exceed R500 000 (all applicable taxes included). This procurement plan must be approved by the accounting officer or

his or her delegate prior to its submission. For the 2011/2012 financial year, the said plan must be submitted to the relevant treasury by not later than 31 August 2011.

- 3.1.2 Accounting Authorities of public entities listed in Schedules 3A and 3C to the Public Finance Management Act, 1999 (PFMA) must submit the procurement plans referred to in paragraphs 3.1.1 to the relevant treasury through their parent departments within the same timeline.
- 3.1.3 Accounting officers of national departments, constitutional institutions and Schedule 3A public entities are required to forward the procurement plans required in paragraph 3.1.1 to the National Treasury's Chief Directorate: Supply Chain Management: Norms and Standards for monitoring purposes.
- 3.1.4 A provincial treasury may issue directives regarding where provincial departments and Schedule 3C public entities should forward their procurement plans to, within the relevant treasury, for monitoring. In cases where the relevant treasury facilitates the arrangement of contracts, a clear segregation of duties must be established between the Unit within the relevant treasury that facilitates the arrangement of the contracts and the Unit that monitors the procurement plans.
- 3.1.5 The relevant information must be furnished in the format contained in the Procurement Plan Template enclosed as Annexure "A". The relevant treasury may customize and utilize the template with minimum changes that are necessary to address the province's specific issues. The template should, however, cover at least the fields reflected in Annexure "A".
- 3.2 **Publication of names of bidders in respect of advertised competitive bids [above the threshold value of R500 000 (all applicable taxes included)]**
- 3.2.1 Within ten (10) working days after the closure of any advertised competitive bid, institutions must publish on its website the names of all bidders that submitted bids in relation to that particular advertisement. Where practical, institutions must also publish the total price and the preferences claimed by the respective bidders. The information should remain on the website for at least thirty (30) days.
- 3.3 **Verifying the names and identity numbers of directors / trustees / shareholders of companies, enterprises, closed corporations and trusts against the relevant staff structure.**
- 3.3.1 The Standard Bid Document (SBD 4) "*Declaration of Interest*" has been augmented to compel bidders to submit the names of their directors / trustees / shareholders, their individual identity numbers, personal tax reference numbers

and state¹ employee / persal numbers as part of their bid (includes written price quotations, advertised competitive bids, limited bids and proposals) submissions.

- 3.3.2 Accounting officers and accounting authorities are required to utilize the attached revised SBD 4 when inviting bids and to verify the identity numbers of the directors / trustees / shareholders of the preferred bidder(s) against the institution's staff establishment in order to determine whether or not any of the directors / trustees / shareholders are in the service of the state or officials employed by the specific institution. Such verification must take place during the bid evaluation process. If a bidder / director / trustee / shareholder declares that he / she is an employee of the state and furnishes, where applicable, proof that appropriate authority exists for him or her to undertake remunerative work outside his or her employment in the public service, such a bid must be evaluated in accordance with normal procurement processes. If a bidder / director / trustee / shareholder is found to be an official who is in the service of the state and has failed to make such a declaration in the bid documents, the bidder may be disqualified and the matter must be dealt with as financial misconduct and the relevant accounting officer / authority must take the necessary disciplinary steps against the official concerned.
- 3.3.3 The revised SBD 4 attached to this instruction note replaces the SBD 4 issued in terms of Practice Note Number 7 of 2009/2010 dated 2 October 2009.
- 3.3.4 In addition to the above, accounting officers and accounting authorities must ensure that:
- (a) the preferred bidders tax matters are in order;
 - (b) the names of the preferred bidders and their directors / trustees / shareholders are not listed on the Register for Tender Defaulters and the List of Restricted Suppliers; and
 - (c) a due diligence process is conducted to determine whether the preferred bidders have the capability and ability to execute the contract.

3.4 **Information on bids in excess of R10 million (including all applicable taxes)**

¹ "State" means –

- a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- b) any municipality or municipal entity;
- c) provincial legislature;
- d) national Assembly or the national Council of provinces; or
- e) Parliament.

- 3.4.1 The following information must be submitted to the relevant treasury **prior** to its advertisement in the Government Tender Bulletin of any bids in excess of R10 million (all applicable taxes included):
- (a) Proof that budgetary provision exists for procurement of the goods and/or services;
 - (b) Any ancillary budgetary implications related to the bid, for example, if the project is for the building of a school, does budgetary provision exist for the remuneration of teachers, the transport of children and municipal taxes and services.; and
 - (c) Any multi-year budgetary implications, for example, if a project will take more than one financial year, the estimated expenditure per year.
- 3.4.2 The relevant treasury must perform the following for all Information Communication Technology (ICT) bids that exceed R 10 million (all applicable taxes included):
- (a) Confirm adherence to Treasury Regulation 17.3.1 which requires that departments and constitutional institutions may not amend or institute new computerized systems that will affect financial administration without the prior written approval of the National Treasury;
 - (b) Confirm that sufficient funds are available on the institution's approved budget;
 - (c) Determine whether the acquisition is through a finance or operating lease and whether the lease complies with the relevant prescripts; and
 - (d) Confirm (in writing), after consulting with SITA, that there is no duplication of the same or any similar ICT and/or licencing contracts in order to prevent fruitless and wasteful expenditure.
- 3.4.3 Contracts above the value of R10 million (all applicable taxes included) may only be awarded with the concurrence of the relevant treasury. The relevant treasury must ensure that the contract is awarded within the budgetary provision and aligned with the targets/outputs indicated in the strategic plan of the institution.
- 3.4.4 Requirements may not be deliberately split into parts or items of lesser value merely to avoid the information being submitted to the relevant treasury prior to the publication of the bid invitation in the Government Tender Bulletin.
- 3.4.5 National departments, constitutional institutions and schedule 3 A public entities must forward the information prescribed in paragraph 3.4.1 to National Treasury's Budget Analyst responsible for their budgetary matters. Schedule 3A public entities must forward such information through their parent departments.
- 3.4.6 A provincial treasury may issue directives regarding where provincial departments and Schedule 3 C public entities should forward the information prescribed in paragraph 3.4.1 to, within the relevant treasury.

- 3.4.7 The relevant treasuries are empowered to decrease but not increase the threshold value of R10 million.
- 3.4.8 The relevant treasury must respond to the relevant accounting officer / authority within seven (7) working days after receipt of the information. In exceptional cases, the relevant treasury and the relevant accounting officer / authority may agree on a suitable period for the submission of responses after taking into consideration among others service delivery. Such a period may, however, not exceed fifteen (15) working days.
- 3.5 **Auditing of bidding processes for bids in excess of R 10 million (all applicable taxes included)**
- 3.5.1 The competitive bidding process for all bids in excess of R10 million must be audited to ensure its compliance with the prescribed norms and standards. The auditing process may be performed by the internal or external auditors and the audit is aimed at minimizing the risk of possible fraud, corruption and/or litigation.
- 3.5.2 A certificate must be issued by the auditors to the effect that all prescribed requirements have been adhered to before the contract is awarded.
- 3.5.3 The relevant treasuries are empowered to decrease but not increase this threshold.
- 3.6 **Legal vetting of formal contracts or service level agreements**
- 3.6.1 Prior to signing a formal contract or service level agreement with a contractor, accounting officers and authorities must ensure that such contracts or agreements are legally sound to avoid potential litigation and to minimize possible fraud and corruption. This must include legal vetting by at least the Legal Services of the institution.
- 3.6.2 Such contracts or agreements must be actively managed in order to ensure that both the institutions and the contractors meet their respective obligations.
- 3.7 **Publication of awards**
- 3.7.1 Treasury Regulation 16A.6.3(d) prescribes that the award of bids must be published in the *Government Tender Bulletin* and other media by means of which the bids were advertised.
- 3.7.2 The following information on the successful bids must be made available on the institution's website and in the *Government Tender Bulletin* and also in the media where the bid was originally advertised:
- (a) Contract numbers and description;
 - (b) Names of the successful bidder(s) and preferences claimed;
 - (c) The contract price(s); and if possible

- (d) Brand names and dates for completion of contracts.

Records of such publications must be retained for audit purposes.

- 3.7.3 For bids relating to the construction industry, the prescripts of the Construction Industry Development Board (CIDB) require that:

- (a) Bids be advertised in the CIDB iTender System; and
- (b) Bids be registered on the CIDB Register of Projects (RoP) on award and progressively updated until project completion for the promotion, assessment and evaluation of best practices on construction projects.

3.8 **Placing of orders for payment in another financial year**

- 3.8.1 Accounting officers and accounting authorities are prohibited from placing orders for goods and/or services from suppliers, receiving such goods and/or services and arranging with suppliers for such goods and services to be invoiced and paid for in another financial year.

- 3.8.2 The prohibition in paragraph 3.8.1 does not apply to multi-year contracts.

3.9 **Management of expansions or variation of orders against the original contract**

- 3.9.1 It is recognized that, in exceptional cases, an accounting officer or accounting authority may deem it necessary to expand or vary orders against the original contract.
- 3.9.2 The absence of a prescribed threshold for the expansion or variation of orders against the original contract has, however, led to gross abuse of the current SCM system.
- 3.9.3 In order to mitigate against such practices, accounting officers and authorities are directed that, from the date of this instruction note taking effect, contracts may be expanded or varied by not more than 20% or R20 million (including all applicable taxes) for construction related goods, works and/or services and 15% or R15 million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount. The relevant treasuries may, however, decrease these thresholds for institutions reporting to them.
- 3.9.4 Any deviation in excess of these thresholds will only be allowed subject to the prior written approval of the relevant treasury. Whilst provision is made for deviations, it is imperative to note that requests for such deviations may only be submitted to the relevant treasury where good reasons exist.

- 3.9.5 The contents of paragraph 3.9.3 are not applicable to transversal term contracts facilitated by the relevant treasuries and specific term contracts as in such contracts, orders are placed as and when commodities are required and that at the time of awarding the contract, required quantities are not known.

3.10 **Payment within 30 days**

- 3.10.1 Accounting officers and authorities are once again reminded of the seriousness of late payments or non-payment of accounts. To this end, Cabinet resolved at its meeting on 2 December 2009 that institutions must put in place mechanisms to ensure that all amounts owing are paid within 30 days from the date of invoice, settlement or court judgment.
- 3.10.2 Treasury Regulation 8.2.3 states that unless otherwise determined in the contract or other agreement, all payments due to creditors must be settled within 30 days from receipt of an invoice or, in the case of civil claims, from the date of settlement or court judgment. This implies that amounts owing must be paid within 30 days from receipt of invoice if the goods, works or services were delivered to the satisfaction of the accounting officer / authority. Payment outside the prescribed period of 30 days from receipt of invoice is regarded as a violation of Treasury Regulation 8.2.3 and may be reported as such by the Auditor-General as part of its audit function.
- 3.10.3 Although sub-paragraph 3.10.2 above is not applicable to public entities listed in Schedules 3A and 3C to the PFMA, accounting authorities must ensure that all payments for goods, works or services due to creditors are settled in terms of the agreement entered into with service providers.
- 3.11 **Monitoring / assistance on the award of contracts by relevant treasuries**
- 3.11.1 The relevant treasuries may assist institutions with the invitation, evaluation and award of contracts and may attend the relevant institution's Bid Specification, Evaluation or Adjudication Committee meetings in an advisory capacity. Institutions are therefore required to timeously submit logistical details of at least all their Bid Adjudication Committee meetings to the relevant treasury, should they require assistance.

4. **APPLICABILITY**

- 4.1 This instruction note applies to all national and provincial departments, constitutional institutions and Schedule 3A and 3C public entities.

5. AUDITING OF TREASURY INSTRUCTION NOTE

- 5.1 A copy of this Treasury Instruction Note will be forwarded to the Auditor-General to ensure that its contents are included in their audit scope.

6. DISSEMINATION OF INFORMATION CONTAINED IN THIS TREASURY INSTRUCTION NOTE

- 6.1 Heads of provincial treasuries are requested to bring the contents of this instruction note to the attention of accounting officers of their provincial departments.
- 6.2 Accounting officers of national and provincial departments are requested to bring the contents of this instruction note to the attention of accounting authorities of schedule 3A and 3C public entities reporting to their respective executive authorities.

7. AUTHORITY FOR THIS INSTRUCTION NOTE AND EFFECTIVE DATE

- 7.1 This instruction note is issued in terms of section 76(4)(c) of the PFMA and takes effect from the date of issue.

8. CONTACT INFORMATION

Mr Jeyrel Soobramanian
Director: Norms and Standards
Tel.No: 012 3155336
E-mail: Jeyrel.Soobramanian@treasury.gov.za



S F NOMVALO
ACCOUNTANT-GENERAL
DATE: 31 May 2011

APPENDIX 20

Appendix 20

INTERVIEW : SIYABONGA GAMA

HELD AT MNS OFFICES, ILLOVO

DATE: 2018-05-31

Attendees:

Mncedisi Ndlovu (Chairperson)
Tshiamo Sedumedi (MNS)
Mandla Mnisi (MNS)
Thobani Mnyandu (MNS)
Nkosenhle Mzinyathi (MNS)
Thulaganyo Selokela (MNS)
Gerhard de Beer (GIBB)

VERBIS TYPING & TRANSCRIPTION SERVICES
25 GRUNG ROAD, SELECTION PARK
SPRINGS 1559
TEL: (011) 812-2226 FAX: 086 5112359 CELL: 083 5665750
E-MAIL: verbis@telkomsa.net

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SOUND FILE: SFANFBFAJEEEN

CHAIRPERSON: Thank you Mr Gama, thank you for your time and we acknowledge that you have got a very busy schedule, but we also ask that we go through this process with you as well.

MR GAMA: Yes, yes.

CHAIRPERSON: As you are aware that we have been appointed to do further investigations arising from the report that was done, so we are in the process of providing the first report by sometime next week. So we need to maybe clarify certain things. I am not sure whether...

10 Do you mind if we record?

MR GAMA: No problem.

CHAIRPERSON: No problem, okay. It is just for the sitting, because I think these things are (inaudible). Our air conditioners are not working.

MR GAMA: Okay.

CHAIRPERSON: Okay, the reason why there are so many of us here is because we lead various (inaudible).

MR GAMA: Ja, ja.

20 CHAIRPERSON: Ja, I am the Chairman, my name is Mncedisi Ndlovu, I am the Project Leader. This is Gerhard, he is from GIBB and Thobani Mnyandu is the Construction Engineering Area (inaudible) and Mandla is Corporate Governance, Nkosenhle works with me on the projects, he is my deputy and he is in employment law, all issues around the employment law.

MR GAMA: Okay.

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CHAIRPERSON: Tshiamo Sedumedi is an expert in procurement law, all issues around procurement are with him, and then Thulaganyo is our secretariat. Unfortunately it is just every one of them (inaudible).

MR GAMA: Ja, I know you are quite progressive, because I mean the other matters we have dealt with and the way it needs to go.

CHAIRPERSON: Ja, ja. So if you are not comfortable with any of the questions, please say that no, you are not comfortable to answer it.

MR GAMA: All right.

- 10 CHAIRPERSON: The questions are merely meant to clarify, they are not meant to interrogate or whatever, you are aware of that.

MR GAMA: Yes.

CHAIRPERSON: I will also object on your behalf if I see, whenever a question is, it is not to interrogate you.

MR GAMA: Ja okay, no, that is fine.

CHAIRPERSON: Okay, guys. Let me start with the business case and then you will just chip in as you go, you know. We note from the documents and from others that the business case was eventually approved by the Board of Transnet on the 13th of April 2013.

- 20 MALE SPEAKER: Sorry Mr Chair, the 25th.

CHAIRPERSON: The 25th of April, yes, the 25th of April 2013. That was after the ... (intervenes)

MR GAMA: But you have got the document, that is why you are saying that.

CHAIRPERSON: Ja no, sure, no, that is fine.

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MR GAMA: What is the issue?

CHAIRPERSON: Ja, so the documents, the business case came after the RFPs was issued and what informed the issue of the RFPs?

MR GAMA: Okay, there was a process that was taking place, which was the business case formulation was taking place concurrently, the RFPs. In the RFPs there was a clause that indicated that the RFP itself was subjected to approval by the Board. So the idea of doing a concurrent thing was mainly just based on urgency around the 1064 locomotives and an expectation that ultimately the Board would, and it

10 was already part of the corporate plan.

So if something is in the corporate plan it means that it is anticipated, but the business case gives you the detail of it. So when they approve the corporate plan they do not approve it with business plan, you approve it, you approve the intent of it, but then you must then come with proper business plans to deal with the matter and the matter of this nature and magnitude, to produce a corporate plan it takes many people and I mean, like you have a verified team around the table and you need engineers, you need logisticians, you need commercial people who will say there is a market for this, you will

20 need also financial people.

So that in itself is coordinating that cross-functional team, it takes a bit of time. So that is the reason that the Board had agreed that the RFP continues while waiting for the business plan to be approved.

CHAIRPERSON: I think... Can I just, you talk about the resolution

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that authorised the management to issue out the RFP, in that resolution it also says it must be subject to the PFMA approval. What is your understanding around that? It is the Resolution of 2010

MR GAMA: Ja, it just says, what that means is it is not the RFP that is subject to the PFMA, it is not, we do not need PFMA approval to go on RFPs, it just says that in the document you must also indicate indirectly that it directly is subject to PFMA approval as well, ja which is the business case and so that people, because even with all the intent to (inaudible) the business, because when you go out on tender
10 you are indicating a commitment.

CHAIRPERSON: Yes.

MR GAMA: But people must know that you could cancel this if you do not get the PFMA approval or if the business plan is not approved. It is just to protect Transnet from litigation and people saying look, we are now cancelling the tender. I mean, part of the clauses there, you would see that Transnet reserves the right to cancel this tender at all times, but also it is subject to, so it is not, it just means that there is a higher authority that needs to approve the business plan and the actual award.

20 CHAIRPERSON: The business case, in your understanding, when it was approved was it inclusive of hedging and Forex? We know that was an issue that was to be considered and determined.

MR GAMA: No, that matter is complex. I am not a financial person, so and a lot of the questions you want to ask about these things are accountants and those people are the correct people to answer that.

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CHAIRPERSON: Yes?

MR GAMA: I have seen the resolution and the resolution says exclude hedging costs.

CHAIRPERSON: Yes.

MR GAMA: And the submission had some hedging costs and some escalating within the further submission, it had some. So I think one needed to understand what was discussed in the actual meeting. My sense is that what has been said at the meeting is that some hedging costs are included, but we do not think that all of them are, that view
10 that one takes, because you cannot say excluding as if there were not some, but some were already in the submission, and also what seems to have happened in this thing is that you said we went out on tender 2012.

CHAIRPERSON: 2012, Yes, July 2012.

MR GAMA: There were a few things that happened. You cannot ask me the detail of them of course.

CHAIRPERSON: Okay.

MR GAMA: Because I was not dealing with them, but I am aware of them, because as soon as we have gone out on tender there was a
20 the (inaudible) of DTI and around the designations to do with whether we could do ... (intervenes)

MALE SPEAKER: The local content?

MR GAMA: The local content.

MALE SPEAKER: That in actual fact the tender, the notice was 16 July, a week later, so that is when we then issued the RFP.

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MR GAMA: Ja.

MALE SPEAKER: Or the other ... (intervenes)

MR GAMA: Ja, it was the other way around. Ja, because I think ours were saying it was issued in RFP, but we have now discovered there is this, so even if maybe you are saying it was the 16th of July, maybe we, if you want to know about it ... (intervenes)

CHAIRPERSON: Ja, ja, sure.

MR GAMA: Two weeks later that it is there, so our guys then said we have a problem, how are we going to adjudicate this thing? Because
10 the document that we have sent out to the market did not take into account the new ... (intervenes)

CHAIRPERSON: Sorry Mr Gama, when it went out, when the other ... (intervenes)

MALE SPEAKER: The notice was not out.

CHAIRPERSON: Yes, so the (inaudible).

MR GAMA: Yes.

CHAIRPERSON: OKAY, and then on the 16th of July that is when the, or the (inaudible).

MR GAMA: Yes, yes.

20 CHAIRPERSON: (Inaudible) then issue the documents on the 23rd of July.

MR GAMA: Yes.

CHAIRPERSON: No, I thought I would just get that aspect right.

MR GAMA: So on the 3rd of July it was ... (intervenes)

CHAIRPERSON: No, 23rd, sorry.

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MR GAMA: Oh, the 23rd.

CHAIRPERSON: The 23rd, as I was saying less a week or so after the ... (intervenes)

MR GAMA: Ja, ja.

CHAIRPERSON: But it was just to like keep you on those facts and ... (intervenes)

MR GAMA: Ja, no, even that detail, I do not think I have it, but what I know is that there was then a lot of discussion internally around the meaning of that treasury instruction relative to the RFP and then there
10 were discussions and meetings to and fro between Transnet Group TFR, Procurement people, going to National Treasury and to the DTI to talk about these things, because we were hanging on this, and I think this thing was not resolved for quite some time actually and the discussions with the Minister and the DG. So one of the things that at some point the people came back with our Finance people was that we had to ask the people to keep the prices, what do you call it, open.

CHAIRPERSON: Open.

MR GAMA: Open.

CHAIRPERSON: The validating.

20 MR GAMA: Ja, the validating, that is correct, that we have to keep the validating open, but however there was an indicating that there is a cost to that, because people have written a document making certain assumptions and the assumptions were around the exchange rate. Now during that period there was quite a bit of activity on the Rand/Dollar, on the Rand/Euro and they then indicated that look,

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something has happened between the time that the people actually tendered, we have asked them to extend the validity, that that has a financial implication in terms of hedging and escalation.

CHAIRPERSON: Yes.

MR GAMA: And the different NDCs that are assumed, and then that will be dealt with at a later date when, because we need to know whom we are dealing with, who assumed what. It will be dealt with during the negotiations. So that was the first set of issues, so that is why the Finance people then said to us no, there is some of this, but
10 we still have to negotiate some more, because the Rand continues to volatile during this period and that you can only really have a firm commitment on the date that you contract, because you want to apply for forward cover.

You can only really do it on the date, so that is why there was some, but I do not think it should have said excluding, I think it should have said it must take into account that there is further escalation. I think that is how the Finance people would have motivated it.

CHAIRPERSON: Because that is exactly my question, you see, the
20 explanation that the, you are saying in your view the discussions happened at the Board, taking into account all these issues that you are talking of.

MR GAMA: Yes.

CHAIRPERSON: So the question is whether at that stage it was the Board itself, was it alive to these developments when that resolution

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was now done that says excluding? Were they now saying in the view of the developments we are (inaudible) the provisions of it, we are ignoring the (inaudible) and actually saying exclude the hedging costs.

MALE SPEAKER: If I can come in before he comes in. (Inaudible) the tender is valid until September, it is extended until February 2014, the Rand is volatile in January 2014, we understand that is the sequence of events, as I understand it.

MR GAMA: Yes.

- 10 MALE SPEAKER: So that is why I wanted to clarify before he then comes in, which are you talking about the negotiating period or are you talking about the approval of the business case?

CHAIRPERSON: In 2013.

MALE SPEAKER: In 2013.

MR GAMA: I think what we are saying is that at the time when the business case was approved and there is an appreciation by the Board that the amounts that were approved are not final.

CHAIRPERSON: All right.

- 20 MR GAMA: And that these things are going to be affected by either the price of steel, which is part of the NDCs that we look at, the exchange rate at the time, the cost of finance, so if we are going to borrow money there is going to be cost of finance and then people say when you hedge it assists you to fix the price, then at least you know your future exposure at (inaudible) or whatever.

MALE SPEAKER: Okay, when did you move from TFR to Acting

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Group CEO?

MR GAMA: In 2015 April.

MALE SPEAKER: 2015 April. There is a bit of a confusion on the documents on the procurement structures of the (inaudible) amounts involved and all that, and I think we made, all of us from the documents as well, that we (inaudible) working together, for example when there was (inaudible). When the LOI (inaudible) amongst others, two clauses that within the OTDs the parties must agree to contract the contracts within nine months.

10 MALE SPEAKER: Ja yes, issued. (Inaudible).

MALE SPEAKER: Ja, (inaudible).

MR GAMA: No, I am not familiar with that.

MALE SPEAKER: I think it was just before his time.

CHAIRPERSON: It was before his time?

MALE SPEAKER: Yes.

CHAIRPERSON: Okay, so that is the Acting Group ... (intervenes)

MR GAMA: Oh, that was the (inaudible).

CHAIRPERSON: Okay, but then I wanted to know the planning structure, who would then, now as a Group CEO how would the
20 planning structure reach you? I know that there are invoices that are (inaudible).

MR GAMA: Yes.

CHAIRPERSON: Will you be part of that?

MR GAMA: The Group CEO, now the Group CEOs, they do not see many things. The Group CEOs see many few things, they see, they

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make very few decisions that are very significant, but no, no, the invoicing is not, the way that Transnet is structured is the treasury and the Finance Department, the CFO, they deal a lot with those kinds of things and if I have seen an invoice in Transnet (inaudible).

MALE SPEAKER: (Inaudible) the way I understand it, the (inaudible) that will be done by (inaudible) from TFR.

MR GAMA: Ja, it will come from the TFR.

MALE SPEAKER: Ja, so it is, now would they just pay things without checking with TFR?

10 MR GAMA: No.

MALE SPEAKER: Because at that stage ... (intervenes)

MR GAMA: The TFR is not in the payment process, the TFR is not in the payment process, it is the work of the CFO, it is their role.

MALE SPEAKER: Okay, but would the CE then be privy to the amounts that, well the invoice, not seeing the invoice, but just knowing that there is X amount for (inaudible)?

MR GAMA: Ja, this McKenzie thing was done by Group. I can assure you that none of the people at TFR can tell you what the work was, what it entailed, how it was structured. That was done by the

20 CFO of Transnet.

CHAIRPERSON: Of Transnet.

MR GAMA: Because I just remember that they said to me it was around the business-planning phase, they just said to me look, we presented the business plan to ... (intervenes)

MALE SPEAKER: Capec.

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MR GAMA: No, it is not the Capec. There is a committee underneath the Capec.

[Background discussion].

MR GAMA: No, it is above.

MALE SPEAKER: Above, it is at Group.

MR GAMA: It is a subcommittee of the Capec and they call it Capec. So now they presented this thing to the Capec and we were told that (inaudible) that McKenzie must come and advise on this thing and I think there was McKenzie, there was David Potter, there were people
10 that were brought in. So and then from that day onwards it was no longer in the TFR process, it was then from Group, but we waited for outcomes.

MALE SPEAKER: At Group, will you be having (inaudible) that you can remember as since you are saying that (inaudible).

MR GAMA: On this transaction?

MALE SPEAKER: On this transaction.

MR GAMA: (Inaudible).

MALE SPEAKER: There is also the issue of the negotiation team and there is a couple of names that are mentioned in the documents and
20 we have asked for the matter to (inaudible). So what was your understanding of the negotiating team?

CHAIRPERSON: I think the negotiations were (inaudible).

[Background discussion].

MR GAMA: Ja, I remember, because maybe it happened two or three times. Mine was just to find out how the negotiations were going and

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if they were going well and then one time they got here on a Friday and they said look, we have not made progress because the Chinese they left last night, apparently a whole meeting from China is (inaudible).

MALE SPEAKER: (Inaudible).

MR GAMA: So I did not really play, I did not negotiate anything. I was just interested in finding out when they finished, because they said to me look, this thing, let me know how much this thing costs, make sure that you put pressure on the people in the negotiations.

- 10 MALE SPEAKER: Just on the negotiations, I think you made mention earlier, so who was then, you indicated that it was a team.

MR GAMA: Yes.

MALE SPEAKER: But then who was in the negotiating team? You said that the ... (intervenes)

MR GAMA: In each of the stands there were different people. I know for instance that the negotiation around Transnet Engineering's involvement with each of the OEMs that was run by Garry Cloete, the legal issue was run by (inaudible) and furniture issues it was Amash and Yousuf Laher and Danie.

- 20 CHAIRPERSON: Danie Smit?

MR GAMA: Danie Smit, ja. (Inaudible) ran with technical issues.

MALE SPEAKER: On negotiations it was a different group on ... (intervenes)

MR GAMA: I think it was (inaudible).

MALE SPEAKER: Ja, okay.

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MR GAMA: Ja, so that was followed. So on the negotiations there was a Finance Team, there was the Legal Team, there was the involvement of ... (intervenes)

CHAIRPERSON: Supply Chain?

MR GAMA: Supply Chain, ja.

CHAIRPERSON: Giyani?

MR GAMA: Giyani led, I think he probably led the whole negotiations between him and Amash, I think Giyani probably led the whole thing, but I know it was also he moved here, actually he was here he was
10 fixed here. If you look for him you will find him here.

CHAIRPERSON: Okay, thank you. Relocation, it is a subject matter that has also been extensively discussed in the documents and the (inaudible) and all that. Were you ever part of those when it started?

MR GAMA: The relocation?

CHAIRPERSON: Yes.

MR GAMA: No, that was led by Garry.

CHAIRPERSON: It was led by Garry.

MALE SPEAKER: Just to pick up, Mr Gama, through you Chair, if I can perhaps get an understanding. Do you know how the issue of
20 relocation came about, the relocation?

MR GAMA: The relocation came about probably immediately after the signature of the contracts. There was a letter that Brian wrote to Bombardier and China to say they would relocate them and the idea was that there were production lines in Pretoria and, but we also needed new lines. So it was felt that Durban could also (inaudible)

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and that new lines could be created there, because we needed the concurrent (inaudible).

So if we could do two here, then we would do the other two, so that is how it was brought about. So the, but that was a discussion that was led I think by Richard who talked to Brian about it. Richard Vali was the CEO. So I think between him and (inaudible) and they had that discussion with them saying you need to relocate these to Durban, it was mainly about facilities, to say one facility is available.

MALE SPEAKER: Ja you know, there was much discussion in the
10 office, it appears to us that the idea to place the two OEMs in Durban was conceived prior to the signing of the agreements at least. Why is it not discussed in the negotiations?

MR GAMA: It may have been conceived prior, but maybe too close to the negotiations, that would be my sense and that they then probably felt that no, let us negotiate on the same footing and then close those negotiations and then find out how to then relocate, because if you negotiate with all four as if they are all going to the same place it is fine, you are having a negotiation that you could compare, that is my sense, but I really ... (intervenes)

20 CHAIRPERSON: So you were not part of that.

MR GAMA: Ja, I was not part of the negotiating strategy, you know, in terms of saying this is how it should take place.

CHAIRPERSON: (Inaudible) were you aware of that act? Or what was your understanding, when did the submissions (inaudible) in the first place? (Inaudible) because in the submissions the issue of the

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actual relocation was not part of the deal.

MR GAMA: No, you are correct. People had their various assumptions, that is why the whole thing of saying we need them to work with TE, there was a stream that was then created during the negotiations to say no, no, we want to work with TE, and then the assumption, I think that came in during the negotiations, or as they were given this preferred leader status. They then said look, we want to do what TE, when people tendered they had all kinds of ideas.

I still remember some of them saying that you know, some of
10 the matters I have seen from Bombardier were that the move to Durban for them was not really optimal, because they have assumed a supply chain in Johannesburg, so then they will have to do certain things here and then move them to the coast, so ja, there was that.

CHAIRPERSON: Anything?

MALE SPEAKER: Just picking up on relocation as well, is there any break from that letter that you were speaking about? There is a proposal that was done by CNR that they estimate in March, that is a week before the contract negotiations.

MR GAMA: Yes.

20 MALE SPEAKER: Sorry, before the conclusion of contracts.

MR GAMA: Yes.

MALE SPEAKER: I understand what you have said in relation to it being too close to signature. There is a break from 2014 and then suddenly in 2015 then there are proposals with amounts that are very, are you aware of any negotiations that were done on the amounts?

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MR GAMA: Look, I have got documents of Bombardier and CNR that say this one and this one and this one, and I have got those documents. All I can say about the documents is that the numbers are very close to one another, they are almost comparable, R600 million odd, R630 million, R650 million or something, I have got those documents.

MALE SPEAKER: Then there was a team that was appointed to go and do negotiations there, it is about in June 2015 after the memorandum was done.

- 10 MR GAMA: Ja, somebody wrote to me to say they are negotiating and I said fine, go and negotiate and come back.

MALE SPEAKER: But they did not subsequently come back with the report that says these are the amounts, they have been delegated as such, are you able to accept?

MR GAMA: There was a subsequent memo, I think that came and said look, the teams have agreed it is this much, it is this much. So I think I have got documents from each of the two entities.

MALE SPEAKER: (Inaudible). If these two guys (inaudible) now you must move to Pretoria, still move these (inaudible).

- 20 MR GAMA: No, these guys, in their submissions, like I said there was no location base, the further recruitment was not location based, now and during negotiations we did in actual fact concede the possibility of them being in Durban and now they come and say but (inaudible) from Koedoespoort to Durban.

MALE SPEAKER: (Inaudible) it might not be the proper one.

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MR GAMA: Ja.

CHAIRPERSON: Here is the context, General Electric has been assembling locomotives with Transnet before.

MR GAMA: Yes.

CHAIRPERSON: And from 2010.

MR GAMA: Yes.

CHAIRPERSON: They both therefore already have facilities, production lines on the Transnet premises that they use, so everything that they are going to do is just (inaudible) a few things in
10 terms of the existing things. These other two, they have never done anything with Transnet and they are then, then Transnet says no, no, you go to Durban and, to Durban, so they had no context in terms of these dealings.

So for us they were always going to be a little bit more than, even at the (inaudible) and they would have had to start new production lines and it would have cost a little bit more than the other two, because these two were already there. But what do we call it in English? (Inaudible).

MALE SPEAKER: Look, I think on what you are saying correctly so,
20 because we are saying from the (inaudible) self-establishment costs also. So whether it (inaudible).

[Background discussion].

MR GAMA: Yes, that is additional cost.

MALE SPEAKER: That is another issue that we would like you to clarify with us, it is the splitting of the contracts. We note that the

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business case did not say anything about the splitting of contracts, but just before the award of the contracts then the issue of the (inaudible) contracts came up. Do you know as to how (inaudible)? We do understand the mitigation of risk factor that was considered, the factors that needed to be considered, but in your view what was, what is your view? Was it something that justified the costs, or what? Why did it (inaudible)?

MR GAMA: The Department of Public Enterprises had indicated also that this must be what is programmatic procurement.

10 CHAIRPERSON: Procurement?

MR GAMA: Ja, programmatic procurement.

CHAIRPERSON: Yes, programmatic procurement, sure.

MR GAMA: There was a (inaudible) who had done a number of formulations around the (inaudible) and what needs to be there and then the programmatic procurement came out of the core notion that where (inaudible) had found itself now in the (inaudible), it is because at some point (inaudible) and that we needed to go even beyond the 1064, we needed to have a way whereby to continue to make locomotives in (inaudible) 50 or 100 per year, but that would need to
20 continue and the (inaudible).

So in the context of the programmatic one of the things that had always happened is when you had (inaudible) initially cut prices to enter the market and they would, once they are in and they know that (inaudible), and I have had quite a few of these types of changes, then it comes in and says look, the price of steel went up, I want to

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increase my price.

When it is a sales supplier and they know (inaudible) you can always say okay, I am going to go down the road for someone else to come up with a different thing, so that was really the idea with the suppliers. It came very late in the process, but it was mainly an economic and a commercial decision to say, because if there is (inaudible) then you start. A locomotive has got a 30 to 40 (inaudible), if you have got just one supplier then you will go to the (inaudible). Once they have done their (inaudible).

- 10 MALE SPEAKER: A question to follow up, and I think it does come out of that question, I think we accept that part that it may make sense to split them for the reasons that you have highlighted, but we are sitting with the negotiating teams, the number of (inaudible) splitting is not such a good idea, because it is spiking the price of the locomotive.

MR GAMA: The locomotive.

MALE SPEAKER: Does it still seem reasonable that the ...
(intervenes)

- MR GAMA: There was no such discussion, as far as I know, at
20 Transnet that this was now resulting in a higher price, that the prices are much higher as a result of that. We always knew that the prices, if I order 600 from you it is different from ordering 360, that you understand, but there has never been said to us that the batch price, as they called it afterwards, had changed significantly. So the (inaudible).

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CHAIRPERSON: (Inaudible).

MR GAMA: In this building, the negotiating team. They said we just kept (inaudible). I can tell you right up until 17 March... Is that the date?

CHAIRPERSON: Yes.

MR GAMA: Right up until the 17th of March I had an R8 billion number in my head, let us call it the (inaudible).

CHAIRPERSON: Ja.

MR GAMA: And the cost at 40 at worst. At the announcement, so I
10 do not know when they said that, when was the business case approved?

MALE SPEAKER: April.

MR GAMA: April.

MALE SPEAKER: April.

MR GAMA: Ja, so that was what?

MALE SPEAKER: 38.6.

MR GAMA: 38.6. So that number sort of remained in my head, I did not have any other number. On the day of the announcement I was sitting next to (inaudible) Mkwanaazi who is the Chairman of the
20 company and whilst there he said today we announce a R50 billion acquisition. I said Chair, when did you go to R50 billion, he said no, no, you tell me. So I said no, no, no, I do not know R50 billion.

I was asking him, because he was the Chair of the Board, so I do not know how to, and I did not know. Then I asked Amash and I said Amash, this R50 billion that Brian is talking about and the

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Minister of Public Enterprises would stand up and also talk, so Amash says no, no, the reason why you guys do not know any of these things is because we finished the negotiations this morning at 04:00, but I can assure you we have given, we have gotten the best prices from the banks and we have hashed these things, we have avoid South Africa an embarrassment like the arms' deal, you know, something that is (inaudible).

So this one is R50 billion, it is fixed, we only finished the thing, you can ask Danie, the paper has not, the ink has not even
10 dried on that. So we did not know what was happening there, we did not know the basis of any of the changes, we only knew the (inaudible) has been made.

MALE SPEAKER: So what you say is you mean you and the (inaudible).

MR GAMA: (Inaudible).

MALE SPEAKER: You say we as outside of the negotiating team.

MR GAMA: Ja, I think that is fair, go and ask the negotiating team. They are, I think it was outside the Finance team, I think only the Finance team, because they are the ones who said they have been
20 talking to the banks until 04:00. (Inaudible) and he was talking to the banks, yes, and I am sure I was asleep. So I think at that time it would have been maybe McKenzie and Regiment or whoever was advising us and then they said no, this thing is just R50 billion, because remember we, there was still a negotiation and the contracts, as I understand it, were about R49 billion in total after all of

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this set of things.

We just got a one-paged paper that said GE (inaudible), but we did not really, I could not tell you what was the cost of the last occasion versus what is the finance cost, what is the hedging costs, what is the cost of escalation. These things were known only by the Finance.

MALE SPEAKER: Just one or two issues on that point, so when the (inaudible) to this building, are there any (inaudible) or a mandate given to say guys, (inaudible) budget at least? Did you tell them that at Transnet? (Inaudible), I am just giving an example.

MR GAMA: No, no, I mean everybody knew that R38 billion was approved and I think what has always been the problem is the R38 billion that is the actual cost, in Transnet the whole notion of cost of capital, finance cost is dealt with at (inaudible).

MALE SPEAKER: (Inaudible) the costs are going up, would they have had the mandate to sign the (inaudible) the costs are going up to that figure (inaudible) as you say, would they have needed to go back to whoever to get consent before they sign in view of the fact that the cost or the amount was now different than the amount which was said?

MR GAMA: Yes, they would have had to go back to the Board.

MALE SPEAKER: For signature?

MR GAMA: Yes. So I am telling you that the Chair of the Board did not know this.

MR DE BEER: If I can ask you, at what stage did you know about the

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accelerating of the locomotives, to accelerate the plan?

MR GAMA: On the same day.

MR DE BEER: On the same day?

MR GAMA: Yes.

MR DE BEER: So the same day the Board finds out, you are now being committed to R49 billion, the 38, does the Board now take action against the people that (inaudible)?

MR GAMA: Ask the Board, ask the Board. That is a question for the Board, because what was communicated, I do not know what was
10 and all I could see here is (inaudible) legitimised an announcement and maybe the Board was busy thinking how is it going to deal with this. Ja, so I am just thinking that maybe that is what the Board was busy thinking. I later was given a memo, a mail where now retrospectively asking for Board permission for the transfer that was announced.

MALE SPEAKER: Yes, because that was now (inaudible).

[Background discussion].

MR GAMA: So it was at that time that I think the Board was then trying to look at that issue, but the whole country knew it was
20 R50 billion, the Minister had announced it.

MALE SPEAKER: Just one last question, it is just a puzzle. What was the relationship between Transnet Treasury and National Treasury? Or must I ask Finance?

MR GAMA: Whether they had a relationship. Well, I mean I think there is a relationship in the sense that if you need to borrow, all our

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borrowing limits are subject to National Treasury, so they would know what exposure Transnet has got, Transnet Treasury is also, that is its own Treasury.

MR DE BEER: Because at a stage I thought if you have such a significant (inaudible) through the National Treasury as well?

MR GAMA: I do not know whether that is required. In terms of the section 54 (inaudible), but I do not know in terms of Treasury, it is more from a Minister of Finance perspective.

MALE SPEAKER: It was merely just to assist, when the resolution
10 (inaudible) on the 25th of April, then on the 30th then National Treasury was then notified of the transaction, maybe just to assist on that.

MR GAMA: (Inaudible).

MALE SPEAKER: What I was not so sure is for the increase to 54, whether is there any formal notification on that.

MR GAMA: I do not know. You will have to ask the people who do that, who is the CFO.

[Background discussion].

MALE SPEAKER: I think from my side this is the last one. In the
20 documents there is also the issue of confinement, both in terms of the transaction and in terms of the 100 locomotives.

MALE SPEAKER: (Inaudible).

MALE SPEAKER: I think for now let us part the transaction and the confinement of the appointment, the confinement of the 100 locomotive to CSR. Were you aware of it? Were you part of it?

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Were you aware of the advices that you were given by some (inaudible)?

MR GAMA: Ja no, I mean I subsequent became aware and (inaudible) had sent to me, I was unfortunately on leave when all of these things happened, so I ... (intervenes)

MALE SPEAKER: Why is it unfortunate?

MR GAMA: Hey?

MALE SPEAKER: Why is it unfortunate?

MR GAMA: Or fortunately. Well, fortunately, because what seems to
10 have happened is that a document that we had sent to Group relating to (inaudible) and somebody had then (inaudible) and put CSR, CSR and then it went to the Committee of the Board. So I unfortunately would (inaudible) two weeks later after (inaudible) but by the time I saw it, it was not relevant, that resolution was (inaudible).

MALE SPEAKER: I think I said it is the last question, but I think we will not release our responsibilities if we do not ask you about your qualifications, because at some point the decisions that were taken either by you or by the people around you will be judged by everybody else outside us, they will be judged largely on what we call
20 a reasonable person in your position and a reasonable person with these qualifications.

So that is why, well I know that during the course of today that question was asked about the personnel at TFR and (inaudible), it is fine, it is not an issue. It is a choice. If you want to answer it, you can answer it in terms of your qualifications, or if you say no, I do not

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want to, it is fine, I will keep my silence, then it is fine.

MR GAMA: My qualifications, I can say that I am just a (inaudible). I did a B Com and I also (inaudible).

MALE SPEAKER: (Inaudible) your experience, a lot of experience.

MR GAMA: Ja, ja, it is a relevant (inaudible) that I had come to, but then I used to work in the (inaudible) because I worked in the (inaudible). When I first arrived at the railway the people at the railway they said this is, what is it that you know about railways, ja.

CHAIRPERSON: Okay, in the absence of any other questions,
10 Mr Gama, we thank you for having cooperated with us. We highly deem it necessary to (inaudible) or the transcript or of what you have said. We are in the presence of another (inaudible) instances where the report is given to you first and then you comment and then we finalise the report, but in this instance the report would go directly to the Board. We have already called for it and ... (intervenes)

MR GAMA: Ja, you can just record to the Board (inaudible), but I get asked lots of questions about this report and I feel I am in a position of disadvantage in that I have not seen this report and I get calls from the media saying that the report says this when it is not what it says
20 and I do not know what ... (intervenes)

CHAIRPERSON: (Inaudible).

MR GAMA: I know that (inaudible) has a copy, but the Board said to him that he must keep the copy, the Board member gave him to authority to give it to, so he cannot share the report. I have threatened to fire him. I think he has got the protection.

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CHAIRPERSON: Okay.

MR GAMA: So at least even at some point hopefully one can read the report and see what he wrote and if there is anything that I need to explain further that one does that, because the disadvantage of the most of these things is that they happened quite a few years ago and sometimes you need the benefit of documents and to remember precisely. I read something that said that I was remarkably unfamiliar with the business case and I do not know, what is the degree of familiarity that I was supposed to have had?

10 There was an assumption, I guess, that I wrote the business case and that therefore I should be familiar with it, but I then realised that you know, sometimes as Executives you are called to sign documents that are written by other people because of your rank, and then somebody would come back to you and say what was the IRR of that project, because I cannot remember that, but I would have asked those questions at the time.

CHAIRPERSON: Okay gents, thank you for your participation.

MALE SPEAKER: Thank you.

MR GAMA: Thank you. So I am not (inaudible).

20 (End of recording)

MEETING ADJOURNS

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that **as far as it is audible**, the foregoing is a true and correct transcript of the digitally recorded proceedings in the matter of:

MEETING HELD WITH**SIYABONGA GAMA**

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APPENDIX 21

Appendix 21

TRANSNET

Internal Interview held on 31 May 2018

HELD AT:

TFR Offices
15 Girton Road
Parktown
Johannesburg

PRESENT:

1. Mr R Nair (TFR)
2. Ms L Mdletshe (TFR)
3. Mr N Mzinyathi (MNS)
4. Mr T Selokela (MNS)
5. Mr W Sprong (GIBB Engineering and Architecture)
6. Mr Gerhard de Beer (GIBB Engineering and Architecture) –
Partial attendance

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E-MAIL: verbis@telkomsa.net

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MR MZINYATHI: That is okay.

MR NAIR: Okay.

MR MZINYATHI: That is Thulaganyo from our firm.

MR NAIR: Thulaganyo, do I say it right?

MS SELOKELA: Yes.

MR NAIR: Thank you.

MR MZINYATHI: She... (intervenes)

MR NAIR: Oh, Thulaganyo, okay.

10 MR MZINYATHI: Ja, she is in Transnet, she is in the transition from being a candidate attorney to an attorney, we are just waiting the date of admission and... (intervenes)

MR NAIR: Oh that is nice, congratulations.

MS SELOKELA: Thank you.

MR NAIR: Okay, okay, okay, my good friend (Inaudible) we studied together.

MR MZINYATHI: Oh, that is great.

MR NAIR: So ja, we studied together, he was doing law and I was doing engineering and he always tells me about young candidate
20 attorneys and how passionate he is about them.

MR MZINYATHI: Is it?

MR NAIR: Ja.

MR MZINYATHI: Well... (intervenes)

MR NAIR: That is in between a lot of other things he will share with me. [Laughs]. (Inaudible) has got a lot of stories, I am sure and you

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know we stayed together for many years when we studied.

MR MZINYATHI: Oh, that is great.

MR NAIR: Ja, at Glen (Inaudible).

MR MZINYATHI: That is great.

MR NAIR: Ja.

MR MZINYATHI: So she is doing the secretariat work, we must thank her as well, she and Gugulego did a good job in arranging all the meetings and whatever.

10 MR NAIR: Okay, thanks Thulaganyo and good luck with becoming an attorney.

MS SELOKELA: Thanks, I am looking forward to it.

MR MZINYATHI: These are our colleagues from GIBB (inaudible).

MR NAIR: Gerhard?

MR SPRONG: And Willem.

MR NAIR: And Willem?

MR MZINYATHI: Ja.

MR NAIR: Okay.

MR MZINYATHI: We engaged them because they understand railway operations better than us, we are merely attorneys.

20 MR NAIR: Right.

MR MZINYATHI: Ja, so they will advise us on issues around railway operations.

MR NAIR: Perfect.

MR MZINYATHI: So that justifies their existence.

MR NAIR: Okay. (Inaudible) guys, Gerhard and Willem.

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MR MZINYATHI: Ja so look, hopefully this is going to be a short interview like I said.

MR NAIR: Sure.

MR MZINYATHI: These are the people like I said, will be assisting us, they are leading the aspects of the relocation.

MR NAIR: Okay.

MR MZINYATHI: I have one or two aspects of my own on my side that I would like to ask, but perhaps I will let them lead so that if there is anything that they would like to ask

10 MR NAIR: Sure.

MR MZINYATHI: And then I will just jump in.

MR NAIR: Okay.

MR SPRONG: Ja, I think Ravi maybe to start off, maybe just explain your role in this whole process.

MR NAIR: Okay.

MR SPRONG: We are being doing that actually with all the guys.

MR NAIR: With all the guys?

MR SPRONG: Yes.

20 MR NAIR: Okay, I will keep it very simple. On the, if I recall correctly, on the 20 April 2015 I was asked in the morning at 08:00 by my CE at the time, Siyabonga Gama here in TFR, he called me and said to me there is going to be an announcement coming in the next hour from the Board of Transnet and I would like you to act as CE of TFR and I said well where are you going? He said well he is going to act as the Group CEO of Transnet. That is on the 20 April. Prior to...

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(intervenes)

MR MZINYATHI: Which year?

MR NAIR: 2015. 2015, right.

MR MZINYATHI: Okay.

MR NAIR: And prior to that, you know I can give you a long CV of where I was in TFR, I was in charge of operations over many years, I ran the Commercial Department for many years, I started in the railways in 1994, in Metro Rail with one Mafikang Konazi(?) at the time, he was my CE at Metro Rail, so from Metro Rail I came to...

10 (intervenes)

MR MZINYATHI: The former Chair, Board Chairperson?

MR NAIR: Ja, Board Chairperson.

MR MZINYATHI: Okay.

MR NAIR: Ja, so in fact he brought me to Metro Rail.

MR MZINYATHI: Oh, okay.

MR NAIR: He phoned me once in 1994 and said to me the elections are over and he has been appointed as a CE of Metro Rail and he would like me to come and join him because I knew him from studies at the time as well, so I do not want to go back to the long stories.

20 MR MZINYATHI: Sure.

MR NAIR: But nonetheless to make it short and sweet, I started acting on the 20 April 2015. I had nothing to do with the 1064, zero, silts, nothing. I never was part of any business case, I was never part of any needs analysis, nothing. Prior to acting, immediately prior to acting I was in charge of Road to Rail as a GM here looking at Road

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to Rail for about a year and prior to Road to Rail I was a GM in charge of the Steel and Cement Business Unit in Isando and prior to that I was a GM Commercial, GM NCC, GM Operations, all those kinds of things.

So when I starting acting I had nothing to do with the 1064, zero. I heard about it, that there is a 1064 programme somewhere that is taking place and people are working on it, I had nothing to do with it.

MR MZINYATHI: Sure.

10 MR NAIR: So if I could continue or you want to ask more questions?

MR SPRONG: No, no, first continue.

MR NAIR: So what happened then is, also in January 2015 I had asked Gama who was my CE at the time, he said to me Ravi, what do you want to do for the next ten years of your life? And I said to him you know Siya, I really want to go and mentor, coach young black people, white people, Indian people, coloured people in the railways. I have got another few more years left before I retire and my legacy is, I want to coach and mentor young people.

20 So he said, what are you going to do? I said well there is a programme at WITS, I have already registered for it, it is a Masters in Management in Business and Executive Coaching which I went and registered. So when he asked me two months later to act, I said to him but Chief, what do I do? Do I act and carry on with the studies? He said ja, do not worry, you act and carry on with the studies, you would be able to manage both. So what happened then is, I am

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going to give you context to that memo that you are talking about.

MR MZINYATHI: Sure.

MR NAIR: On the 19 May 2015 I was at WITS Business School. Mr Patrick Dada was acting for me, I was acting and he was acting for me there because I went to WITS Business School. He then signed a memo that he received from Group okay, which... (intervenes)

MR SPRONG: Is that 2015 or 2014.

MR NAIR: 2015.

MR SPRONG: 2015, okay.

10 MR NAIR: I will give it to you, all the copies to you.

MR SPRONG: Okay.

MR NAIR: So because when you said in your e-mail about a memo I signed, I went and asked Tuli and said Tuli, just go and check all the things that I have signed around this thing. So this was the only thing that I signed about this thing. So Patrick Dada was acting at the time and he signed it pp, I will give you a copy of it, on the 19 May. On the 19 May I was at WITS Business School in that week.

20 This memo, although the memo comes from, it is written, this memo is written like it comes from me, you can see here like we will get to the other memo as well, it says from me to the Group CE, but this memo was prepared at Group because the memo that came to Patrick Dada for him to sign, was the same memo that he signed but he already had these two signatures on it at Group, Mr Ndiphiwe Silinda and Mr Anoj Singh. So it, the memo is from me to Gama but it was already prepared and pre-signed by the two gentlemen, so I will

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leave that with you as well, I have got copies on it.

So needless to say, what happened here in this memo, when I came back from WITS Business School, I asked Tuli, okay who was acting for me, what have they signed and all of that, let me have a look at it. So I had a look at this memo and this memo basically says it is asking the GC to approve the relocation of CNR and BT to Durban and it is basically saying to the GCE there is a team that we need you to approve, who is the negotiating team of the people to move. It is in there.

10 MR MZINYATHI: Sure.

MR NAIR: It says a Group Chief Financial Officer, it says the Group... The Chief Executive TE.

MR SPRONG: Ja.

MR NAIR: It says the Group Head Supply Chain.

MR MZINYATHI: (Inaudible).

MR NAIR: Ja, it says the Group Head Supply Chain and it says the Group Executive Legal. So at the time when I came back from Business School and I saw this memo being signed, oh by the way I only picked up when I was coming for the interview, I will not lie, that
20 the memo that came from Group was already signed by two people, because Tuli had it, she said, interesting, I should give this to you. So okay fine. So I then called Mr Anoj Singh... (intervenes)

MR MZINYATHI: You only picked it up when, yesterday or the day before?

MR NAIR: No, I had the memo signed by Dada.

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MR MZINYATHI: Okay.

MR NAIR: This one here... (intervenes)

MR SPRONG: That was then (inaudible)... (intervenes)

MR NAIR: But the one that came from Group that already had the two signatures indeed, Tuli gave that to me yesterday. She said, interesting, I should tell you because she keeps what came from Group and what was signed.

MR MZINYATHI: Oh.

MR NAIR: She says no, when it came from Group it already had
10 these two signatures which is Mr Singh and Mr Silinga.

MR MZINYATHI: Okay.

MR NAIR: So I said I will bring it and give it to you for what it is worth, I want to be open, I do not want to hide anything. So that memo then, I then called Mr Anoj Singh and I said to him, Anoj what is going on with this thing? Are you guys relocating to Durban? And he says yes, as the memo says in the negotiations on the 1064, it was agreed in the negotiations that CNR and BT would be relocated to the TE premises in Durban. And this is to give effect to that and that is the negotiating team.

20 I said okay fine, TFR is not involved in this thing, we were never involved in this thing. If anyone in TFR was involved in the negotiation of the amounts to go to Durban, it would be news to me because I do not know. It says the four people there whose names are there. So what happened then is on, this is the short and sweet of it, on the 22 July, two days after my birthday in 2015, we were at

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Kloofzicht.

MR MZINYATHI: Is that 25 July?

MR NAIR: 22 July, I am going to give this to you now.

MR MZINYATHI: The 22nd? Okay.

MR NAIR: 22nd, this is the memo you referred to, that had my name on it.

MR MZINYATHI: Okay.

MR NAIR: So on the 22 July 2015, we were at Kloofzicht. Kloofzicht is a place near Muldersdrift, the Group EXCO had a breakaway if you
10 go check everyone's diaries. At the breakaway Lindiwe Mdletshe from TFR was there in the afternoon, evening, and she brought the memo for all of us to sign and she was assisting Mr Jiyane at the time on the locomotive side. He was not able to see a TE, she was assisting them with regards to putting together like just the memo, she brought the memo to sign at Kloofzicht and I looked at the memo and I asked them.

Ja, I said colleagues, tell me something, I remember there was a memo that Patrick Dada signed, you guys had a negotiating team. Are you guys happy with the numbers here, because I am not
20 an expert in these numbers because this is a relocation from a TE facility in Pretoria to a TE facility in Durban.

MR SPRONG: Sure.

MR NAIR: It has got nothing to do with TFR, I am not an engineer, I would not know whether it would cost R10 to move or R20 to move. Are you guys happy with it? Yes, yes, yes, we are very happy, we

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have interrogated all the numbers as a team, as approved by the GC.

TIA was also present during the negotiations... (intervenes)

MR MZINYATHI: So who is having this conversation with...? You said Lindiwe gave you the memo.

MR NAIR: Lindiwe brought the memo to all of us, that is why... (intervenes)

MR MZINYATHI: With us you mean who?

MR NAIR: Ndiphiwe Silinga, Anoj Singh, Thami Jiyane, Gary Peter, that is why it is no coincidence that we all signed it on the same day.

10 MR SPRONG: Okay.

MR MZINYATHI: So the question you posed, you posed to the remainder of the people that are on this memo and they said... (intervenes)

MR NAIR: We were all in an informal group after the EXCO and she brought the memo and all I said is, guys, are you guys all happy with this thing here? Have you guys checked the numbers? Yes, we checked the numbers, we verified the numbers. I said okay, you guys are experts. I am signing this only because from a TFR point of view we are managing the agreement. I am not an expert in the relocation
20 cost, I was not involved in the negotiations of these costs, I know nothing that makes up the make-up of it.

Only much to my amazement I started reading media reports in the past two weeks about that month's report and Professor Weiner and all those kinds of things. That is the long and short of it. Now Mr Gama signed it on the 23rd and I can tell you why, he with was us, the

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breakaway was for three days, 21, 22, 23. We signed it all there the 22nd together and it was probably taken and given to him to sign it and we signed it the next day while we were at the breakaway, that is the only reason why his signature is dated the 23rd and not 22nd, but why we all signed on the 22nd is, we were at a Group EXCO breakaway.

MR MZINYATHI: Sure.

MR NAIR: So that is the long and short of it.

MR MZINYATHI: Your involvement.

10 MR NAIR: Of my involvement.

MR SPRONG: Can I ask maybe a stupid question?

MR NAIR: Ja.

MR SPRONG: Why do they call it a relocation to Durban?

MR NAIR: Look, I do not know why they call it a relocation to Durban, I think my understanding was, I was told this even when I asked informally there, I was told look, they needed to relocate to Durban because they need to create jobs, because it is not good to have all four locomotives, OEMs producing locomotives in Pretoria. They need to move it to Durban so that also this job is created in KZN and
20 it is the same TE facility, they are moving from a TE facility here to a TE facility there. The word relocation, I will be damned.

MR MZINYATHI: Okay, let me then ask the question differently.

MR NAIR: Ja.

MR MZINYATHI: Okay, we know that you came *post facto*, all the agreements were signed, right, but when you came in did you know

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where the two OEMs that are now based in Durban, were? Where were they based at the time?

MR NAIR: Well I came in in April 2015.

MR MZINYATHI: Yes.

MR NAIR: I will be lying to you if I said to you if I knew where they were based.

MR MZINYATHI: Is it?

MR NAIR: My understanding was that all of these people were based in Pretoria.

10 MR MZINYATHI: Okay.

MR NAIR: And I was surprised to hear then that they said look no, it has been decided now that at least two of them to be moved to Durban, BT and CNR so that they could make locomotives there and create jobs there.

MR MZINYATHI: Okay.

MR NAIR: That is an honest answer I will give you.

MR SPRONG: All right, thank you. If I can give you some perspective why I had been asking that question, according to me I am not sure if they have established a production line in
20 Koedoespoort, the two companies.

MR NAIR: I am not... (intervenes)

MR SPRONG: At that stage.

MR NAIR: At that stage I do not know, because Koedoespoort is part of TE.

MR SPRONG: And if they did that, then it is a relocation.

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MR NAIR: Ja.

MR SPRONG: But if they have not done it... (intervenes)

MR NAIR: But it did not even arrive there.

MR SPRONG: Ja.

MR NAIR: I hear what you are saying, but I do not know that.

MR SPRONG: Because for me it is important to understand what is the meaning of relocation.

MR NAIR: Of relocation. No, it is a valid question because if you are not located, you cannot relocate. I hear where you are coming from.

10 MR SPRONG: Ja.

MR NAIR: Legally speaking. I do not know if they had a production line or not at that point in time when the memo was signed. What I can tell you is, I have not been to the production facility in Durban but my people have been who manage the agreement at the moment, Nomfuyo Galeni, Rita Roper and company, they have been to Durban and they say yes, there is a production line, they have been there.

MR SPRONG: Ja, in Durban now?

MR NAIR: Ja.

20 MR SPRONG: They have established that because it was an empty warehouse?

MR NAIR: Ja, well I do not even know about that, I did not know it was an empty warehouse, I thought it was a TE facility.

MR SPRONG: Ja, it is a TE facility. My understanding of what I have picked up in the discussions, it was an empty facility.

MR NAIR: Okay, I am not aware. I am not and your question about

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whether there were, they had a production line in TE at the time, I think is a valid question but I would be lying to you if I told you yes, I know.

MR SPRONG: No, I understand. That is why I try to find out.

MR NAIR: Yes I know, I do not know.

MR SPRONG: Because we focus now more on the relocation if you can call it, on the TE facility.

MR NAIR: Correct.

MR SPRONG: In Durban itself.

10 MR NAIR: Ja.

MR SPRONG: But even the negotiations took place actually in 2014, is it not?

MR MZINYATHI: Yes.

MR NAIR: Well according to the memo there that I saw, they said the negotiations of the 1064 took place in 2014 in that memo.

MR SPRONG: Correct, it is 2014.

MR NAIR: And it says during the negotiations it was agreed that they would relocate. I can read the words for you there?

MR MZINYATHI: Yes.

20 MR SPRONG: Ja no... (intervenes)

MR NAIR:

“During the negotiations it was agreed that they will use the Durban Transnet Engineering facility for the construction of locomotives which were allocated to them. The Durban facility and the move were

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introduced after the tender closed and evaluations were done.”

And it says in here:

“BT and TE have completed the detail assessments in terms of the move to Durban and have submitted a joint quotation on the move.”

So I cannot answer that question. It is a valid question but I cannot answer it.

MR MZINYATHI: Okay, let me start with the context that you gave.

10 MR NAIR: Ja.

MR MZINYATHI: Particularly around the memo coming from the Group.

MR NAIR: Ja.

MR MZINYATHI: Was the contract management not supposed to happen at TFR?

MR NAIR: Contract management is supposed to happen at TFR but I must be honest with you, even as we speak at the moment, it is a bit of a funny relationship to the extent that for example, a lot of things that we want to go to the OEMs with and charge them for penalties and do this and do that and so on and so forth, the way it is structured is that we still have to get consensus and support and approval from the Group before we issue these letters.

20

MR MZINYATHI: Okay.

MR NAIR: So that is how it is.

MR MZINYATHI: Okay. All right, so because the next question, my

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next question is, the memo, well from what you have told us is misleading that it was combined by Lindiwe because it comes from...

(intervenes)

MR NAIR: Because it has got two signatures on it.

MR MZINYATHI: Yes.

MR NAIR: Correct and also although Lindiwe was there at Kloofzicht on the 22 July, I remember that afternoon. I remember it very clearly because I hate meetings, I hate workshops, I hate breakaways, I actually hate it and as soon as it was over I wanted to run away to my
10 room and she was there and they insisted, please come, let us have some drinks to socialise and so she was there and she had the memo, but whether she prepared the memo, I cannot vouch for that, you will have to ask her that.

MR MZINYATHI: Sure, okay.

MR NAIR: That with the two signatures was picked up by chance, Tuli just picked it up two days ago and said to me hey, can I give you this file by the way?

MR MZINYATHI: So it defeats the questioning, I suppose my line of questioning if you are saying everything is being, you know you must
20 get approval for everything at Group.

MR NAIR: You see, I think because of the sensitivity of these contracts, the size of them and everybody has their eyes and ears on them and all that, so for example in the past two months, three months I issued, four months I have been issuing letters, penalties to the OEMs, because I said no, we have got a contract here, the

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contract says you did not deliver on this day, I am issuing you with a penalty.

So we inform the people at Group of these letters purely because I do not want Gama or the Group CFO or anyone to be cornered somewhere and say well, Ravi issued these people with a letter, a big penalty, 18-million, 19-million, a 100-million and he does not know about it.

MR MZINYATHI: Okay, my next question is, the team that could have negotiated the relocation, should not TFR been part of the team
10 seeing that the money was going to come from you? Do I understand you correctly first, was the money going to for relocating these people, going to come from your budget?

MR NAIR: Okay, let me share with you, let me share this here with you and I am going to answer your question. You know, in the 1064 the negotiations were done at Group, the payments were made at Group on our behalf as TFR, so they paid all these upfront monies to the OEMs and it was sitting on our balance sheet in TFR. They did it on behalf of TFR, okay. Secondly is, this money here that they were going to pay them, of course eventually it sounds like they were going
20 to bill it to us.

You are right and in fact your question is probably valid, that there should have been somebody from TFR that should have been part of the negotiating team. With hindsight I could say yes, but I mean I do not think anyone from TFR would know what it would cost to move or relocate a production line from Pretoria to Durban.

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MR MZINYATHI: I think not necessarily for but I think for good governance to say, I am looking after the TFR first, I am not happy with these costs, you should not be happy. For instance I know that at some point Mr Yousuf Laher is copied on the e-mails on the relocation costs, putting questions of the figures. He is then later excluded from the correspondence. So I am asking it in that context.

MR NAIR: I think somebody from TFR should have been part of it, should have been part of the four, unfortunately the name of the four was the name of the four they gave. If they used Lindiwe and Yousuf Laher and then they excluded them, I cannot vouch for that.

MR SPRONG: You see... (intervenes)

MR NAIR: Honestly I cannot vouch for that.

MR SPRONG: I think Yousuf was leading actually the financial part of the (inaudible) if I am correct here.

MR NAIR: Ja, was he?

MR SPRONG: Ja.

MR NAIR: Under those four people that are there?

MR MZINYATHI: No, the technical evaluations, you are talking about something else, not this.

20 MR SPRONG: Ja, no, no, but what I try to get at is, he was involved in that process and he raised a few questions... (intervenes)

MR NAIR: Of the relocation?

MR MZINYATHI: Yes.

MR SPRONG: Ja, particularly because there was a logistic cost involved in that and there was a question mark and it was on the

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logistic cost.

MR NAIR: Ja.

MR SPRONG: Because if you import stuff, it should not be so much logistic cost.

MR NAIR: Ja, ja.

MR SPRONG: So he raised a few questions based on that, at the (inaudible).

MR NAIR: Ja.

MR SPRONG: What he was referring to, he never got an answer in
10 terms of that.

MR NAIR: Then I am not aware, then the people that were supposed to give him an answer, you must ask him why they did not give him an answer and why as you they excluded him or stopped communicating with him.

MR SPRONG: I think that is how I have it.

MR MZINYATHI: Sure Willem, that is correct, yes. Okay, now with this composition of this team, I know it happened, you said this happened after you, you were not here and someone was acting, right?

20 MR NAIR: Uhm-uhm.

MR MZINYATHI: Could you not impose someone from TFR on Group?

MR NAIR: No, I do not think so. At the time with hindsight I do not think I could have imposed someone from TFR. I will be honest with you, you know and I am sorry to say this to you, I do not know what

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was going on at the time about this 1064. All I know at the time, the 1064 was headed up by the people at Group, they did the deals on behalf of TFR, they even signed the 1064 agreements on behalf of TFR. No TFR person signed those agreements.

MR MZINYATHI: I know it was signed by Mr Gama, ag by Mr Molefe, sorry.

MR NAIR: Yes and witnessed by Mr Singh.

MR MZINYATHI: Yes.

MR NAIR: Ja.

10 MR MZINYATHI: Are you saying that is irregular?

MR NAIR: No, I am not saying it is irregular. I am not saying it is irregular. Your question was, could I have imposed someone on them? I do not know, maybe with hindsight I should have, I do not know.

MR MZINYATHI: Thula, anything from you?

MS SELOKELA: I think the last one where you say the agreements were signed by a Group which goes back to I think your initial question about contract management and stuff, ordinarily was it supposed to be TFR that signs the agreement, the contract
20 agreements with the way in?

MR NAIR: You know, I think because of the size of the agreement and the publicity and all the hullabaloo that went with it at the time, I think it was appropriate that Group would sign such a big thing, right. TFR after that manages it.

MS SELOKELA: Okay.

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MR NAIR: Now in managing it, you then have to ask yourself what is the role and responsibility of managing it versus going there all the time to ask for, I am going to give them a penalty, can I give them a penalty? No, no, no, do not give them a penalty and that type of thing. I think them signing the agreement, I do not think that is a problem. You buy other things that you like to go and launch them and sign it with the media, the press, the Group CE is there, the ministers are there, all of that, I think that is fine.

It was signed by them, it was given to TFR to manage on a
10 day-to-day basis, so all we manage at the moment in TFR is, we manage delivery schedules from the OEMs, did you deliver on this date, did you not deliver on this date? Here is the penalty. We take acceptance of locomotives after TE has tested them and we bring them into service. When we bring them into service we issue what we call a certificate of, what is it, something, some certificate. Based on that certificate it means that Finance is ready to pay. Some certificate, but...

MR MZINYATHI: Completion.

MR NAIR: Completion, ja that is what we manage at the moment.

20 MR SPRONG: Do you have to phase out the old locomotives? Because that was a big discussion at a stage, is the number of locomotives coming into the system and locomotives going out of the system. How did you deal with that? Because that is linked with the accelerated plan.

MR NAIR: You see, let me share this with you, from, you will have to

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talk to some of our people but I will not pretend I do not know those things. We hit a snag with this 1064 about a year after I started acting. We started funding, had funding constraints, the affordability was becoming a problem and we had to then renegotiate with the OEMs to push out the programme.

In pushing out the programme, we had to keep the old locomotives in service for longer, getting spares for the old locomotives became a problem, customer service became a problem and at the end of the day it became a total mess because in some
10 situations where we had to keep the locomotives longer, there were no spares, the people that made locomotives stopped making spares and TE, Transnet Engineering had to now cannibalise from other locos, take a part from there, a part from there, a part from there and make a locomotive run.

So this phasing out of the locomotives became a huge problem from an operational point of view. Also it became a problem in certain corridors where you have a mixture of new and old.

MR SPRONG: So it effected all operational activities actually on the lines?

20 MR NAIR: Ja.

MR SPRONG: Because you double up resources.

MR NAIR: Correct.

MR SPRONG: Train drivers... (intervenes)

MR NAIR: Well we had to train train drivers for the new locos and then when we trained them for the new locos, not all the new ones

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came, then the drivers had to drive the new and the old one. Then also you have the old one and the new one running in the same line on a same rail corridor and you know that, you have one loco that is very reliable and another one that is breaking down, you will not get the value out of the new locomotives that you invested in, because it is a system, you are running it in a system of new and old.

MR SPRONG: You see that, hence we know the acceleration was not very well thought through because acceleration is also linked to your marketing... (intervenes)

10 MR NAIR: Plan.

MR SPRONG: (Inaudible) opening plans and stuff, because to me there is a total disconnect in terms of that.

MR NAIR: Ja.

MR SPRONG: And how did you deal with that?

MR NAIR: Look, from a TFR point of view it was very difficult because they accelerated the locomotives and when they accelerated the locomotives, some of the OEMs could not produce according to the accelerated schedule.

MR MZINYATHI: But I do not think... (intervenes)

20 MR NAIR: They could be renegotiated.

MR MZINYATHI: In all fairness to Mr Nair, he has explained, he did not (inaudible) to the acceleration.

MR NAIR: Ja.

MR MZINYATHI: We know from our interviews that the colleagues at TFR were against the acceleration, né.

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MR SPRONG: Ja.

MR NAIR: Firstly I know you got me on record.

MR MZINYATHI: Ja.

MR NAIR: If I look back now with hindsight, I would not have accelerated this. Secondly is with hindsight, a locomotive runs on a railway line, there is no concomitant strategy at the time to make sure the railway lines around the country are upgraded and fixed to handle new locomotives and a lot of other things, so to me the 1064 was important, we needed to have new locos because we have an ageing
10 fleet.

MR MZINYATHI: Sure.

MR NAIR: But you should have said okay, maybe do not bring in the 1064 in one go. Maybe on this corridor, on these two corridors we are bringing new locos that... (intervenes)

MR MZINYATHI: No, those (inaudible)... (intervenes)

MR NAIR: (Inaudible) but when I took over as CE here, I was struggling, we had no money for infrastructure. On a yearly basis when we do the capital budget, it is what goes to the locomotive contracts first, the remainder you go and fix all other things. That is
20 what we are doing even right now at the moment.

MR MZINYATHI: Okay.

MR SPRONG: Ja, you see Ravi actually answered now the question I was going to ask, because the impact of the acceleration was much bigger than what the people thought of.

MR MZINYATHI: No, they never thought of it.

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MR NAIR: No, they never thought of it, you are right. No, you are right. I can honestly say people never thought about it. You know, we currently have a backlog.

MR MZINYATHI: In fact they did not advise. Because they did receive advice against acceleration, raising all of these issues and they did not use it.

MR SPRONG: Ja.

MR NAIR: Correct.

MR MZINYATHI: So we will just note it in the report, that is why.

10 MR SPRONG: Ja. Are you aware of any of the liability issues with the locomotives that were delivered?

MR NAIR: The locomotives that were delivered, in the beginning we had some small issues, radiator issues, I was told heating issues and all of that and they were all sorted out, so they were sorted out eventually. I can tell you, I think the CSR locos, they are in service, they are doing well. They were (inaudible) had heating problems, I will not lie about that. GE locomotives, we had some problems with some, I think some welding things that my people told me that the nickel had to be heated to be welded and they were welding it when
20 the nickel was cool and they dealt with that. There were some cracks and what have you on that there.

On the CNR locomotives, I believe (inaudible) I think four at the moment that are being tested and Bombardier, I think 16 are being tested and there are some teething problems there at the moment.

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MR SPRONG: So they are way behind, really behind it all.

MR NAIR: Way behind the plans, way behind the plans. There was a time where I even got cross in one of the OLT meetings. I even said to the Group CFO at the time who was there and I kept on being hammered as the CE of TFR, Ravi where is the cash interest cover? We are going to be in default, default, default and eventually when they were waiting and had an (inaudible) I said, do not tell me about cash interest cover when you guys went and paid upfront for locomotives.

10 Now I must service the debt that you have created and I do not have the locomotive to create the revenue to service the debt. Now you are telling me about cash interest cover?

MR MZINYATHI: And you had that discussion with whom, Mister... (intervenes)

MR NAIR: No, we have an OLT meeting and... (intervenes)

MR MZINYATHI: What is an OLT, sorry?

MR NAIR: You know it is... Okay, in any company you will have an Executive Committee and an Operations Committee.

MR MZINYATHI: Okay.

20 MR NAIR: EXCO and OPCO.

MR MZINYATHI: Okay.

MR NAIR: At Transnet they changed it two years ago, they call the EXCO GLT, they wanted to put a T to everything, a team, not a committee, a team, so Group Leadership Team is the EXCO, OLT is Operations Leadership Team which is the OPCO. So what happened

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in that meeting, Mr Peter was in that meeting, Mr Buthelezi was in that meeting and I got cross and I said, do not come and tell me about cash interest cover in TFR, you have gone and paid upfront for locomotives that I do not have and you come here and telling me I must generate revenue and the (inaudible) does not look good, but you paid upfront and I do not have the loco and without the loco how can I make the revenue?

You know, so it was just one of those frustrating moments and I just said look, I mean I do not want to hear stories about... You cannot come to TFR and say to TFR you must do this, this, this, we want this from you but then we now went and paid something on your behalf and created a problem. Now you are coming and telling me the cash interest cover is a problem.

MR SPRONG: Now that is a major problem. [Laughs]. Okay Ravi, and just for interest, it is now four years down the line since the agreements had been signed.

MR NAIR: Ja.

MR SPRONG: Who is doing a due diligence between the business case and what realised outside?

20 MR NAIR: Okay... (intervenes)

MR SPRONG: Are there processes which are doing that?

MR NAIR: What we have done is, for all the locomotives that we deployed, wherever we deployed the new locomotives, we had been tracking the operational benefits, so we said for example, let me give you a simple example, if you take a 22E locomotive that runs from

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Rustenburg all the way down to Richards Bay, previously we would have a diesel locomotive in Rustenburg that will go from Rustenburg to a chrome mine, diesel. It will drop empties and come back, it will bring loaded, come back to Rustenburg, then we will attach an electric locomotive and take it down to Richards Bay.

Now you do not have a diesel going to the mines, you have one new locomotive that goes straight to the mines via Rustenburg all the way down to Richards Bay, so on those type of things I have seen that there have been genuine improvements like where for example
10 you could run previously five trains a week in that area, with the new 22Es you can run nine trains a week. So those kind of things we have tracked.

Now if you ask me whether the original business case and the actual benefits of those things and has anybody done a full tracking of everything and made a presentation of everything on where we stand today, I can tell you I have not seen that. I will admit that, but day-to-day operational benefits of locomotives... (intervenes)

MR SPRONG: Ja, I understand the operational part of it.

MR NAIR: Ja.

20 MR SPRONG: I mean and I thought that besides that nothing else happened in terms of due diligence because you said now probably there was a mismatch in terms of pricing and also in terms of freight in totality, if you can call it like that, because that was the total behind (indistinct).

MR NAIR: Yes.

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MR SPRONG: I do not know in terms of the pricing negotiations, if that compares what we have, what they have put in the business case.

MR NAIR: On the GFB side, look I do not know but I can tell you that on a yearly basis, on the GFB side we give, we have a Pricing Committee. The Pricing Committee reviews all contracts, all markets, all commodities and issues the commercial team with the mandate. Now whether that mandate, I know we have achieved the mandate in the past three years that I have been here, whether that mandate
10 talks to the business case, I will have to go and check and confirm that or maybe you will have to call somebody, I do not know who, we will have to check and confirm that. I would be lying, I cannot tell you whether that is true or not.

MR SPRONG: Okay.

MR NAIR: Ja, whether the mandate of the Pricing Committee is aligned to the business case, what I know is we achieved the mandates, but whether the mandate is aligned to the (inaudible) of business case, I cannot tell you that.

MR SPRONG: Okay.

20 MR MZINYATHI: I just wanted to perhaps go to, but you cannot talk to it because you have already said that these guys said they have tested all of these things and the prices are okay?

MR NAIR: That is what they have said, in the first memo, the one with Mr Dada's signature, they said in there that TE and BT and T and CNR have already gone through a detailed assessment and provided

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a quotation.

MR MZINYATHI: All right.

MR NAIR: They said it in the first memo and they said TIA would be part of the process. In the second memo they confirm TIA ordered to be part of the process and they interrogated the numbers. That is what they have said. Now what they then interrogated, what that means, I do not know.

MR MZINYATHI: I just want to check something on whether the contract for the relocation is signed.

10 MR NAIR: The letter from Mr Gama to them was sent on the 23rd as well, I have got the copies of the letters here.

MR MZINYATHI: Okay.

MR NAIR: I do not know when the contract was signed, but the letter here to each of them was on the 23rd.

MR MZINYATHI: Which month?

MR NAIR: Of July.

MR MZINYATHI: Okay.

MR NAIR: Which is the next day on most of our signatures on that document.

20 MR MZINYATHI: Okay.

MR NAIR: You have got copies of that or you want it?

MR MZINYATHI: No, I think we have it. I think we have it.

MR NAIR: Thulaganyo, you have got copies of it or?

MR MZINYATHI: There is one I think we have it.

MS SELOKELA: Ja, (other official language).

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MR MZINYATHI: Thulaganyo has it.

MR NAIR: Okay.

MR MZINYATHI: Okay no, I suppose I am fine.

MS SELOKELA: Uhm.

MR SPRONG: Only one question.

MR NAIR: Ja?

MR SPRONG: What is a repo rate currently? [Laughs].

MR NAIR: What is a repo rate?

MR SPRONG: Ja.

10 MR NAIR: Ja, I do not know. Why are you asking me that question?

MR SPRONG: Ja, remember the rate has changed from 18% to 12% during the course of these contracts, ag not repo rate, the hurdle rate, sorry.

MR NAIR: The hurdle rate?

MR SPRONG: Ja.

MR NAIR: Ja, I believe the hurdle rate has changed.

MR SPRONG: Is it back to 18%?

MR NAIR: I am not sure. I am not sure, I will have to check.

MR SPRONG: Okay.

20 MR NAIR: I will have to check.

MR SPRONG: I forgot to ask that question the other day to Yousuf.

MR NAIR: Ja, okay.

MR MZINYATHI: I am fine, thank you.

MR NAIR: You are sure? You came in here with a red tie and now you say you are fine. [Laughs].

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MR MZINYATHI: I said I had a limited scope.

MR NAIR: Okay.

MR MZINYATHI: And you have made it clear that everything is coming from Group, so I must redirect my questions to the remainder of the people that I have in Group and are willing to meet with us, because the ones that have left, they do not want to meet with us.

MR NAIR: They do not want to meet with you?

MR MZINYATHI: Yes.

MR NAIR: Are they not obliged to meet with you?

10 MR MZINYATHI: No.

MR NAIR: Maybe when Zondo writes.

MR MZINYATHI: When Zondo?

MR NAIR: Judge Zondo.

MR MZINYATHI: Yes. [Laughs].

MS SELOKELA: Ja. [Laughs].

MR MZINYATHI: So that would be interesting.

MR NAIR: Okay. No thanks very much, man. Look, I want to cooperate, I do not want to be evasive and all of that, I wanted to just tell you the truth and nothing but the truth and ja, that is, unfortunately
20 that is... The Lord will know what happened.

MR MZINYATHI: No, no, thank you very much for making time for us.

MR NAIR: No, thanks very much, my pleasure.

MR MZINYATHI: Ja, let us not keep you a bit longer... (intervenes)

MR NAIR: No, no problem.

MR MZINYATHI: Than you have to be... (intervenes)

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MR NAIR: I am supposed to be with trade unions. I have my quarterly meeting with trade unions, so I said to the trade unions yesterday, listen, I am going to be with auditors, I am between the rock and the deep blue sea. You must decide as trade unions and the attorneys who is the rock and who is the deep blue sea. [Laughs].

MR MZINYATHI: Ja. Thanks very much, hey.

MR NAIR: Thank you. Thanks very much, thanks Thulaganyo.

MS SELOKELA: Thank you, thank you.

MR NAIR: Good luck, all the best with your law studies and being an
10 attorney.

MS SELOKELA: Ja.

MR NAIR: I do not know what you are going to specialise in, litigation? Thanks Chief, all the best, thank you.

MS SELOKELA: Forensic Auditing. [Laughs].

MR NAIR: Forensic Auditing? She is enjoying this.

MEETING ADJOURNS

MEETING RESUMES

MR MZINYATHI: Maybe because they are here for relocation and I am not sure how long I am going to keep you here for the other stuff, I
20 do not think it will be long, you want us to start with the relocation now?

MS MDLETSHI: Okay.

MR MZINYATHI: Okay. Look, maybe as an overview, tell us what your role was at the time and what your role is currently.

MS MDLETSHI: Okay, at the time when I started, locos, okay I am

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trying to think, at the time meaning starting with the 1064.

MR MZINYATHI: The 1064.

MS MDLETSHE: Because I have been involved in quite a few loco acquisition when the lady left by the name of Sue Allan who was responsible for the locomotives, she was a commercial specialist at the time I had to, then I was asked to take over. So at the time when I took over I was a commodity manager.

MR MZINYATHI: So this was when, around 2014 or 2012?

MS MDLETSHE: 2012, 2011, the latter part of 2011.

10 MR MZINYATHI: Commodity specialist?

MS MDLETSHE: Yes.

MR MZINYATHI: So what does that entail as a commodity specialist?

MS MDLETSHE: Look, commodity specialist, commercial specialist, commodity manager as well as senior manager of locomotives, the roles are almost the same. The only difference between the three roles is the reporting structure, a commercial specialist reports to a commodity manager, a commodity manager is reporting to a senior manager, a senior manager will be reporting to an executive manager.

20 Right, but most of it, procurement representatives, the role there is to facilitate the procurement process, from the inception of the procurement process until the award and then from there once the tender and the contract is awarded, you do contract management. So that is the cycle of procurement process, but in terms of facilitating and doing administration, what it means is you will facilitate the

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(inaudible) as part of it. When the tender close or before the tender is issued, you will review that the specification is not to read in as such that it favours a specific supplier and they will take you through because you get involved here... (intervenes)

MR MZINYATHI: No, I think we will get to the procurement aspect, I just want us to get an overview of what... (intervenes)

MS MDLETSHE: Okay, that is fine.

MR MZINYATHI: That job entailed because like I said, I do not want to keep them here longer than they have to, you know. All of my
10 suppliers are complaining that we are keeping them in meetings and they want to write reports.

MS MDLETSHE: That is fine, that is fine.

MR MZINYATHI: [Laughs].

MR SPRONG: No, no, I think it is very important what she is saying, they are looking at the logistic part of the Supply Chain.

MR MZINYATHI: Yes, all right.

MR SPRONG: Sorry. Okay, in terms of the relocation, just tell us a little bit more, what happened there and... (intervenes)

MR MZINYATHI: Maybe let us start at the beginning. What was your
20 role in the relocation?

MS MDLETSHE: Okay... (intervenes)

MR MZINYATHI: If any?

MR SPRONG: Ja.

MS MDLETSHE: The role there was again facilitating the meetings between the OEMs that were identified to move to Durban, right. So

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again in terms of the Supply Chain there should be a point of contact between Transnet as well as the suppliers. Suppliers cannot communicate willy-nilly with everybody, so especially again to arrange meetings, to arrange negotiations, to receive proposals. Again their proposal was very financially intense that anything that has to do with Finance you give the financial expert, so you would look at it and you would pass it on.

So my role was literally receiving documents, handing over to the right people, if it was Legal, Ndiphiwe, if it was Finance, Yousuf and Anoj and Gary, but there was nothing much. Negotiations, I was also a part of it. I was recording... (intervenes)

MR MZINYATHI: For the relocation?

MS MDLETSHE: Relocation, yes I arranged a meeting and I was part of it.

MR MZINYATHI: Okay.

MS MDLETSHE: Yes and when it comes to memos... (intervenes)

MR MZINYATHI: Who were the other... (intervenes)

MS MDLETSHE: I need to say that, when it comes... The process was very short and it was a process that was different from the norm you know, so... (intervenes)

MR MZINYATHI: Ja, maybe before you get to the process, who else was part of the team, the relocation, the negotiating team?

MS SELOKELA: Already the question has been altering.

MS MDLETSHE: I have got a memo where it was appointing the team.

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MR MZINYATHI: Okay.

MS MDLETSHE: It is the Group Chief Financial Officer, it is the Chief and I think at the time it was, I cannot remember if it was Anoj or Gary, but it was the CETE, it was the Group Head ICMO which was Gary.

MR MZINYATHI: Yes.

MS MDLETSHE: And then Group Executive, Legal Compliance which was Ndiphiwe.

MR MZINYATHI: Ndiphiwe?

10 MS MDLETSHE: Ja.

MR MZINYATHI: And then it was you?

MS MDLETSHE: And it was me, yes.

MR MZINYATHI: Sure, okay.

MS MDLETSHE: That is the team.

MR MZINYATHI: So this memo that you are referring to, do I have the right memo?

MS MDLETSHE: Let me see, its subject is reading, "Request for Acting GCE to approve relocation".

MR MZINYATHI: Ja.

20 MS MDLETSHE: Is it the same?

MR MZINYATHI: Yes.

MS MDLETSHE: Okay, yes.

MR MZINYATHI: So you compiled that memo?

MS MDLETSHE: No, the memo came, I think it was compiled at Group and again I want to emphasise this, I know that I need to rush

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so the team can be released... (intervenes)

MR MZINYATHI: No, no, you do not have to rush, I am just saying I want to start with their part, ja.

MS MDLETSHE: The time and the process, it was a different process from the norm, so a lot of things were done because they were financially intense, they were done at a Group level and I think if I recall correctly, this memo came from Group already drafted, already signed I think by Anoj. Hold on, I have got that memo here, I have got a pack full of... Yes, the memo that I have here né, it had already
10 been signed, it was not signed by myself and Ravi.

MR MZINYATHI: Sure.

MS MDLETSHE: It came from Group and then we were asked to facilitate and that for Ravi... And also, I have a memo. Ravi was not around, I think Patrick Dada was acting.

MR MZINYATHI: Okay.

MS MDLETSHE: Ja, this is Dada and then we signed afterwards.

MR MZINYATHI: Okay.

MS MDLETSHE: I do not know if you have got the copy?

MR SPRONG: Ja, we have got a copy.

20 MS MDLETSHE: Okay.

MR MZINYATHI: Okay and then when did the negotiations commence then after this memorandum?

MS MDLETSHE: I think immediately after the team was appointed, we then started with... I need to check the dates because I have got the attendance register in terms of the exact date.

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MR MZINYATHI: Okay.

MS MDLETSHE: Ja.

MR MZINYATHI: Lindiwe, you were part of the negotiations for the price as well, right?

MS MDLETSHE: I was but... (intervenes)

MR MZINYATHI: The one at Webber Wentzel, the signing of the contract.

MS MDLETSHE: No, uhm-uhm, uhm-uhm, the negotiations did not take... We were done with Webber, we moved to Durban with
10 Webber Wentzel.

MR MZINYATHI: No, no, no, I am saying... (intervenes)

MS MDLETSHE: With the normal... (intervenes)

MR MZINYATHI: I am saying that you were there in the negotiations?

MS MDLETSHE: Yes, the three months that, two months more or less, yes I was there.

MR MZINYATHI: Ja, in February/March.

MS MDLETSHE: SCS is part of it throughout.

MR MZINYATHI: Throughout, all right.

MS MDLETSHE: So I was there.

20 MR MZINYATHI: So you know that what was signed in terms of where there OEMs are going to be stationed?

MS MDLETSHE: Ja. One contract and I think it is the Bombardier contract, because when we went out it says DDP in terms of (inaudible) terms, so which means we need to specify a place of delivery, right.

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MR MZINYATHI: Sure.

MS MDLETSHE: So at the time the place of delivery was Koedoespoort.

MR MZINYATHI: Okay.

MS MDLETSHE: When even on the RFP it did mention that.

MR MZINYATHI: Okay.

MS MDLETSHE: Right, but I think, I can check, I think the Bombardier contract, it had Koedoespoort or any other place of delivery but what was specified, I think on all four it was definitely
10 Koedoespoort.

MR MZINYATHI: Okay.

MS MDLETSHE: Ja, but part of, the contract does say where exactly, but I think the Bombardier one did say another place of delivery, but Koedoespoort is there.

MR MZINYATHI: Okay, I will come back to this because I have a contract where it does not necessarily specify, I think that is Bombardier, the place where...

MS MDLETSHE: Sure, that is fine.

MR MZINYATHI: Where the OEM is going to be located, it is one of
20 the OEMs that happens to be, that is now in Durban.

MS MDLETSHE: But let me... (intervenes)

MR MZINYATHI: Where I am driving... (intervenes)

MS MDLETSHE: Sorry, sorry, I will let you go back to that point, but I think what is key as well is for one to say what was the RFP issue saying? The RFP said place of delivery is Koedoespoort.

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MR SPRONG: For all of them?

MS MDLETSHE: For... Remember it was not for a specific OEM, it was to the market.

MR SPRONG: If there was capacity or not.

MR MZINYATHI: Can you show me where, in the RFP where it says that?

MS MDLETSHE: I am trying to open my RFP... Do you have a copy with you so that I can go there? Please if you do not mind?

MR MZINYATHI: You know I become too sophisticated for my own good, I tried and, I put these things in my... So I am trying to get it as well.

MS MDLETSHE: My laptop was stolen, so this new laptop is a nightmare.

MR MZINYATHI: But look, I think it is fine, we can get there. The point I was trying to arrive at is, what do you understand by relocation? Is it, ja what do you understand by relocation?

MS MDLETSHE: Relocation in a nutshell is moving someone from the initial place that either they were allocated at, you are then moving them from that place to another. In a simple English that is what relocation says.

MR MZINYATHI: In simple English?

MS MDLETSHE: Simple English, you are moving someone from a specific area to another area.

MR MZINYATHI: Okay and then the OEMs, were they in a specific area at the time when you started negotiating or contemplated the

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relocation, the move?

MS MDLETSHE: The OEMs were not, especially the two, CNR and Bombardier, were not there because they had never bought, we have never bought locomotives from them before under GE and CSR.

MR MZINYATHI: Sure.

MS MDLETSHE: But again their quotation, their response to the tender was then specific to that area, so that is why it is important for me to find that clause. So they might not have physically been there, started with operation or manufacturing, but what was their proposal initially saying? Was there a specific area that was mentioned that they had to quote based on, because if you move, if you say to me move to Johannesburg, I will then give you and say my move to Johannesburg will cost this much, but if you move me there, maybe when I am about to move to Johannesburg and you move me and say go to Cape Town, there will definitely be a slight change, either it goes down or goes up.

There will be a change because it is no longer the same area that you, I was meant to go to. That is the example that I am trying to make.

20 MR MZINYATHI: Okay, so regardless of the fact that that person never had a facility? Just to speak of... (intervenes)

MS MDLETSHE: And again I would want to make an example, a simple example of me, if you ask me to move to Johannesburg, whatever research and that I will make in terms of what will it cost, the lifestyle the cost of leaving if I were to go to Johannesburg, I should

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look at different areas, what place, where is it, you know the impact that it will have in terms of my salary and all of that, but if you say even if I did not move, you now are saying I must move to Cape Town, the lifestyle is not the same.

Things that I was going to, maybe I was going to be close to work or close to you know, things around me in Johannesburg were close to the place or area that I was going to stay in. If I go to Cape Town, then again I need to do some work, groundwork, you know what will change, what will, how will it change it. If there are no
10 changes, then there are no changes.

MR MZINYATHI: No, I like the fact that you are saying if there are no changes, there are no changes.

MS MDLETSHE: Ja.

MR MZINYATHI: Because we were made to understand in one of the interviews that the workshop... Okay, these OEMs did not have and you have just confirmed it, they did not have any workshop or footprint in Pretoria, right. The footprint they had was by virtue of the tender documents that you are saying and the agreed contracts at most.

20 MS MDLETSHE: Ja, to say TE facility.

MR MZINYATHI: To say a TE facility.

MS MDLETSHE: Yes.

MR MZINYATHI: All right. Now there is a workshop at (Inaudible), we are told it is empty, it is nice, nothing. In fact when you go there you are going to customise it to your specifications. Surely that is

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convenient. It is unlike someone, let us say, let us take an example of GE who had a facility in Koedoespoort in Pretoria, who then have to say no, I must... (intervenes)

MS MDLETSHE: Pack and change everything because... (intervenes)

MR MZINYATHI: I must pack and then go.

MS MDLETSHE: Ja, ja, ja.

MR MZINYATHI: Yes.

MS MDLETSHE: And I think that question as a procurement person
10 again if you remember initially what I said to you, this was, it impacted their proposal, their cost, overall cost that they had initially submitted, either down or up. I am not saying it was not supposed to change because they were not already there like GE and CSR. So any other changes that you made as a procurement person, that there was any other changes that you make in somebody's proposal, you ask them are there going to be any changes, yes or no?

If there are changes, what are those changes? I do not think one takes it at a face value. You are dealing with companies here that gave their proposal based on your RFP, so if you are then
20 moving those people to another area, it is worth asking to say, now you are being moved to here. Our engagements, negotiations were around this specific area. Are there any changes in terms of the proposal that you have given us? So for me I think that was the important part to say are there any changes?

If then they came back and said yes, there are changes and

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these are the changes, SCS cannot review the changes and say these changes, they seem to be fair or not. It is a finance person who actually evaluated the initial proposal to then say, but during the evaluation, during the original proposal these were the things that were specified. Now how different is this from what you had initially submitted to us? So I think a finance person will be in a better position to say this was originally submitted, this was now submitted, looking and comparing the two, we should not be charged as Transnet because your initial proposal anyway did cover these things, why now are we charged?

So as a procurement person I really think this question is a very good question, but that needs to be posed to Finance and for me I think again what needs to be understood clearly on this event, procurement event or any other, not this one specifically, when you do a cross-functional sourcing team, you bring a team of experts, people that are...

MR MZINYATHI: I am listening.

MS MDLETSHE: People that are the ones that you understand that area of expertise, you know.

20 MR MZINYATHI: Yes.

MS MDLETSHE: If it is Finance, you bring them exactly for that to come and say review, you know. Supply Chain again, we facilitate, we read. There is no way you can take a document blindly so and give it to somebody else, you read it, you want to understand what is in there. When there are questions being raised, you are aware of

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what is there, you know. So your question I really think a finance person needs to be asked that question, as in particularly to this move to Durban.

The proposal, I have seen the proposal, I know what was in the proposal. The breakdown, even their proposal I have seen. If the breakdown you are saying shelving because there is no shelving, there is transportation, there is whatever, you know a finance person, they need to look at that detail.

MR MZINYATHI: Okay.

10 MALE SPEAKER: If I remember, we do not have a detailed costing for BP.

MS MDLETSHE: Okay.

MALE SPEAKER: And we also do not have what was submitted in the original proposal, that we can do a comparison.

MS MDLETSHE: A comparison, okay.

MALE SPEAKER: And that is not within.

MS MDLETSHE: That is fine, I will definitely provide that because...
(intervenes)

MALE SPEAKER: I think BT gave a massive roll-out plan there.

20 MS MDLETSHE: And... (intervenes)

MR SPRONG: The information we have for CNR is also very...

MALE SPEAKER: Ja, limited.

MS MDLETSHE: So I can provide.

MALE SPEAKER: Ja, we need that detail because to make an assessment on that, the R634-million, is it worth spending?

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MS MDLETSHE: Sure. No, definitely.

MALE SPEAKER: The person said, the source to me, if we stay in a hotel in Johannesburg and we stay in Durban, is a (inaudible) take up with cost.

MS MDLETSHE: Ja, sure, sure. So the CNR one for example I will provide.

MR SPRONG: On our table that we have got, we cannot read it, it was a scan from a scan from a scan.

MALE SPEAKER: Ja.

10 MS MDLETSHE: And I think I did, I do have, I will check if I can find that because when Yousuf got the information to go, Yousuf is the finance (inaudible), when he got it he was also, he asked for the Excel spreadsheet so he can do the proper calculation because he could not tell out of this, so I had requested for it and I did pass it on. And for me, for one to do that comparison and then understand and question the new or the revised proposal then, that (inaudible).

MALE SPEAKER: Can we get the same Excel sheet? I do not think, do we have it? I do not think we have it because it will make our life also easy to get a direct comparison.

20 MS MDLETSHE: Sure.

MR SPRONG: (Indistinct).

MS MDLETSHE: May I send it directly to them and then...?

MALE SPEAKER: Yes, please.

MR SPRONG: Whatever you send must include him or our lady there, she is the main, the most important person of everybody here.

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[Laughs]. Do you agree?

MS SELOKELA: Uhm?

MR SPRONG: Do you agree?

MS SELOKELA: Thank you. [Laughs].

MR MZINYATHI: Look, going back to the RFP, I know you are working a lot, just out of interest, again out of the interviews we were told that the business case is very neutral as to where the OEMs are going to be stationed. That is number one and then two, the colleagues then also tell us that they knew that that facility in Pretoria was most likely not going to be able to accommodate all four OEMs. Why then do you specify in the RFP, if specified that you are going to, you guys are going to be at Pretoria?

MS MDLETSHE: So then... (intervenes)

MR MZINYATHI: That does not make sense.

MS MDLETSHE: Sure, the understanding from whoever at the time is that the facility in TE Koedoespoort was not going to be able to accommodate.

MR MZINYATHI: Four?

MS MDLETSHE: For four. That is my understanding.

20 MR SPRONG: It might have... (intervenes)

MS MDLETSHE: I do not, I did not, I was not involved in the business case drafting, that study is done by the engineers or... (intervenes)

MR MZINYATHI: Yes, yes, yes.

MS MDLETSHE: But please, I think what you are not giving me here, you ask a question but also you want to you know, cut me short to...

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(intervenes)

MR MZINYATHI: No, no, no, I am not cutting you short, I said yes, I agree with you. Sorry... (intervenes)

MS MDLETSHE: When I explain... (intervenes)

MR MZINYATHI: No, no, no, I am saying yes, I agree with you, sorry, sorry if it comes across.

MS MDLETSHE: Oh okay. Again there is segregation of duties.

MR MZINYATHI: Sure.

MS MDLETSHE: And again I would like to repeat, procurement
10 process you oversee from the inception of the procurement process
up to the award of the contract, right. Business case I was not
involved but if that was the understanding at the time, then it is fine.
If Business is saying though when you issue and right now we know
that locomotives are built in Koedoespoort and that the RFP should
then call for you know, DDP, Koedoespoort, then the RFP will be
saying that. If Business do specify that, so definitely.

MR SPRONG: Can I ask you quickly in terms of the role of Supply
Chain, your main function is actually to look at the compliance of BEE
and all those kinds of things being the returnables, if that was all
20 submitted. You have not gone into the technical stuff or into the
finances and things like that?

MS MDLETSHE: No.

MR SPRONG: So it is more to make sure that everything, all the
returnables was there?

MS MDLETSHE: No, no, no, it is to make sure that there is

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compliance in terms of evaluation criteria from stage one which is administrative until the last stage.

MR SPRONG: Okay, yes.

MR MZINYATHI: So the team does not evaluate outside...
(intervenes)

MR SPRONG: There you go.

MS MDLETSHE: Of the evaluation criteria that was set upfront. When you get the document, also what you need to do, again administrative, definitely correct, substantive, but the substantive part
10 of it, there is financial stability requests. You then bring Finance. These are three years because one can look at it, it is three years because someone submitted for 16, 17 and 18, we know that is not three years, you bring them in, so our role is to check that they comply with the governance rules as well.

If there are any risks that we have pointed upfront, people work around those confined space of procurement processes, yes.

MR SPRONG: Are you happy?

MR MZINYATHI: No, you ask the question, you are the one that should be happy.

20 MR SPRONG: Ja, but you... [Laughs]. No, no, I think I understand how the Supply Chain worked. Indeed their role is not in the financial deviation, check that is done.

MS MDLETSHE: Ja, we do not do evaluations.

MR MZINYATHI: Ja.

MS MDLETSHE: We do not.

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MR SPRONG: What is the process if an employee... (intervenes)

MR MZINYATHI: It is Laher that does the evaluation and his team.

MS MDLETSHE: Yes.

MR MZINYATHI: And Thabo.

MS MDLETSHE: If there is a query... (intervenes)

MR MZINYATHI: And Mohamed Moola and the likes.

MR SPRONG: I think the important part is, if there is a query.

MS MDLETSHE: Yes.

MR SPRONG: How do you deal with a query?

10 MS MDLETSHE: If there is a query, they will call and I want to make an example with Finance.

MR SPRONG: Ja.

MS MDLETSHE: The discussion will take place with the finance team and the SCS person. They will then explain for example, here we have asked for this, this is what the criteria is asking for, however what we have received is slightly different by this and we need clarity on this and even clarification, they draft clarification. You review, they explain what it means, so you do not say something that you do not understand. You then go through it.

20 My role was to take it because we had a Chairperson of the team which is Mr Jiyane, was then to request Mr Jiyane to join the team so that we can go through it and then I can issue. If the Chairperson is comfortable, then we can issue.

MR SPRONG: Okay, because that clarifies that process.

MR MZINYATHI: Okay, relocation.

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MS MDLETSHE: Yes.

MR MZINYATHI: Okay, so you became part of the team, they started shortly after the memo was signed, correct?

MS MDLETSHE: I think, I stand to be corrected but I can confirm the date, looking at the date when the memo was approved, as well as the date on the attendance register, ja.

MR MZINYATHI: Okay and then who did the financial verification of the figures of the quotations, yes?

MS MDLETSHE: Sure, it was Yousuf Laher, he was requested by
10 Anoj to review as well and I am assuming Anoj did, no, no, no and Gary, because both of them responded with comments in terms of the proposals.

MR MZINYATHI: Yes, that is what I understand as well. There is one e-mail from Mr Laher where he appears not to agree with what has been quoted. I am not sure if you remember that e-mail.

MS MDLETSHE: I know the e-mail where he was saying there is a lot of questions that he wanted to ask the OEMs.

MR MZINYATHI: Yes. How did you deal with that e-mail?

MS MDLETSHE: That came to me and I forwarded it to the OEM,
20 and then the OEM responded with a lower proposal as opposed to what he had reviewed. The very same e-mail was forwarded to the team, Laher, Anoj, Gary, Ndiphiwe, so it was forwarded back to them. So it was literally forwarding e-mails.

MR SPRONG: Post office.

MS MDLETSHE: Post, paper post office literally, ja.

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MR MZINYATHI: So are you saying Laher was answered in other words?

MS MDLETSHE: I cannot say Laher was answered because he never came back and said I am good to go, but the request from the Group at the time, I think he was acting as Chief after that but it was the e-mail from Gary saying Lindiwe will prepare for the GCE to approve. So my understanding... (intervenes)

MR MZINYATHI: If everyone agrees, if I understand the... (intervenes)

10 MS MDLETSHE: Ja, I can read it, I have got it.

MR MZINYATHI: Yes.

MS MDLETSHE: So based on that my understanding if you have forwarded, all of that, they revised, then it means it made business sense for one to accept.

MR MZINYATHI: Maybe (inaudible) from the e-mail and who are the...

MS SELOKELA: Copied people?

MR MZINYATHI: Ja.

20 MR SPRONG: I think Gary was the Head of Supply Chain in a Group at that stage.

MS MDLETSHE: Yes.

MR MZINYATHI: Actually procurement officer... (intervenes)

MS MDLETSHE: But ja... (intervenes)

MR MZINYATHI: So to whom is the e-mail addressed to?

MS MDLETSHE: The e-mail is coming from Gary to Lindiwe, copy

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Anoj, copy Thani, Ndiphiwe and Emma. Emma is TIA, the representative there at TIA. So it reads:

“Hi Lindiwe, feedback from the meeting this morning is that BT will be sending us another letter providing further clarity on their offer. This is expected on Monday. Can I ask that you update all documentation, *id est* memos for us to send to the Acting GCE for approval of CNR and BT proposal and letter from GCE to CNR and BT accepting proposals in order to save time. Should the team copied, they are happy with the proposal, we can then in effect sign off quickly.

Please also ensure that the TIA sign off from there.”

MR MZINYATHI: Okay, did you note that from the people that e-mail is addressed to, Mr Laher is missing?

MS MDLETSHE: Ja, ja.

MR MZINYATHI: So was that deliberate, was that an omission? I know you did not draft the e-mail.

MS MDLETSHE: I think you need to ask Gary that.

MR MZINYATHI: Is it?

MS MDLETSHE: It would be unfair for me to say it was, I think maybe it was deliberate or not.

MR MZINYATHI: At the time did you pick up that Mr Laher is missing?

MS MDLETSHE: I did, I did.

MR MZINYATHI: And what... (intervenes)

MS MDLETSHE: But Mr Laher was not even appointed to be the

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member to negotiate, but he was asked by Anoj who was appointed to be the member, to review. So again maybe he asked him because he was initially part of the TFR finance... (intervenes)

MR MZINYATHI: But I thought the people that are there, it is not only him that was copied in that e-mail that was not part of the negotiating team.

MS MDLETSHE: Ja? So it is not only him?

MR MZINYATHI: Him. There is a (inaudible) that you sent from... (intervenes)

10 MS MDLETSHE: Emma.

MR MZINYATHI: TIA.

MS MDLETSHE: TIA, ja.

MR MZINYATHI: TIA.

MS MDLETSHE: Sorry, I did not get your question. You are saying, you are asking me that Yousuf Laher was not copied.

MR MZINYATHI: Yes.

MS MDLETSHE: So and I did see that, but if you look at the appointed team, Emma, they do not get appointed, they are HVT.

MR MZINYATHI: Okay.

20 MS MDLETSHE: When you appoint the team cross-functional, you do not include TIA, they have that mandate to come and support Supply Chain, so that mandate already is there for them to support.

MR MZINYATHI: Okay no, that is fine. Now is it not part of your role as well to make sure that okay, here is Laher who has been asked to validate the numbers and he raises queries, is it not part of your role

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then to then make sure that whatever queries come, then are sorted?

MS MDLETSHE: One, it was not part of my role to say Laher is not here, Zuneid, because if that was the case, then initially I was supposed to ask... (intervenes)

MR MZINYATHI: No, but that is not my question with respect. My question is, is it not... (intervenes)

MS MDLETSHE: No, it is not part of my role, my role is to make sure that people that are appointed as the team and the people and again I want to repeat, the people that are appointed, all of them were
10 copied. So it is not my role to include other people that... (intervenes)

MR MZINYATHI: No, not include.

MS MDLETSHE: And again and allow me.

MR MZINYATHI: Okay, sorry.

MS MDLETSHE: Allow me to explain.

MR MZINYATHI: Sorry, sorry, sorry.

MS MDLETSHE: Because yes or no answers are not fair sometimes.

MR MZINYATHI: Sorry.

MS MDLETSHE: So it was not part of my role to include. One, I did not request Laher to review, it was the GCFO.

20 MR MZINYATHI: Yes.

MS MDLETSHE: So my role was to make sure that the team that is appointed as per the memo, all of them do get the communiqué. Laher was not there, so hence it is not my role.

MR MZINYATHI: No, but my role is not... I am not asking you if your role is to make sure that Laher gets there, the communiqué.

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MS MDLETSHE: Sure.

MR MZINYATHI: I am asking about there is a clarity, this is how I look at it and perhaps I have the benefit of hindsight, I am someone who is looking at it from the outside, I am not someone that is looking at it from the inside, I am looking at it as I am saying, here is someone who appears to be looking after the interests of Transnet and they are concerned about the costs that are related to this project. They are employees of Transnet and they are supposed to do that.

10 In this response that comes, he is not there and there is no evidence from where I am sitting that says his queries have been addressed. Do you understand?

MS MDLETSHE: Uhm-uhm.

MR MZINYATHI: It is in that context that I am asking, that is why I am asking you the question. Who of... Maybe I must ask it different, the question differently, not address it directly to you. Whose obligation then is it to make sure that all, the clarity that was sought by Laher, he gets the clarity and is able then to give meaningful input to the (inaudible)?

20 MS MDLETSHE: My assumption at the time was that it might have happened that Laher had a discussion with Anoj because if he, Anoj is writing to say Yousuf, please review. Yousuf is one, I have worked with Yousuf, Yousuf is very thorough when he does things, he will ask a whole lot of things for him to be able to review.

MR MZINYATHI: Sure.

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MS MDLETSHE: So my assumption at the time was that maybe there was that alignment somewhere, but I did not even want to say Laher, are you comfortable, are you answered, are you whatever, because if the GCFO himself who is higher than Laher, comes back and say or Gary will say I am comfortable with this and copy all of the others including the GCFO who is higher than Laher to say if all of the people that are copied are comfortable then we are good to go. So I thought then maybe they were aligned, they did discuss and again it was not my responsibility to say again Laher, are you comfortable?

10 So maybe the assumption at the time was wrong, I do not know, but my duty and my role was to make sure that the team that was appointed is on board.

MR MZINYATHI: Okay, I have exhausted my questions around that point.

MR SPRONG: Okay, can I ask a little bit more (inaudible)? The scope of work for TE, when was that being issued?

MS MDLETSHE: There were questions around, I do not think, I cannot remember if the scope and I do not think it was included as part of the RFP... (intervenes)

20 MR SPRONG: There was a value proposition in that, in the RFP?

MS MDLETSHE: Ja, but what then happened, looking at the clarifications and all of that, there were questions around TE and there were responses from technical team, TFR technical team around those questions, but I think the clear, clear scope was then eventually given during the negotiations because there were two

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negotiations that were taking place.

MR SPRONG: Yes.

MS MDLETSHE: It was the TFR and the TB.

MR SPRONG: Ja, ja.

MS MDLETSHE: And my understanding that the scope, the detailed scope was going to be negotiated during that time. That is the understanding. I stand to be corrected there, but looking at the questions, I think the final scope of work, exact scope for TE was discussed there. I stand to be corrected.

10 MR MZINYATHI: Just linked to that question, sorry to disturb you, when, our reading of the documents, we understand that some tenders or bidders, let me call them bidders, responded and included TE, others did not, clarity was sought on how to manage that and then in a letter written by Mr Molefe that was in January, he then says TE was compulsory. Where does he get that?

MS MDLETSHE: Where does he get that?

MR MZINYATHI: Yes.

MR SPRONG: Ja.

MS MDLETSHE: That TE was compulsory?

20 MR MZINYATHI: Ja.

MS MDLETSHE: I do not know where he got it, but anything that was communicated to the bidders, if it was technically, directed to Technical, it will always be, the answers will be requested from the technical team. If it was Finance, the answer will be requested and I think some of the documents that we have shared with you guys, it

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was saying where I think others were no answers but it was saying Technical, SCS, Finance, and maybe the risk one, that information he got it from Technical. I do not know.

MR MZINYATHI: But why would Technical talk to a document that is prepared by you, for instance, because... (intervenes)

MS MDLETSHE: No, it is fine, ja. You see that is uncomfortable.

MR MZINYATHI: Ja.

MS MDLETSHE: RFP is not a CS RFP, we compile but any information that goes to RFP, you get the info from the Technical, you
10 get the info from Finance, CFST, cross-functional sourcing team, they individually or teams review that what is in the RFP represent what we have provided. Section 3 is an example which talks to Finance, that information was obtained from finance team, so ours is to make sure that you collect all of that but commerce... Some were things like the administration, the returnable documents.

Obviously there will be returnable documents that talks to the BEE, to the vat, (inaudible) but those that talks to Finance, Finance will have to provide and say TCO model, this is their attachment, this is what you need to request, so.

20 MR SPRONG: Do we have the final scope of work for TE? Mohamed had the last, the lot of (inaudible).

MR MZINYATHI: Well as per watch because here is Lindiwe saying that the TE scope was only clarified during negotiations.

MS MDLETSHE: But again... (intervenes)

MR MZINYATHI: They know that.

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MS MDLETSHE: With a, to say I stand to be corrected.

MR MZINYATHI: No, I agree with you.

MS MDLETSHE: So. [Laughs].

MR MZINYATHI: No, I agree with you.

MS MDLETSHE: (Other official language).

MR MZINYATHI: No, I agree with you, I am just saying you are telling us and I agree, that is what I have read in the documents as well, you see.

MR SPRONG: Frikkie Harris when we had the interview with him, he
10 said there was a second scope of work.

MS MDLETSHE: Sure, that was issued?

MR SPRONG: Which was issued.

MR MZINYATHI: No, there is an additional, it is called additional scope of works. We do not know what it means and all of us are still asking ourselves what that means.

MS MDLETSHE: And he did not mention at what point, if it was during the negotiations or it was after the negotiations? Because I...
(intervenes)

MR MZINYATHI: It was placed under workings of that negotiations.

20 MR SPRONG: Ja.

MS MDLETSHE: But negotiation, oh the TE negotiations, because I was not part of that team.

MR SPRONG: Okay.

MS MDLETSHE: I think he is in a better position to explain that part.

MR SPRONG: Okay, I think what we must say then, 'at what stage

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the (inaudible) stopped.

MS MDLETSHE: Okay, so TE negotiations, I was not there. There are two sessions taking place, it was the TE with the OEMs because obviously the RFP said you will subcontract TE, so those negotiations had to take place. I was not part of that, but the TFR negotiations there I was.

MR MZINYATHI: But if you are saying this thing is saying you will contract TE... (intervenes)

MS MDLETSHE: And there was information provided around TE, but
10 I am not sure what exactly as part of the scope of work that was issued.

MR MZINYATHI: But I understood you to say that it was not mandatory to use the work, the scope was not provided?

MS MDLETSHE: I did not say, no, no, no... (intervenes)

MR MZINYATHI: It was then provided for the RFP.

MS MDLETSHE: I did not say. No, I did not... (intervenes)

MR MZINYATHI: No, that is why I am saying I understand you...
(intervenes)

MS MDLETSHE: I think what I will not agree, no, no, no, what I will
20 not agree to is you putting words into my mouth. I never said it was not mandatory, never. Today I did not say that.

MR MZINYATHI: You remember my question around Mr Molefe?

MS MDLETSHE: Yes.

MR MZINYATHI: What was my question?

MS MDLETSHE: You said where did he get the statement of saying

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in the letter that he issued, that the TE scope will then be discussed or confirmed.

MR MZINYATHI: No, I said it says it is compulsory, you said you did not know.

MS MDLETSHE: No, no, no, I did not say I did not know where he... I said I did not know where he got that.

MR MZINYATHI: Yes, I mean that.

MS MDLETSHE: I did not say I did not know that it was compulsory.

No, I do not know if you guys are recording. Can we go back?

10 MR MZINYATHI: Okay no, it is fine.

MS MDLETSHE: Can we go back?

MR MZINYATHI: No, no, it is fine, let us... While we, okay TE scope was compulsory, that is your understanding?

MS MDLETSHE: The RFP is saying you will subcontract with TE.

MR MZINYATHI: No, the RFP is saying the scope for TE will be prescribed at a date.

MS MDLETSHE: Okay, that is a scope part, but what the... Can we get a RFP please?

MR MZINYATHI: No, no, that... (intervenes)

20 MS MDLETSHE: That is two things now. It is how the TE is introduced... (intervenes)

MR MZINYATHI: Yes.

MS MDLETSHE: And their scope but what we discussed here, it was the scope for TE but you did not ask me if the TE element was compulsory or not.

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MR MZINYATHI: No, no, I did not ask you, you are right.

MS MDLETSHE: Okay.

MR MZINYATHI: I agree with you, I agree a 100%.

MS SELOKELA: Can I ask it differently, that question? Well I understand it differently. If the question is Mr Molefe had said that TE or the way he responded to the letter is that TE is compulsory and the question was, where would he get that from, is it not? And if I am correct your answer was that you do not know where he would have got that from.

10 MS MDLETSHE: And I said anything that relates to Technical, obviously Technical is the one who provides information. Anything that relates to Finance, it is Finance who provides the information.

MR MZINYATHI: Yes, that is what you said.

MS MDLETSHE: That is what I said.

MR MZINYATHI: I agree.

MS MDLETSHE: Ja, and I said I cannot repeat or say on his behalf that he got it from Gary or he got it from Thami or to be specific, but I know that information that has to do with Technical, there is a technical team who provide clarity. And again the way you are asking
20 it now, I remember it is how you asked, but maybe because this is an interview, again for someone to say if Mr Brian Molefe made the statement, where did he get the statement, seriously that question you are saying I must respond on behalf of Mr Molefe to say maybe he got it from Anoj or whoever, I cannot respond for that.

MS SELOKELA: Ja.

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MS MDLETSHE: All I know I can confirm, any information that is communicated, it might be technical, there are people that are technical experts that provide guidance to us.

MS SELOKELA: Okay, can I just, I just want to finish this point, I just want to go back because I just want to understand the whole compulsory part of TE in the RFP. So fine, I take the point that fair, you cannot be expected to know where or where that statement comes from because you were not the compiler... (intervenes)

MS MDLETSHE: Where he got it from.

10 MS SELOKELA: Where he got it from.

MS MDLETSHE: Ja.

MS SELOKELA: Okay fine, I take that but if we go back and for me this is just logic, maybe it is logic to me, would he not have found it in the RFP itself if the RFP is there, is the source of TE is compulsory, it is clearly stated in the RFP?

MS MDLETSHE: No, you are a 100%, that is correct to say it can be in RFP. It can be as well a team informing him that again mister... Although it was signed off because any documentation that was issued out, they had to go all the way up for signing off. He might
20 have found it there, he might have been told that and been reminded by somebody who was bringing a letter to him or who was, he was engaging with to say this is how we need to respond or your response is correct because this is what we have communicated to the market or this is what we have clarified to the market.

MR MZINYATHI: Ja.

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MS SELOKELA: All right, thank you.

MR SPRONG: Can I just put a different angle? When we had the discussion with Frikkie, he said the part which will always be part of TE is the maintenance of the locomotives.

MS MDLETSHE: Sure.

MR SPRONG: So that is the compulsory part. What is the other part of that, of TE?

MS MDLETSHE: My understanding looking at documentation, was that TE, they are trying to make TE not only the Maintenance
10 Department or a section, but also to be able to manufacture locomotives. That is the understanding that I have got through documentation that I have seen to say TE, this is where they want to be in future and so forth. And looking at the scope later to say if TE is assembling and again it is information that I get when you look at supply involvement or, and part of supply development there is an assembly part and on all four it is TE.

So assembly is not maintenance and if the OEM themselves on supply development are disclosing to say our assembly in terms of the whole manufacturing part will be done by TE, it is beyond
20 maintenance.

MR SPRONG: No, I just say what he was telling us... (intervenes)

MS MDLETSHE: Sure, sure, sure, so for me if you look at all of that, ja.

MR SPRONG: You see that is why it is important to understand what was the initial scope of work, what was issued to the OEMs.

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MS MDLETSHE: Sure, so that, you did not get or you want me to maybe provide something that was issued?

MR SPRONG: Ja, I do not know... (intervenes)

MS MDLETSHE: That is fine, I can.

MR MZINYATHI: Yes, that was, it was in that context that I had asked the question.

MS MDLETSHE: That is fine. No, no, no, if the request was simple to say can you provide us with the scope of work that was issued? The scope of work was part of the pack that was issued with the RFP
10 and I do have, I can forward that.

MR MZINYATHI: Please can you give us? Because we are battling with this question.

MS MDLETSHE: Wait, wait, wait, I want to check from the and I might be wrong, from the folder that was given to MNS, RFPs were not submitted?

MR MZINYATHI: They were there.

MS MDLETSHE: And the scope?

MR MZINYATHI: That is why we are telling you what is in there in so far as TE is concerned. It says it would have been prescribed.

20 MS MDLETSHE: No I do not, I am not disputing what you are telling me, I was disputing the words that you were putting in my mouth or your question that says where would have Mr Brian got it from. I think that is the only thing.

MR MZINYATHI: No, that one I understand. I am past that one, I am saying I asked the question related to in the midst of all of that, I

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asked the question and I put it to you in fact as a statement, that the RFP does not explicitly say TE is compulsory.

MS MDLETSHE: Okay, no... (intervenes)

MR MZINYATHI: It says... (intervenes)

MS MDLETSHE: It is fine.

MR MZINYATHI: Ja, ja, ja, it says... (intervenes)

MS MDLETSHE: That is fine, I take it. If I was wrong then it is fine, I was wrong there.

MR SPRONG: You see, that is why I asked you when was the scope
10 of work been issued to them and I said that was during the negotiation process.

MS MDLETSHE: Sure. I think ja... (intervenes)

MR SPRONG: And that scope of work we do not have. I (inaudible) it might be in that major pack that they have just received today. It could be there, I am not sure.

MS MDLETSHE: Ja. No, I can... (intervenes)

MR SPRONG: And also the second scope of work, we do not have it.

MR MZINYATHI: But guys, I want us to put first the issue of the original scope of work.

20 MR SPRONG: Yes.

MR MZINYATHI: If any.

MS MDLETSHE: Okay.

MR MZINYATHI: You understand? It is too bad because as, your initial response was that it was prescribed for in the RFP document.

MS MDLETSHE: Not the scope.

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MR MZINYATHI: Okay.

MS MDLETSHE: I had said the use of TE as a subcontractor.

MR MZINYATHI: Okay, maybe I misunderstood.

MS MDLETSHE: Ja. No, no, I did not say the scope. Gentlemen, it is four, it is how many of us in this room, five people, I never said the scope was in the RFP and... (intervenes)

MR MZINYATHI: Okay, was it clarified to the bidders?

MS MDLETSHE: There were clarifications, I even said there were clarifications around TE scope and the first pack that we gave you had names to say technical team to respond, technical... I just need to go back and say, did we respond and we also provided the CD to you guys where we had responded and I am not sure, I cannot remember if the scope was clarified or it was clarified during negotiations.

MR MZINYATHI: Ja, because you see, why I am asking... (intervenes)

MS MDLETSHE: I think we misunderstood each other there, I never said the scope was in the RFP, I said the compulsory part was the use of TE as the subcontractor.

20 MR MZINYATHI: Okay but if you are saying, maybe I am asking the question wrongly there, the people that responded to the scope of TE, where did they get it?

MS MDLETSHE: Again... (intervenes)

MR MZINYATHI: I do not know.

MS MDLETSHE: I need to go back to clarify, not that I do not know.

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MR MZINYATHI: Okay.

MS MDLETSHE: It is not that I said I do not know.

MR MZINYATHI: No, no, you did not.

MS SELOKELA: Did you find the RFP?

MR MZINYATHI: No, I am looking for it.

MS SELOKELA: Sure.

MR MZINYATHI: I cannot find it here (indistinct).

MS SELOKELA: That is the (inaudible) one.

MR MZINYATHI: So where will you find it, let us first clarify it.

10 MS MDLETSHE: Okay, let us start with section 3 where we said DDP. Either we said Koedoespoort... Go to section 3 under price, finance, because there was that question around, just right on top where it says RFP section 3, there is the... Sorry what section is that? Sorry, you need to go down. There is a line that says DDP or in accordance with using... Go down... (intervenes)

MR MZINYATHI: Let me say find. Okay.

MS MDLETSHE: Is this your down, né?

MR MZINYATHI: Section 3? Okay here is section 3.

MS MDLETSHE: Ja, it says DDP, duties, availables. Go down.

20 Okay, supply basis, delivery, be disqualified... Can you say... Go down. Maybe a search, just for now say Koedoespoort.

MR MZINYATHI: How do you spell it?

MS MDLETSHE: Koedoo [spelled]. Uhm-uhm, Koedoe Double O right, S-P... (intervenes)

MR SPRONG: D-O-E.

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MS MDLETSHE: Ja, D-O-E-S-P-O-O... (intervenes)

MR SPRONG: S-P-O-O-R-T.

MS MDLETSHE: Ja. Will it search with caps?

MS SELOKELA: No, I am saying he should know.

MS MDLETSHE: Why, have you been?

MR MZINYATHI: He is Afrikaans. [Laughs].

MS MDLETSHE: Oh.

MR MZINYATHI: Afrikaans speaking also.

MR SPRONG: (inaudible).

10 MR MZINYATHI: It says no matches here.

MS MDLETSHE: Okay, say Pretoria or South Africa, can it only say South Africa? Because they are a South Africa destination and then maybe we did not say that here. If you say Pretoria, no match?

MR MZINYATHI: I checked.

MS MDLETSHE: Is it no match? Then only selected it, then I was wrong. We left it at South Africa and not Koedoespoort. But there was something, I need to remember where it mentioned Koedoespoort. If it was clarification, okay but it is only then (indistinct) South Africa. Okay, then I was wrong. I need to check

20 where we have mentioned, if it was not on clarifications, where we have mentioned Koedoespoort. Okay, another thing, on the RFP what else did you want?

MR MZINYATHI: We were... (intervenes)

MS MDLETSHE: Oh, sub TE as a subcontractor.

MR MZINYATHI: TE?

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MS MDLETSHE: Ja.

MR MZINYATHI: No, but I think you and I agree now as I understand it, that TE has said its role is going to be prescribed.

MS MDLETSHE: No, no, no... (intervenes)

MR MZINYATHI: The scope itself was not... Oh, okay.

MS MDLETSHE: Ja, ja, sorry, continue.

MR MZINYATHI: I am saying we agree that it says TE scope will be prescribed, but the scope itself is not in the RFP.

MS MDLETSHE: No, no, no... (intervenes)

10 MR MZINYATHI: You do not agree?

MS MDLETSHE: It is not on... Now we agree... (intervenes)

MR MZINYATHI: Yes.

MS MDLETSHE: It is not on the RFP, that is why I said I stand to be corrected.

MR MZINYATHI: Sure.

MS MDLETSHE: But clarification as well, there was something that was provided as a response but I cannot remember if it was a scope TE, but TE scope in the RFP is not mentioned upfront. What is mentioned, what I said was that they will use TE as the subcontractor.

20 MR MZINYATHI: Yes.

MS MDLETSHE: Ja.

MR MZINYATHI: There we agree, that is why I am saying I think we are aligned.

MS MDLETSHE: I did not know that we will disagree there.

MR MZINYATHI: [Laughs]. Okay.

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MS MDLETSHE: I said they will use TE.

MR MZINYATHI: Sure.

MS MDLETSHE: Ja.

MR MZINYATHI: Now in light of the fact that now we have established that this RFP... (intervenes)

MS MDLETSHE: The RFP does not have Koedoespoort, but I need to check if it only mentioned incoterms, DDP, South Africa only, I need to check in the clarification if we did not mention Pretoria or Koedoespoort in any way, because during the briefing session people raised it a number of times that it is difficult. Yes, if it arrives in South Africa and then where it goes because the place, the area of delivery in terms of the incoterms, you have to say either Pretoria or whoever.

So I think there were complaints to say South Africa is broad, where in South Africa? Or your RFP is saying incoterms, DDP, South Africa, but I think clarifications I need to check.

MR MZINYATHI: Okay. Let me put it and maybe I will ask one of my colleagues to e-mail me the page where the address for, I think it is Bombardier, it is not necessarily specified, it is like you page everywhere in South Africa.

20 MS MDLETSHE: The address.

MR MZINYATHI: That is not specified.

MS MDLETSHE: No, no, I am saying please say that again?

MR MZINYATHI: Oh, I am saying I am going to ask one of my colleagues to e-mail me a page where in the contract where it says it does not say Pretoria or anywhere.

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MS MDLETSHE: Okay, that is fine.

MR MZINYATHI: In fact it is vague and neutral.

MS MDLETSHE: Okay, that it does not say what I have said to say on all four I think it says Koedoespoort or any other.

MR MZINYATHI: Correct.

MS MDLETSHE: That is fine. No, that is fine.

MR MZINYATHI: And then because where we want to understand is, if then it is very neutral, on what basis are we negotiating any relocation terms? Let us say you, we agree that this is what it said.

10 MS MDLETSHE: Sure.

MR MZINYATHI: Yes, I am not saying you agree.

MS MDLETSHE: Just as a, no, no, no, as in just for argument sake, for me again if someone quoted anywhere in South Africa now, because earlier on I have said if someone quoted but it was specifically to Koedoespoort and Pretoria, now you are moving that person to Durban, you do have a right to ask them, is your proposal the same or are there any changes? But if it just says anywhere in South Africa, now you are saying in Durban, there is nothing wrong with asking somebody to say now we know later, just for argument
20 sake, now we know that you will be based in Durban.

This is where you will be based in Durban. It is the place or the area still your proposal? Takes care of what needs to be done for you to be fully fledged and for you to be able to manufacture? You are asking. Remember here you are asking and engaging to say you have given us a proposal, now we are specifying, it is no longer

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broadly South Africa, we are specifying to say Durban. Ask, it can go down, it can go up, whatever the difference is, there is nothing wrong with that.

MR MZINYATHI: Now okay and I take that as a fair point but, what you are making, but does your answer change if you consider that if I say I allocate you anywhere in South Africa and in your price that you are quoting me for with the locomotives, you have built in the price of locating it anywhere in South Africa.

MS MDLETSHE: Okay, I want to use my example earlier on,
10 Johannesburg versus Cape Town.

MR MZINYATHI: Is that Cape Town or Durban? But it is fine, it is immaterial.

MS MDLETSHE: No, no, no, I said Johannesburg and Cape Town. No, no, no, it is material.

MR MZINYATHI: Okay, okay.

MS MDLETSHE: Because now you are saying, you said Durban. I had said... (intervenes)

MR MZINYATHI: No, no, I did not say Durban... (intervenes)

MS MDLETSHE: No, no, I said Johannesburg... (intervenes)

20 MR MZINYATHI: I asked did you not say Durban?

MS MDLETSHE: No, no, I said Johannesburg and Cape Town.

MR MZINYATHI: Okay no, that is fine. It is okay, for me it is neither here nor there. For you it is material, for me it is neither here nor there, it is okay.

MS MDLETSHE: Okay, so should I continue?

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MR MZINYATHI: Continue, yes.

MS MDLETSHE: Okay, so... (intervenes)

MR SPRONG: You can use A and B.

MR MZINYATHI: Ja.

MR SPRONG: Make it neutral.

MS MDLETSHE: No, but there is a difference between these two areas you know, and that is what I am trying to... (intervenes)

MR MZINYATHI: It is not important for me... (intervenes)

MS MDLETSHE: But it is fine.

10 MR SPRONG: So area A and area B.

MS MDLETSHE: Okay, area A and area B, so for me what is important and again as a SCS person to avoid later somebody coming back and said, in your proposal you did not ask, you just said South Africa, so when I did my own calculations, as an example I used Johannesburg or I used Durban because the ships are coming in Durban or I used PE, is it PE or Kimberley where the ships can go through as well?

20 So I, if my ship then lands in PE for example, clearing and all of that, but now moving that to Durban as opposed to moving that to Johannesburg, is slightly different. Again if there are certain things that are moving from my area of origin or my country of origin to South Africa, as a start for me just to do the facility and all of that, there is a transportation cost involved. So as an example, I am trying to explain, but if I were then to change my ship not to a, I mean the ship that is containing my stuff, my kits and everything, now not to

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arrive in Kimberly or PE, to arrive in Durban, there is a slight change in terms of price.

As a SCS person that is the understanding that I have to say give somebody an opportunity to say will it impact your price either by up or down? If it does, explain to me why the changes because originally you had transportation and then someone would then explain. Like CNR did here, because the question was asked by Yousuf that there was transportation, there was labour, there was whatever, but now why are we charged for the same thing? Are you
10 saying labour in Johannesburg was going to be less or more? It made sense what he was asking.

MR MZINYATHI: Sure.

MS MDLETSHE: And a simple procurement process, you look at those things as well.

MR MZINYATHI: Yes that is, it is in that context that I am asking.

MS MDLETSHE: Ja.

MR MZINYATHI: It does not make sense to me immediately when you tell me in the RFP I say I am going to place you anywhere.

MS MDLETSHE: Anywhere.

20 MR MZINYATHI: I would assume that when you do the response, you have quoted me for being placed anywhere in South Africa.

MS MDLETSHE: Sure, sure.

MR MZINYATHI: You understand? So why are you then going to...
(intervenes)

MS MDLETSHE: Because you charge me more.

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MR MZINYATHI: To cost me again... (intervenes)

MS MDLETSHE: Ja no, I understand what you are... (intervenes)

MR MZINYATHI: For placing me.

MS MDLETSHE: I hear what you said.

MR MZINYATHI: Because using your example again, it did not matter whether you place me in PE, in Cape town or in Durban. It did not matter, my ship could land anywhere in that country, you would have still billed me.

MS MDLETSHE: I hear you, I hear you.

10 MR MZINYATHI: Right?

MS MDLETSHE: I hear you, but for me as a procurement person at the time when we were asking is there going to be an impact, but again if I remember correctly, because I came in, I found out later that BT had already approached after receiving a letter from Brian, I think for the move to Durban, they then gave a proposal, Bombardier. And they were saying if we were to move, this is what it will cost for us, you know. So...

MS SELOKELA: Can I just come in because I am really, really getting confused about just the word move, because yes, the example
20 I fully understand it, when it is that example and the person that is submitting that bid was fully aware of that example that or was giving, there was a reasonable expectation of being in B for example and now have to be in A, and to afford that person an opportunity to say well, I know you had proposed this, now you are changing, but I think where we would like some clarity on is that there was not a B, there

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was not an A, there was a place, right? And then quote me of a place.

MS MDLETSHE: Sure.

MS SELOKELA: So that person, obviously I cannot speak for them, I am not them but I am saying logically that person who is making that bid, is considering all these things that okay, one fact is clear, it is in South Africa.

MS MDLETSHE: Ja.

MS SELOKELA: Where in South Africa is you know... (intervenes)

10 MS MDLETSHE: It is not known.

MS SELOKELA: It is not known... (intervenes)

MS MDLETSHE: At the time, ja.

MS SELOKELA: But I am quoting them because my probability test tells me that it will cost me plus minus this how much to set up anywhere in South Africa. Right, so I get the whole thing that for the sake of I do not know, maybe completeness or fairness, then now the location after the bid has been, after the proposal has been made, factoring in being based anywhere in South Africa, then you want to afford the person in the bid or the (inaudible) say, you say okay now it
20 is definite, it is at B.

Right, I think what we asked and said, why is it material to afford that person a chance? Okay, you can afford them a chance to say your proposal, does it still stand? Fine, that I get né, but what we are saying is that what happens after that, after you have given that opportunity to say you know, does your initial quote change, yes or

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no? What we are saying which Mr Mzinyathi can correct me is that it is immaterial if that person comes to us and say yes, it does change or no, it does not change because they had initially said anywhere.

MR MZINYATHI: Sure, sure.

MS MDLETSHE: And my response again is saying, I hear because we have checked, then it says DDP and again I want to check if nowhere during the clarifications on negotiations where we specified, because negotiations, that is where a lot of changes in terms of their proposals happened when we were clarifying, when we were adding
10 some exercisable options or variation orders that the technical team wanted and so forth. A lot of changes happened there in terms of someone's proposal.

So what I want to confirm again, I want to go back to Yousuf, did we make mention of any Koedoespoort or Pretoria in any way during negotiations that made one firm up their price there or not? And that is all I am requesting, can I confirm because the RFP we have checked. I had said the RFP is saying that but DDP is saying that just says South Africa.

MR MZINYATHI: Okay.

20 MS MDLETSHE: And I said can I check in the clarifications anywhere where we have made that... (intervenes)

MR MZINYATHI: (Inaudible).

MS MDLETSHE: Of that. If there were no changes, then one needs to ask what then prompted us as Transnet to say now move, because there were no specific area mentioned? Now move to Durban, but

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the third question as well to the OEMs because looking at the timing as well, is your proposal still the same? We are now telling you... (intervenes)

MR MZINYATHI: No, I accept that.

MS MDLETSHE: Move, like for example look at BT... (intervenes)

MR MZINYATHI: I accepted it, no I accept... (intervenes)

MS MDLETSHE: BT is based in Johannesburg right, and BT, they are based in Johannesburg.

MR MZINYATHI: Their head offices are there.

10 MS MDLETSHE: No, no, no, they have manufactured the, it is not only the head office, the Gautrain, they did it here.

MR MZINYATHI: Okay.

MS MDLETSHE: In Johannesburg, so look at the likes of BT where they are here. What does it mean? So please, if you can allow me to go back and check.

MR MZINYATHI: No, no, that is why I am saying it is a fair request but I just want and you know, I think you will accept that I know nothing about construction of locomotives, but the little consultations that I have done, I would have expected that where they start an
20 assemble line for the Transnet locomotives, they would separate that assemble line from the Gautrain, so they would, in any event they would still have to set up... (intervenes)

MS SELOKELA: A (inaudible).

MR MZINYATHI: (Inaudible), so it is immaterial. So the fact that they are here in Johannesburg, Gautrain you know, I would say it is...

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(intervenes)

MS MDLETSHE: No, no, I might argue differently to say...

(intervenes)

MR MZINYATHI: Ja, but I am saying... (intervenes)

MS MDLETSHE: That maybe they might have a different line because of them doing locomotives and not the coaches like the Gautrain, maybe they might want to do a different assemble line altogether which I think is, you are right with that, but moving them to Durban is even again you are saying maybe back to your question, 10 you might say Lindiwe you are wrong because they are nowhere, but my understanding, BT is based in Johannesburg again if we can look at that.

But just allow me an opportunity to go back and say did we do any clarifications that made one to specify to say Koedoespoort.

MR MZINYATHI: No, no, fair enough, I think we have belaboured the point enough.

MS MDLETSHE: Ja.

MR MZINYATHI: By when can you come back to us?

MS MDLETSHE: By... Today is Thursday. Friday, I will try by 20 tomorrow because I want to engage Yousuf right, to check if when we did clarifications on the negotiations, did we at any point in time mention that Koedoespoort or whoever, just that, just the... (intervenes)

MR MZINYATHI: From the recordings, the one thing I do remember, because they are very fresh in my mind, it was introduced that these

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guys might be moved to Durban.

MS MDLETSHE: Ja.

MR MZINYATHI: But when someone says you guys might be moved to Durban, what I did not understand again is that I am still negotiating with you, as far as I understand you do not have a home.

MS MDLETSHE: Ja, ja.

MR MZINYATHI: So where am I moving you? That is the question that I had but that is... (intervenes)

MS MDLETSHE: No, no, I also... (intervenes)

10 MR MZINYATHI: Not for you.

MS MDLETSHE: No, I also, I am aware of that, that at some point during the negotiation it was highlighted that some of the OEM, you might be one of those, some of the OEMs will have to move to Durban. So if you mention the same line right across which if you look at SCR and GE, you will understand. So it makes sense that you are moving people that are already...

MR MZINYATHI: Ja.

MS MDLETSHE: But it is the same line across all four OEMs.

MR MZINYATHI: Yes.

20 MS MDLETSHE: So ja, definitely that I agree it was mentioned during the... If you were to be awarded business, this is what might happen.

MR MZINYATHI: Sure. Okay, anything on relocation?

MR SPRONG: I think we belaboured the point a lot.

MR MZINYATHI: Ja.

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MR SPRONG: No, I am comfortable.

MR MZINYATHI: You are comfortable?

MR SPRONG: This issue now (inaudible) and how was it costed, I think we (indistinct) come back at that.

MALE SPEAKER: Ja, I think I want to know because I have seen the negotiation strategy, there is a point on base price, the impact of TE, price offered, the (indistinct) will cost of losing TB.

MR MZINYATHI: I am going to talk about the negotiations now.

MALE SPEAKER: I think it is just...

10 MR MZINYATHI: No, no, so that you follow a particular theme. I do not want to be fair to Lindiwe to have an all over, one minute you are talking about relocation, the next one now is negotiations. If we are done with relocation, then we all move to negotiations as well so that now I may get also... (intervenes)

MALE SPEAKER: Okay.

MR MZINYATHI: Reconfigure now my brain to negotiations.

MS MDLETSHE: So just to confirm, it is the relocation cost breakdown that you are asking for both BT and CNR. We have checked the clause, we are comfortable with that. I just need to go
20 and check any other clarifications that we communicated to the OEMs that specify the area which says Koedoespoort or Pretoria. Also to check where in any of the four contracts had mentioned Koedoespoort or any other, because you said the BT one, it did not make mention of any place specifically.

MR SPRONG: That is right.

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MS MDLETSHE: Okay and do you still need me to confirm with Frikkie at what point the TE specifications were communicated?

MR SPRONG: No, I think we must get clarity on that as well. I know it is in the... I remember he was talking two scope of works.

MS MDLETSHE: He said two?

MALE SPEAKER: He said two.

MR MZINYATHI: Ja, there was an additional scope.

MR SPRONG: There was an additional scope.

MS MDLETSHE: Okay.

10 MR MZINYATHI: In fact it appears in the workings, in the negotiation.

MS MDLETSHE: And again I am sure somewhere during evaluations, there was this, a scope because how would one quote with TE if one does not know what would be, what TE scope will then be, because I know evaluation, financial evaluation, the TE scope at some point it was included. At some point it was not, so okay.

MR SPRONG: I think we must remember that by, where they have now the production capability, there was nothing, it is only four years, so even for TE it was to set up a full process.

MS MDLETSHE: Yes.

20 MR SPRONG: So who is carrying the cost of TE? Is that now effected into the contractor's price or is it separately or how does it work?

MR MZINYATHI: Ja you know, I almost came to your defence and said that Lindiwe (other official language) how would you know this thing?

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MS MDLETSHE: I am just taking notes and... (intervenes)

MR SPRONG: You are taking notes. [Laughs].

MS MDLETSHE: And I am not, because the value concept, I do not, at some point I remember I asked. I think I was asking Thami, to say Thami if OEMs are coming with this, who is...? I know we went there, it was just an empty warehouse and then if they are quoting us, are they then saying we are building this warehouse from scratch? But at the end of they whose property is it? I did ask that question, but I will not respond, I will check and come back.

10 MALE SPEAKER: We are grateful.

MR SPRONG: Listen, can you excuse me? I...

MR MZINYATHI: No, no, that is fine, that is why I said I wanted to start with the stuff.

MS SELOKELA: But can we just, are you also leaving?

MALE SPEAKER: No, I can stay for (inaudible).

MS SELOKELA: Oh okay, because I was worried about his questions if he was leaving.

MS MDLETSHE: Sorry, I am done with those.

MR SPRONG: Thank you, sorry for that.

20 MS MDLETSHE: But may I ask that you send it to me as well, just to make sure that... (intervenes)

MR MZINYATHI: What?

MS MDLETSHE: I have captured everything.

MR MZINYATHI: Oh okay, the questions?

MS MDLETSHE: Yes.

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MR MZINYATHI: Sure, sure.

MS MDLETSHE: (Other official language).

MR MZINYATHI: No, let me tell you, that is why you and I lost each other somewhere.

MS MDLETSHE: I think so.

MR MZINYATHI: And then what I wanted to understand, (other official language) that is why you (other official language).

MS MDLETSHE: (Other official language).

(
10 MR MZINYATHI: So (other official language). This issue of compulsory but GCE at the time was saying this thing is compulsory, (other official language) it was in that context.

MS MDLETSHE: (Other official language).

MR MZINYATHI: Because I will tell you why I am saying it is in the context (other official language) whatever information (inaudible).

MS MDLETSHE: Of course, (other official language).

MR MZINYATHI: Sure, okay.

MS MDLETSHE: I think (other official language) somewhere.

MR MZINYATHI: That is fine, these things happen.

MS MDLETSHE: But is it a problem (other official language)?

20 MR MZINYATHI: (Other official language).

MS MDLETSHE: (Other official language) let me tell you, it is human nature, (other official language).

MS MDLETSHE: Look it is a fair point, you should be a bit, I do not know whether it is apprising... (intervenes)

MS MDLETSHE: I am uneasy, you know.

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MR MZINYATHI: Or uneasy, yes.

MS MDLETSHE: (Other official language) how many years ago, you know?

MR MZINYATHI: 2014.

MS MDLETSHE: (Other official language) 2011, 2012, but it is fine, okay.

MR MZINYATHI: Sorry Willem, there is a question I think?

MR SPRONG: No, no, I just... (intervenes)

MS MDLETSHE: Negotiation.

10 MR MZINYATHI: Negotiation, oh ja maybe let us talk about the negotiations. I meet again at SCS... (intervenes)

MALE SPEAKER: It is Gerhard's jacket?

MR MZINYATHI: I think so.

MS MDLETSHE: Ja.

MR MZINYATHI: You are involved, you are there, a cradle to the grave so to speak.

MS MDLETSHE: Ja.

MR MZINYATHI: Okay, now we are there, the negotiations. I just need to confirm the team, maybe if who formed part of the negotiating

20 team?

MS MDLETSHE: I do not have this memo here but it was Finance and Finance it was Yousuf, it was Danie, it was... (intervenes)

MR MZINYATHI: (Other official language)?

MS MDLETSHE: Ja, because it had a lot of... The calculations were not based on only, I mean calculations were not going to end only at

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the evaluation, it was going to be carried over to say, should we pay, looking at these amounts? Who then pays? It is not TFR, it is Group because of the nature of the DOA and all of that. So Danie in terms of Treasury, the escalations and we had, we had loans at the time, no, no, not at the time, so they do the payments and everything, so it was better that they involved upfront, they understand what is being proposed, so Danie I think was there, he was there, not I think.

(Inaudible), I am not sure but Thami was there, Thamsanqa Jiyane, Nonkululeko and myself, (Inaudible) Sibiya.

10 MR MZINYATHI: Did the GCFO... (intervenes)

MS MDLETSHE: No, he was not there but he was, he had an office to say if we want to speak to him, confirmation of certain things, we will consult with him but he was not part of the team.

MR MZINYATHI: Oh.

MS MDLETSHE: But I just need to see how his role, the exact role, but it was more a, I think a consultation of some sort.

MR MZINYATHI: Okay.

MS MDLETSHE: And at some point I think Regiman's, was it Regiman's who Yousuf was confirming some information with them, analysis or data with them, but they were not part of the actual
20 negotiations.

MR MZINYATHI: In light of that who was then leading the negotiations?

MS MDLETSHE: Thami was the lead negotiator on the procurement point of view. Yousuf on the finance point of view in terms of driving

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the finance discussions, but Thami was the lead negotiator.

MR MZINYATHI: Is it? I think you can, please tell me if I am misquoting Yousuf, you can, he said he was the runner.

MS MDLETSHE: What is a runner?

MR MZINYATHI: He outplayed his role.

MS SELOKELA: In and out.

MR MZINYATHI: As and when he was asked to do calculations, he would do calculations. He did not do any negotiations.

MS MDLETSHE: Let me tell you people that were there fulltime...

10 (intervenes)

MR MZINYATHI: Yes.

MS MDLETSHE: And Thami was not or myself or who was Legal, there were fragments. Yousuf and Danie were there to... (intervenes)

MR MZINYATHI: (Inaudible)... (intervenes)

MS MDLETSHE: (Inaudible) as well.. Yousuf and Danie were there to look at, they had twofers that I took after the negotiations that had communications. They had their original evaluation outcome.

MR MZINYATHI: Yes?

20 MS MDLETSHE: Whatever that we would negotiate, he would go back, the laptop was with him, checked if is there any impact on the original. There was no runner if the runner is what I am hearing you explaining. He was there fulltime, facilitating the financial part of things. It was him.

MR MZINYATHI: So the person that we would need to talk to with that spreadsheet of the negotiations is him?

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MS MDLETSHE: It is him.

MR MZINYATHI: Okay.

MS MDLETSHE: Even Gary was not, Gary was doing the TE, I think it is also... (intervenes)

MR MZINYATHI: Thank you for that clarity, it becomes important for us.

MS MDLETSHE: (Other official language) so as in now and again you are called in... (intervenes)

MR MZINYATHI: No, he was sitting in but he is saying as and when
10 they needed calculations.

MS MDLETSHE: No, no, no, no, he will talk, he will ask questions, Regimen's, he will if he wanted to verify something with Regimen's, Regimen's was communicating with him, documents that were given by Regimen's, that were prepared and all of us would have, I think no, it was Yousuf, Danie and Vatman's and Thami who will get but the person who will talk through and ask questions, would be...

MR MZINYATHI: Okay, no I think you have made the point. Okay, so then tell me, before the negotiations start, right, I read the PVM and this is (inaudible) for me, you get the approval for the team that is
20 going to negotiate, then what is supposed to happen, you get a mandate.

MS MDLETSHE: The mandate when you submit it, there is a (inaudible) of the institution with you... (intervenes)

MR MZINYATHI: Yes, by that time.

MS MDLETSHE: We were requesting to negotiate an award.

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MR MZINYATHI: Sure.

MS MDLETSHE: This is the high level information that we want to and then it will say there is a price, but it was more the commercial things that we wanted to negotiate with the OEMs.

MR MZINYATHI: Sure.

MS MDLETSHE: And it would have a list of people that will be part of the team. And then the mandate will then say, PPM says or any, it will say the mandate is for the team to go and negotiate within the confines of what you have mentioned in the approval. If it is price,
10 what do you want because there was a negotiation strategy that is not signed off that you responded back to say it is not signed off. That is the mandate, that is what you need to negotiate within.

MR MZINYATHI: Okay, I am happy that you are saying that, it is not signed because we asked that question, I was not happy with the fact that it is not signed. So you are aware of that strategy?

MS MDLETSHE: The strategy I am aware but the high level of what is in the strategy is in the name of what was approved, to say...
(intervenes)

MR MZINYATHI: No, no, no... (intervenes)

20 MS MDLETSHE: But the detail in terms of you know, we want to go in with this position, if we do not come right with this, we can at least accept that or push it further to that, ja. I am aware of that, the common strategy.

MR MZINYATHI: Yes. Okay, how was everyone taken through that strategy?

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MS MDLETSHE: I think we had because I asked Thami when you guys were requesting for a signed one, again maybe the role between myself and Thami, Thami is a lead CPO, was a Chairperson, so I would report, so a lot of things like my role, I cannot go to present to any of the sittings and any document that is prepared or again it will be guidance through Mr Jiyane through a team and everybody, and I asked him when the memo requesting to negotiate, did you attach the strategy or the strategy was done afterwards or something?

So again he could not remember why the strategy, if the
10 strategy itself break down, was signed or not and then he had, I think I had said to him can we verify, can we check if maybe Gary did take it up on top? Yousuf needs to remind me there as well, because he also played a huge... (intervenes)

MR MZINYATHI: No, I am not talking about signing now, I am saying did you sit in a room and the strategy was prepared and... (intervenes)

MS MDLETSHE: Ja, it was a few, the CFST was aware, I think we had Finance, we had because it was only commercial, we could not take through Technical because that was going to be discussed after,
20 but the team of people... (intervenes)

MR MZINYATHI: Yes.

MS MDLETSHE: Yousuf, the team that was there, that was buckshot.

MR MZINYATHI: Is it? Now I wish I brought that strategy. Do you have it?

MS SELOKELA: Let me check.

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MR MZINYATHI: Because it had certain delivery rules or mandates.

MS MDLETSHE: Ja.

MR MZINYATHI: By batch pricing you must not, you know we do not want to hear batch pricing, *et cetera, et cetera*.

MS MDLETSHE: We do not want to hear batch and then batch price is then if we talk about batch, we say because the RFP as well has batch prices, you know... (intervenes)

MR MZINYATHI: This debate is really to come back... (intervenes)

MS MDLETSHE: No, no, no, I am saying that... (intervenes)

10 MR MZINYATHI: No, no, do not worry, I am head this is what is playing, I debated this issue of batch pricing and break pricing with Thabo.

MS MDLETSHE: Oh, okay, okay.

MR MZINYATHI: So it is that context which I hope I am not going to have this debate with you, that... [Laughs].

MS MDLETSHE: Okay.

MR MZINYATHI: I am saying this batch pricing is coming back. Okay, so what is your understanding of batch pricing?

20 MS MDLETSHE: Batch pricing, it is simple. Batch pricing is saying in the event of Transnet or of any economic crisis, should we have to cancel the contract, should we have to you know, stop production for whatever reason, if we stop it here what will be your price? If we stop it here what will be your price? But also it says there is a disclaimer in the RFP, in the event where as Transnet we want to do a split award, how are we then...? So there are a whole lot of things that

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links to the batch and the split and... (intervenes)

MR MZINYATHI: Okay, okay, because I have argued everything at the office. Tshiamo says there is a difference between batch pricing and break pricing. Break pricing is what you explained before, batch pricing is with the split.

MS MDLETSHE: So the breakeven point, that is what Tshiamo, is it Tshiamo Sedumedi?

MR MZINYATHI: Ja.

MS MDLETSHE: Ja... (intervenes)

10 MR MZINYATHI: No, not breakeven, the break price is the one where you say there is a column Daltron... Wait, now (other official language). [Laughs]. The break pricing is when you guys can no longer afford these (inaudible) because of economic conditions and now you have to cancel, right. And then in year one you have ordered ten.

MS MDLETSHE: Ja.

MR MZINYATHI: In... (intervenes)

MS MDLETSHE: Pay them off.

MR MZINYATHI: Pay them off, in year two you have ordered
20 whatever, pay them off, whatever-whatever. That is break pricing. Batch pricing is when you guys decide to split the awards amongst two or more... (intervenes)

MS MDLETSHE: But go to your contract né, sorry to interject. Go to your contract and look at the definitions. There are definitions in the contract that talks, it explains if you talk about batch.

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MR MZINYATHI: I will look at it, that is why I am saying for me I debated it with Notago, I left it there. Tshiamo came, he then said I agree with you Mzinyathi by the way, break pricing is something else and I was excited for a minute. Now it means... (intervenes)

MS MDLETSHE: Now I am going... (intervenes)

MR MZINYATHI: Now you are breaking my heart again but it is okay. So but okay, you are explaining it, that is the story, that is what happened with these things.

MS MDLETSHE: But I will say the contract, you need to go,
10 definitions are there and what else was I explaining?

MR MZINYATHI: No, it was... (intervenes)

MS MDLETSHE: The disclaimers in terms of the split, that we reserve the right to split, we reserve the right to not to award...

MR MZINYATHI: In fact how this thing comes around is that I know that in the batch pricing strategy for instance, it says deliverable, I think it says partial delivery, it says no, no batch pricing. Whatever, fully achieved.

MS SELOKELA: Partial.

MR MZINYATHI: I cannot remember what the exact words...
20 (intervenes)

MS MDLETSHE: No, the partial is on the technical part of things, where there is partial delivery.

MR MZINYATHI: Okay, I know it is, Tshiamo has it in his document.

MS MDLETSHE: Okay, that is fine.

MR MZINYATHI: Tshiamo is a colleague of ours in the... Sorry.

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MS MDLETSHE: So you guys discuss and it end well?

MR MZINYATHI: No, we... (intervenes)

MS MDLETSHE: I have heard where you do not seem to have a same understanding.

MR MZINYATHI: Yes, sure. I will take you to there.

MS MDLETSHE: And for me I think... (intervenes)

MR MZINYATHI: A replica of the document, not necessarily that document. But when you look at what the mandate was going in in terms of the strategy, how would you rate the negotiating team? This is your personal opinion.

MS MDLETSHE: Yes, yes. How will I rate overall or how negotiations were handled or how... (intervenes)

MR MZINYATHI: Overall.

MS MDLETSHE: Overall? Out of what? I would say I was, because... (intervenes)

MR MZINYATHI: Okay, who had a bad average?

MS MDLETSHE: No, looking at the governance point of view because it is... (intervenes)

MR MZINYATHI: Sure.

20 MS MDLETSHE: And I would want to rate it on the... (intervenes)

MS SELOKELA: You found it?

MR MZINYATHI: No, I found the replica that was originally generated by Tshiamo. It looks like this. Would you agree with these worksheets, the baseline worksheets?

MS MDLETSHE: Ja, ja, although I was basing it on colour, where

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there is green and... (intervenes)

MR MZINYATHI: Ja.

MS MDLETSHE: And we will give you the most, the list that...
(intervenes)

MR MZINYATHI: Correct.

MS MDLETSHE: And all of it. So she is saying what is this? This is
a ja, negotiation strategy? Yes.

MR MZINYATHI: Correct.

MS MDLETSHE: Yes, it looks like this.

10 MR MZINYATHI: Yes, so I am saying now not him, I am saying batch
pricing, now let us say we are talking split here because that is the
batch pricing that was negotiated at the time, right, unless I am
wrong.

MS MDLETSHE: The split.

MR MZINYATHI: I think that we agreed that four instead of two were
awarded the contract.

MS MDLETSHE: No, no, my understanding with the strategy when it
comes to batch pricing, taking from what they have offered when they
were responding from the RFP and the RFP gives numbers in terms
20 of each batch to say if it is 465, this is how much, if it is not 465 and
then they say it is a 100, how much? If it is 50, how much? So this
will say under 50 they have proposed R1-million for example.

MR MZINYATHI: Sure.

MS MDLETSHE: And is R1-million acceptable to us or let us push it,
maybe the most desirable outcome instead of R1-million, we want

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800 000 right, and then if we do not get 800... In the negotiation they will come with the price, we will push back. If it is not 800 000, maybe if they do not accept, maybe here let us accept 900 for example, but our last position when we cannot go beyond that, is this position. Again looking at the cash flows, looking at whatever, so this one, I am not sure, it is just I do not have the strategy.

MS SELOKELA: I only have the technical one.

MR MZINYATHI: Which one?

MS SELOKELA: The schedule.

10 MS MDLETSHE: I have a copy of this.

MS SELOKELA: It looks like that one.

MR MZINYATHI: What I have here, ja but... (intervenes)

MS MDLETSHE: No, the look yes... (intervenes)

MS SELOKELA: This one.

MS MDLETSHE: But the understanding behind it, the way it is written here, I am not sure if, but the look of course is the same but their understanding of what the strategy was trying to get when you talk about batch prices is different, because the strategy says if they quote because the prices are there, remember, as the response or
20 the proposal through RFP, because RFP said we want batch prices, take it down from 465 to 100, maybe 250 and so forth. So you go in with the price that is already proposed.

MR MZINYATHI: Clearing up.

MS MDLETSHE: Ja.

MR MZINYATHI: Okay. Ja, ja, continue.

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MS MDLETSHE: So you go in, remember you go in with an understanding that they have quoted so much. They have quoted so much, remember.

MR MZINYATHI: Yes.

MS MDLETSHE: For batch 100 or 50, but this much no, let us push it to that much. Can I quickly grab? I have got a copy at (inaudible) here in strategy or it is fine? It is fine it... (intervenes)

MR MZINYATHI: Oh no, you can carry on.

MS MDLETSHE: So this, what does it mean? Is it the cost break...
10 (intervenes)

MR MZINYATHI: No look, let me tell you, it is not the cost break. Okay, our understanding all along is that batch pricing refers to the split and what it, how it would affect how much the base price of the locomotive.

MS MDLETSHE: Yes, yes.

MR MZINYATHI: Right, so you are saying no, your understanding is wrong in other words?

MS MDLETSHE: No, no, no, I am saying what needs to go there, I am not sure of the information here, but you go into negotiation, going
20 in with the position that the OEMs have given you, right. Maybe let us say let us start with the base price.

MR MZINYATHI: Sure.

MS MDLETSHE: If the base price, they say my best price is excluding all of these things, excluding variation orders or exercisable options and all the things that you have included, my best price on

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465 locomotives is 20-billion. Right, and when you go with the strategy saying that they are charging us 20 but let us go in with a position of 15-billion right, that is a desirable outcome on negotiation negotiating base price, you have a position based on what they have provided you, but now you are saying when they were negotiating the batch price, they were saying no batch price or let us split it to 50/50 or 40/40. There I do not have an understanding.

MR MZINYATHI: My interpretation of this document... (intervenes)

MS MDLETSHE: But maybe why do you not ask Yousuf to explain
10 what was negotiated in terms of batch prices? Because now I would be saying no, your understanding is not correct based on who explained it. Why do you not ask Yousuf to explain in your negotiations what was the strategy and the aim of negotiating the batch price? Because now I will be saying no, your understanding is wrong or it is right, I do not want to do that.

MR MZINYATHI: Okay, Willem here has a question, sorry.

MR SPRONG: This, I just wanted to find some clarity on if I understand correctly that once you started negotiations you changed the scope for TE.

20 MS MDLETSHE: No, no, no, I do not want to say change the scope, again I had said can I go back because he had mentioned that Frikkie said there were two scopes that were eventually issued. I was not part of the TE negotiation but I know that at some point that TE has later I think during negotiations was negotiated but changing the scope, no I am...

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MR SPRONG: Because I have a memo here that says the negotiation strategy embodied the following key elements.

MS MDLETSHE: Ja?

MR SPRONG: And then point 2 is Transnet Engineering revised scope of requirements.

MS MDLETSHE: Okay.

MR SPRONG: So to me that means the scope was changed.

MS MDLETSHE: Look, revise can say either we are adding or we are changing or whatever.

10 MR SPRONG: Yes.

MS MDLETSHE: But again the TE scope was never negotiated within the TFR scope. The memo was one, that they will look at that, but the TE negotiations took place. It might have confirmed revised or confirming the actual scope, I do not know when it comes to TE scope. I need to validate that, was their scope initially communicated with the RFP? If that scope was communicated, what scope is it? During clarification was the scope communicated?

20 During negotiation was the scope...? So all I am asking is, when it comes to TE, the only thing that I know, in the RFP it says you will work with TE as a subcontractor.

MR SPRONG: So appointment letters was issued on the 28 January 2014 according to this memo?

MS MDLETSHE: Ja, 2014 of the appointment team.

MR SPRONG: And then negotiations started on the 3 February, so after these letters were issued and then as part of those negotiations

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one of the key elements is a revised scope.

MS MDLETSHE: And I do not want to pass the bug, but again you, that is the batch, but again can you confirm that and I want to repeat, the TE scope was never discussed within the TFR negotiations. TE scope was negotiated separately, so again I need to check if we issued as part of the RFP our specification as technical, as TFR included the TE scope or not. Clarifications, did we communicate any TE? If the memo is saying that, I will check.

MR SPRONG: Okay, so was there then two separate negotiation
10 teams?

MS MDLETSHE: Yes, yes.

MR MZINYATHI: Ja, there were.

MS MDLETSHE: There were, that is why I kept on saying the...
(intervenes)

MR MZINYATHI: No, no, I know this one, sorry.

MR SPRONG: Ja no, no, I agree with that.

MS MDLETSHE: There were two separate TE representatives and it was led by Gary and the TE team that was what was negotiated there.

20 MR MZINYATHI: You know, I am curious about that because I think it posed the risk but I know maybe you are not at risk. In fact the whole issue of not taking a proper scope for TE for me I think, in hindsight...
(intervenes)

MS MDLETSHE: There is a risk, that is what you are saying?

MR MZINYATHI: Ja.

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MS MDLETSHE: Okay.

MR MZINYATHI: So I am just checking if... (intervenes)

MS MDLETSHE: Is it not maybe to... Sorry, sorry, sorry, I am interjecting, yes.

MR MZINYATHI: And I know it is not a question that perhaps I should be asking you. I just ask myself why was it done like that, why did you not include the scope of...? Oh, but you are still going to come back to it, it was included amongst... (intervenes)

MS MDLETSHE: To check if it was included in there.

10 MR MZINYATHI: Or not included.

MS MDLETSHE: I know our scope had various clauses, 599 had about 21 different clauses that talks directly to the locomotives.

MR MZINYATHI: Sure.

MS MDLETSHE: 465 had about 19 clauses, so I want to know and it talks about maintenance, it talks about engines, it talks about a whole lot of things, so I want to understand part of that just to confirm was there ATE (inaudible) as part of that, which I doubt because then that scope was going to be evaluated by the maybe ATE representative or someone who has an understanding of what TE requires.

20 MR MZINYATHI: That is why I am saying, in terms of price that really crippled you because now you are walking in there blindly, so to speak.

MS MDLETSHE: I know, I hear your comment. I hear your comment but ja.

MR MZINYATHI: I am just trying to find this agreement... (intervenes)

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MS MDLETSHE: Oh, you want to find the?

MR MZINYATHI: The clause.

MS MDLETSHE: The clause of the batch?

MR MZINYATHI: No, no, not of the batch.

MS MDLETSHE: Of where the... Of Koedoespoort?

MR MZINYATHI: Koedoespoort.

MS MDLETSHE: Okay, just say...

MR MZINYATHI: This thing is it not scanned? It will not take.

MS MDLETSHE: Scanned? Okay, let me help you.

10 MR MZINYATHI: Okay.

MS MDLETSHE: It is clause...

MR MZINYATHI: But in terms of... Did you have a scorecard based on the strategy that you walked in with and did you file a report as required by the... (intervenes)

MS MDLETSHE: What scorecard?

MR MZINYATHI: No, just to say look, this is the strategy, this is what was amended, this is how we faired as against the mandate and the strategy.

20 MS MDLETSHE: The strategy was there and the negotiations were based on... (intervenes)

MR MZINYATHI: The strategy.

MS MDLETSHE: The strategy and when the OEM is saying this is my price, you do not want to say uhm, is it really the price or not? It is there. Information was fed to the strategy... (intervenes)

MR MZINYATHI: No, no, I accept, I am saying... (intervenes)

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MS MDLETSHE: So later one would then say did we achieve what...

(intervenes)

MR MZINYATHI: Yes, that is what I mean.

MS MDLETSHE: I normally start there before, did we achieve what we wanted to achieve to date?

MR MZINYATHI: Correct.

MS MDLETSHE: But no, they still need to because what was difficult with the OEMs, they could not make a decision there and there to say... (intervenes)

10 MR MZINYATHI: (Other official language) right at the beginning which I do not know what people... (intervenes)

MS MDLETSHE: I hope, I am sure because their strategies were to go out and negotiate. I think everybody has their own strategy to say if this is asked, maybe they would want to go out and caucus or call people with powers. I do not know but most of the time they will put it in writing, they will respond to us to say this is what we are, this is our position, Yousuf will review that. Does it have an impact on the original proposal? Is it accepted within what we want to achieve or not?

20 And afterwards the team will sit and say guys, this is what we have managed to get, this is what we do not get from these people. Should we move on with this or not? You know, there will be those breaks in between, so for me looking at the process, a governance point of view, going back to your question, if you were to rate these people, I think it was a process that was fairly followed in terms of

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governance processes but getting out the results that we wanted, looking at the people that were helping us, the Yousufs of this world and the Danies to say did we achieve what we wanted? Seemingly we did because at the end of the day contracts were signed.

MR MZINYATHI: No, you walked in with a budget of 38-billion, you walked out with the value of a contract of 49-billion.

MS MDLETSHE: But what was the... (intervenes)

MR MZINYATHI: How did you achieve... (intervenes)

MS MDLETSHE: My understanding, the change there was based
10 mainly on hedging, escalations, forex and all that.

MR MZINYATHI: No, we will get to that.

MS MDLETSHE: So... (intervenes)

MR MZINYATHI: I do not want to debate that with you.

MS MDLETSHE: And hence, but you are bringing it, so now you are choosing, you are telling me you do not want to debate so I am not...
(intervenes)

MR MZINYATHI: No, no, no, I am not saying... (intervenes)

MS MDLETSHE: But I am saying... (intervenes)

MR MZINYATHI: (Other official language).

20 MS MDLETSHE: No (other official language), but you cannot raise something and say to me you go in there with a budget of 38.6 or whatever the case might be, you come out with an increase in ETC to 50 point something and then I am saying to you my understanding, the impact was due to those things.

MR MZINYATHI: Okay.

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MS MDLETSHE: And I do not want to argue because it is not my platform as well.

MR MZINYATHI: Okay, when you are done I will tell you why I said I did not want to get into that debate with you and I am not saying it because I, of any other reason except for the fact that there is... (intervenes)

MS MDLETSHE: No, no, sorry, sorry, it is not the whole, I need to (other official language).

MR MZINYATHI: Ja.

10 MS MDLETSHE: Batches, so does it take two definitions.

MR MZINYATHI: Okay, ja.

MS MDLETSHE: Let us go to... Sorry yes, you can.

MR MZINYATHI: The context in which I was reading it was that remember, there is the business case and there is the resolution that says exclude forex (inaudible), right.

MS MDLETSHE: Yes, yes.

MR MZINYATHI: And then there is a business case as you have read it after you have consulted it with coloured, it says no, we have provided for hedging in the business case. You have no idea why it
20 was excluded at whatever level, including Board level. So it is in that context that I am saying I do not want to get into that debate with you about... Because you were not part of the decision to exclude hedging. Do you understand what I am saying?

MS MDLETSHE: Uhm-uhm.

MR MZINYATHI: It is in that context that I say the issue of hedging

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and how it contributed to the escalation of cost, is not something that I think would be fair to debate with you unless you want to engage in that debate.

MS MDLETSHE: And I guess I do not choose what I want to...
(intervenes)

MR MZINYATHI: No, no, no, you choose.

MS MDLETSHE: What you should ask me and what you should not ask.

MR MZINYATHI: No, no, you choose.

10 MS MDLETSHE: But when you ask I will then say I am not in a position to respond because I was not involved, right, so I think you can ask what you want to ask and I will say I am in a position to respond or not.

MR MZINYATHI: Are you able to comment on whether the business case had hedging or not?

MS MDLETSHE: No, but the comment of saying moving from 38 because of the memo that was done, requesting ETC was saying due to these following things, this is why we are requesting the increase, so hence my response.

20 MS SELOKELA: But the increase of ETC, the request for the increase in ETC came after the negotiations have concluded.

MS MDLETSHE: Yes, it was done in May... (intervenes)

MR MZINYATHI: In May 2014.

MS MDLETSHE: 2014, ja.

MR MZINYATHI: Yes.

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MS MDLETSHE: And based... (intervenes)

MS SELOKELA: So going back to what he is saying is that when people went to negotiations, it was before the memorandum... (intervenes)

MS MDLETSHE: Of course.

MS SELOKELA: Which now says hardly forex and all those things, so what he is asking in its basic form is that the budget you had is 38 point whatever as you walked in February and March, and the budget or the cost that was ultimately agreed to inside before the memo was
10 drafted is 54.

MS MDLETSHE: No, no, no, I understand and my response was then based on... Remember the response is not, I mean the question is not asked shortly after negotiations before the memo is done, the question is asked now to say but why do you say that because of this difference, you went in with 38, but my response, I have that in mind already to say because of the memo that was prepared, although the memo was prepared way after but because of the reasons that were provided, hence I am saying the understanding is the move was because of those things. I understand that.

20 MS SELOKELA: But what was the understanding after the negotiations, I mean... (intervenes)

MR MZINYATHI: Before.

MR SPRONG: Before the memo?

MS MDLETSHE: What was their understanding at the time?

MS SELOKELA: How did we move from there to 54 immediately after

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the negotiations?

MS MDLETSHE: I did not discuss that to say was it moved. Now it is moved from here to there. That memo was prepared at Group, it was not prepared at TFR.

MS SELOKELA: Yes.

MS MDLETSHE: So we saw the memo later to say we now are going to do the increase in ETC and this is the reason. I never asked the team so what is the outcome of the negotiations? So what was discussed to say we are done with the negotiations, this is what we
10 have achieved and... (intervenes)

MS SELOKELA: So during the negotiations there was no...
(intervenes)

MS MDLETSHE: Discussion to say it is moved... (intervenes)

MS SELOKELA: Discussion in terms of... (intervenes)

MS MDLETSHE: No.

MS SELOKELA: How we are doing with like assessing how are we doing with pricing, how are we doing with cost, where are we at the moment?

MS MDLETSHE: There is a different discussion in terms of pricing
20 that happens at that level where I was involved. No one sat and say we are sitting at 38 right now. Now looking at how we are going with the negotiations, we are at 40 or we are at 50 and by the time we end the negotiations we will be sitting at 52 or whatever. Those discussions, the strategy is saying price, if you were to give us Mr OEM, so many, this is how much it will cost. So I never sat with

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Yousuf and them to say okay guys, where are we against the budget and so forth?

Uhm-uhm, I did not but what was negotiated against the strategy, it was, it started, it did not have a 58 or 38, the Resolution had, the one that I saw in March, 40 something, right. And then later business case, but nowhere it said where we sat as a team and said can we review... (intervenes)

MR MZINYATHI: Can I put the question different?

MS MDLETSHE: Yes.

10 MR MZINYATHI: You are walking, I think the bafo price né of let us say, I think it was a total, let us say per loco as an example, I think one was about 29-million per locomotive.

MS MDLETSHE: Yes and one 33 or 30 something, ja.

MR MZINYATHI: Right, you negotiate up to 50-million per locomotive. That you know, that is past half, the halfway mark.

MS MDLETSHE: Sure.

MR MZINYATHI: Of what these guys have quoted you.

MS MDLETSHE: Yes it, for me as a procurement person I always say any procurement (inaudible) for that matter, what informed the 38,
20 let us use 38, what informed the 38, you know when the billion, when did we do the calculations for 38-billion? All right, so people would say okay business case was done three years ago, now three years later there were different (inaudible)... (intervenes)

MR MZINYATHI: No, no, okay let us be factual, let us be factual. The business case was done a year earlier.

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MS MDLETSHE: Ja, so a year earlier, so this was what was, what happened. So if a price changed and obviously whatever that changes... (intervenes)

MR MZINYATHI: I said bafo, not business case, bafo.

MS MDLETSHE: Bafo is a price.

MR MZINYATHI: Yes.

MS MDLETSHE: Ja.

MR MZINYATHI: The price you walk in from bafo is 29-million per locomotive. You walk out of the negotiations with a price for a locomotive that is 50 something and then it is discounted down to something.

MS MDLETSHE: Again, but I need to say to you again give me time to explain, please.

MR MZINYATHI: Oh.

MS MDLETSHE: As a procurement person what you are... (intervenes)

MR MZINYATHI: I thought you have answered the question, sorry.

MS MDLETSHE: No.

MR MZINYATHI: Sure.

20 MS MDLETSHE: You also rely on the financial or finance people to say these are known factors that will impact the price a year later, right. Nobody knows, nobody knows what the OEM will charge you or will quote for a locomotive. We always when we do these business cases or when we request for budget, we use what we have paid in the past.

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MR MZINYATHI: Yes.

MS MDLETSHE: If the loco has been enhanced through the specification that we have issued, it is another thing that will impact.

MR MZINYATHI: No, I am listening.

MS MDLETSHE: That will impact price, so walking in with a price of bafo that says 33 and we had made assumptions and to request budget with a price of 29, again for someone who was evaluating then at the time maybe it made sense that this price of 33, it had all of these things and why it had all of these things, was the spec maybe a part of what... Because when you make up a business case or when you make a TDR for that matter, you are making it based on the budget that was approved and there were a lot of assumptions that were done to get that budget.

Obviously you use an old price of the loco that you bought, is it the same loco that we have bought or it has slightly changed? So a bafo to say you are going in with a bafo of 33 to negotiation, you are going to negotiate and you are saying you might charge me 33 now, but at the end of this negotiation maybe I want to achieve 30 and the 30 will be within my 38, excluding what then was mentioned of the memo, maybe the escalations or whatever the case might be.

MS SELOKELA: Hence if you go back, (inaudible), if you go back to my question about what was going on in that room in terms of the action, what you just said now, negotiations, are we going up or are we going down, are we going to make that we (inaudible), all these other factors right, so hence I am saying when people are in and

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around the negotiation table, then they are trying to find themselves, whatever, in terms of pricing, other factors. They do discuss prices.

MS MDLETSHE: No, of course.

MS SELOKELA: Naturally.

MS MDLETSHE: Ja.

MS SELOKELA: So that is what I am trying to understand that as all these things and you had, one of the people that were there as you confirmed earlier on is that he was not a runner, he was there, he was punching in the numbers, he was doing the spreadsheet. So
10 numbers can be monitored throughout every single day, so what we are trying to understand is that throughout every single day there was not what do you call it, at the end of the meeting or at the end of whatever as you are discussing and say okay fine, initially on day one this was our purpose and these are the objectives that we are to achieve in terms of the negotiation strategy, especially when it comes to things like prices, because things like prices are numbers.

So as things are moving up and down or whatever, what is recording there, are you not or not you specifically but the team, is it not that we are moving far from the like... (intervenes)

20 MS MDLETSHE: I think the 38, you have just mentioned something that is very key now to say oh the team, because now when you ask me, I will tell you as a SCS person, yes I was there, sometimes I would leave to go and facilitate other things outside discussions, but numbers obviously will change. We introduced during those sessions, we introduced certain things that Technical wanted, that at

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some point we did not go in with where we said if we were to take, if you were to supply us with long term space, how much will you charge us?

Price will move from 33 because the long term thing was not there, but I think your question again, the person who was doing the evaluation of what we were getting, where we are getting the reduced prices by saying this is what we want to achieve from 33-million to maybe 30-million, did we get that or we did not get that? If we did not get it, what was the cause of it? So I think Yousuf is in a position to
10 remember to say guys, this is what we did.

MS SELOKELA: Okay.

MR MZINYATHI: You know the reason why I did not want to get into that, these workings with you, is because... (intervenes)

MS MDLETSHE: And I do not think it is fair to get into the workings with me.

MR MZINYATHI: Yes.

MS MDLETSHE: Because I am not Finance.

MR MZINYATHI: Exactly, but you are commenting on it, that is why.

MS MDLETSHE: But you are asking me.

20 MR MZINYATHI: No, no... (intervenes)

MS MDLETSHE: You guys are, you said going in with the 38. No, no, no, I will honestly, let me tell you and I did not want to do this and it is not fair, I will leave the room because you ask me a question and when you ask me a question, when I try and try and respond to say to you guys where I am not able, you can ask the question, where I am

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not able to respond I will tell you that guys, there was a Finance person. You are asking me a question, you went in with 38-billion known budget right, known budget.

You came out with 50 odd and I am saying you further clarified you knew that before the memo was done and I said no, if the question was asked before the memo was done, then I was going to ask, guys where are we? This is, did we know that this is our position before then? But because I am responding with the fact that the memo said, that is the response I am getting, but I am not saying
10 guys, go to workings, I know what happened there, we changed because of this, but you guys are asking this.

MR MZINYATHI: Okay.

MS MDLETSHE: No, I think you are not, no you are not fair, you are not fair.

MR MZINYATHI: Lindiwe... (intervenes)

MS MDLETSHE: I cannot sit and keep quiet, I have to respond when you ask questions.

MR MZINYATHI: Lindiwe, okay I am sorry if you think we are not fair... (intervenes)

20 MS MDLETSHE: No, you are not fair, I think I want to record it, you are not fair.

MR MZINYATHI: Okay mamela, can you make a point? That is why when I initially started, I said I do not want to engage with you on the business case and all of these numbers, because I knew that it is not your terrain or your domain. I knew that, I wanted to abandon that

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question, that questioning. I knew it, so I think it is unfair of you to say I have been unfair.

MS MDLETSHE: No you are and I want to note this because if you ask a question, you have a right to ask a question and the good question that you asked initially, you said what was your role. I explained my role.

MR MZINYATHI: Yes.

MS MDLETSHE: But someone, you are sitting here and say you guys went in with 38. You asked, you went in with 38.

10 MR MZINYATHI: Yes.

MS MDLETSHE: You came out with 50 something. Is it fair?

MR MZINYATHI: It was... (intervenes)

MS MDLETSHE: Because it is not my terrain. Is it fair?

MR MZINYATHI: Okay, who is not fair? Who do you say is not fair?

MR SPRONG: I think you, you just commented based on a comment you made to say that the negotiations were successful.

MR MZINYATHI: Yes.

MR SPRONG: So then he commented to say... (intervenes)

20 MS MDLETSHE: I was asked the rate, yes. You are a 100%, I was asked rate and I said on a governance point of things, saying people coming out and we sign the contract and the strategy was there, people were working around the strategy, so then what was I supposed to say if the question was, was it fair? Sorry what can you rate? What was I supposed to say, no I cannot rate it? But again I said governance point of view because that is what I am there for, did

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we stick within the strategy in terms of people not introducing things that are not here or risks that we identified? I responded around those.

MR MZINYATHI: No okay, let me why I, where I was going with the question, fair or otherwise, is that one of the things that you say when you appointed these guys at negotiation, you said look, in the event that we cannot agree and this is repeated during the negotiations, we reserve the right to walk out and negotiate with other people. It is in that context that I am asking all of these questions to say does
10 anyone make that judgment call?

Not necessarily you, I asked for your personal opinion, I made it known that it is your personal opinion and I am not going to, I was not trying to say, how do I put it, I am going to hold you to it.

MS MDLETSHE: No, no, it is...

MR MZINYATHI: It was just a personal opinion of how you feel that the negotiations were and you did separate from a governance point of view you think they went well, right. Yes, if you say the question was unfair to say but you walked in with a budget of 38 and you walked out with 49, if you say it is unfair because I cannot comment
20 on that terrain, I take that point. I take it fully.

MS MDLETSHE: Ja.

MR MZINYATHI: You understand? Thulaganyo asked you other questions and that is when you comment, I can see that you are entering that terrain that you are not comfortable in.

MS MDLETSHE: Not comfortable ja, or familiar ja.

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MR MZINYATHI: Yes, so I am making the comment now to say I do not want to engage with you on these things because I know that this is not your forte. We may have asked you the questions but what I am doing is to protect you to say I know this is not your terrain. If you are still saying I am unfair, then it is okay.

MS MDLETSHE: No, no, but Thulaganyo came in with the question and I noted that.

MR MZINYATHI: Yes.

MS MDLETSHE: She said the team, if it is not you, the team, and I
10 said I like what you are saying because the difference between the two questions whilst you are trying to clarify one question, the difference between the two was you said in your own personal view.

MR MZINYATHI: Yes, correct.

MS MDLETSHE: And the difference what she said, she said if it is not you, the team. That is the difference and I was elaborating on what she said based on the team and again my understanding based on what I have read on the memo, was the impact was this, due to this and that.

MR MZINYATHI: To the hedging.

20 MS SELOKELA: Can I ask a different question because I think soon we are going to have to wrap up.

MR MZINYATHI: Sure.

MS SELOKELA: The RFP right, okay before I get to the RFP I just want to because of the concerns you have just raised now in terms of you know, hearing you properly and not putting words in your mouth, I

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just want to go back to the part at the very beginning when we were dealing with compliance, what the role of SCS is in terms of compliance and making sure that people comply in terms of the requirements that were in the RFP, right, so the RFP itself did not have, sorry, did not have an ATC?

MS MDLETSHE: No, it does not have, RFP does not make mention of the budget.

MS SELOKELA: It does not make mention of the budget?

MS MDLETSHE: No.

10 MS SELOKELA: Okay, that is fine. When did then the 38 became known in order to inform the bidders, whoever is bidding, would they... (intervenes)

MR MZINYATHI: They do not tell them.

MS MDLETSHE: We do not tell them.

MS SELOKELA: You do not?

MS MDLETSHE: We do not.

MS SELOKELA: Okay, they gave you whatever.

MS MDLETSHE: Because then you would be guiding them to quote within, so that we do not.

20 MS SELOKELA: Okay.

MS MDLETSHE: But the team... (intervenes)

MR MZINYATHI: Knows.

MS MDLETSHE: Use that as a guidance.

MS SELOKELA: As a guide, right.

MS MDLETSHE: To say this is what we...

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MS SELOKELA: And then that obviously goes forward in terms of the negotiations and the... (intervenes)

MS MDLETSHE: Ja, it will filter through to, yes.

MS SELOKELA: So hence I think the whole thing that you went in with 38 known to you as the team or the (inaudible) team.

MR MZINYATHI: I want to repeat it, she is there as a governance person and it is unfair. Maybe she would like to comment but I repeat, it is unfair to ask her those things. She is just there to monitor the process... (intervenes)

- 10 MS MDLETSHE: But the note yes, the note that I want to or the comment that I want to make, I wanted to make an example earlier, you then said no, that is specific, a year later. No, because the example that I want to make is as a SCS person you know the budget, right, but again the budget is informed of a whole lot of things. When people do the business cases, when people do they use the old information, they use their own analysis at the time, but nobody knows when they put together a business case, that the loco that will be costed by these OEMs will cost this much, right.

- You use the info that is there and again it is what we apply in
20 Supply Chain. I am not saying that is what happened on the locos. Supply Chain you say but guys, you had a budget of this much, we have exceeded that, so why, Finance can you confirm why have we exceeded?

MS SELOKELA: Yes, that is what I am driving to.

MS MDLETSHE: Is it reasonable enough that what the OEMs or the

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suppliers are giving us, does it make sense? Is it us who under budgeted or underestimated? We look at all of that, so when we go back to Council and again excluding locomotives... (intervenes)

MR MZINYATHI: Council, who is Council?

MS MDLETSHE: Acquisition Council.

MR MZINYATHI: Okay.

MS MDLETSHE: The approval, for the approval.

MR MZINYATHI: Sure, sure, sure.

MS MDLETSHE: When we go back to them, we will go back and say
10 the price or the budget is this much. What you are recommending is over but can we request to negotiate with an aim to achieve something that will be within our budget, failing which we do not have a choice as well, we have to request for an increase and meeting, so... (intervenes)

MR MZINYATHI: Can you repeat that for me, that process?

MS MDLETSHE: Okay, we go to the Council with whatever that we have evaluated and we are proposing or recommending. If the... (intervenes)

MR MZINYATHI: Evaluated where? Sorry, because evaluation I take
20 it that it is the technical evaluation and all those things in the finance... (intervenes)

MS MDLETSHE: Finance, technical, done. It is a SCS... (intervenes)

MR MZINYATHI: And bafo?

MS MDLETSHE: No, no, no, it is not all the time when bafo is there, it is not all the time.

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MR MZINYATHI: Okay, negotiation, regarding negotiations?

MS MDLETSHE: If there is a need for best and final offer, you will request for it.

MR MZINYATHI: Oh.

MS MDLETSHE: Again guidance from Finance.

MR MZINYATHI: Okay.

MS MDLETSHE: Guys, let us write and request for best and final, maybe we might find something different before we go in with the negotiations.

10 MR MZINYATHI: Okay.

MS MDLETSHE: Because you can go without asking for bafo, you can go for negotiations and negotiate and get the best and final offer from the outcome of the negotiation or you can write and say, can you give us your best and final offer? But if again you feel that you want to negotiate this best and final offer, you can always push and get the price that best suits the company's needs or the company's cash flows. So it is how we do procurement process that even if they were cheap, you always push them.

MR MZINYATHI: Okay, in light of your comment né, I want to make a
20 statement. The way I understand the business case, I know you are saying the budget was approved without hedging.

MS MDLETSHE: No, no, no, I need to say can you take out the locomotives? I am saying on a procurement process normally if there is a situation where the price is higher.

MR MZINYATHI: I want to ask about the RFP.

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MS MDLETSHE: Okay, let us go there.

MR MZINYATHI: And hedging in particular as it relates to the procurement process.

MS MDLETSHE: That is fine.

MR MZINYATHI: The business case says hedging is included, the RFP comes out once the bidders... to including hedging, some do, some do not. Do you agree with that proposition as a factual statement, not in detail but broadly?

MS MDLETSHE: Do I agree with what, that the business case
10 explicitly said including hedging and escalation. Does the business say... (intervenes)

MR MZINYATHI: Okay, maybe let me leave the business case out. Your RFP when it calls for tenders, it wanted the prices to be hedged. Do you agree?

MS MDLETSHE: You do not say prices must be hedged because you do not know who will respond, is it only local or is it foreign? If the local responds but there is an element of a foreign component in it, that you take it to National Treasury. You take it to... Supply Chain does not evaluate and I want to repeat it.

20 MR MZINYATHI: I agree.

MS MDLETSHE: You take that component or that part. Finance will then say can we validate this with national, sorry with Treasury, our own Treasury? So your question is saying in the RFP and the RFP says it needs to be hedged. Ja, because section 3 does mention here, section 3, go to section 3. [Laughs].

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MR MZINYATHI: Ja?

MS MDLETSHE: I know where you are going.

MR MZINYATHI: Okay, where am I going now?

MS SELOKELA: You just passed it.

MR MZINYATHI: The section 3.

MS MDLETSHE: There is section 3.

MS SELOKELA: Here.

MS MDLETSHE: You read it, what does it say?

MR MZINYATHI: It says:

10 “The respondents must separately disclose the cost of any
 hedges included in the price offered.”

MS MDLETSHE: Okay, what does it mean? It says separately
disclosed.

MR MZINYATHI: Correct.

MS MDLETSHE: Ja, so your question?

MR MZINYATHI: It is the... (intervenes)

MS MDLETSHE: To me as a SCS, ja, ja.

MR MZINYATHI: The bidders were required to include any hedged
prices.

20 MS MDLETSHE: Okay and then how long did it take for us to do the
 evaluation up until the negotiations?

MR MZINYATHI: It took approximately... (intervenes)

MS MDLETSHE: A year.

MR MZINYATHI: A year, yes.

MS MDLETSHE: Okay, so the team then what they did before we

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went even to do negotiations, was to say can you, because there were inflation, there were, sorry there were rate of exchange that needed to confirm at the time of after the evaluations were done, so I am trying to get your question.

MR MZINYATHI: Ja, ja. Okay, what do you want to get about my question?

MS MDLETSHE: You are saying that statement is said in the RFP, yes the statement is there, that they are asked to separate if their price, separate their prices in terms of hedging so we can see that if
10 the base price is this much, right, hedging is this much. So I do not understand your question in terms of the statement in the RFP, honestly speaking.

MR MZINYATHI: But I never finished it, that is why you do not understand it.

MS MDLETSHE: Okay, that is fine, sorry.

MR MZINYATHI: Okay, so the RFP required these people to have hedging, your policy says your contracts are going to be rand based...
(intervenes)

MS MDLETSHE: Which policy?

20 MR MZINYATHI: Your Finance Risk Policy.

MS MDLETSHE: Okay.

MR MZINYATHI: Do you agree or do you not agree?

MS MDLETSHE: We have got our own PPM, it is procedure, we have got the National Treasury structured notes that PPPF...
(intervenes)

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MR MZINYATHI: I said... (intervenes)

MS MDLETSHE: So that is why I want to be specific.

MR MZINYATHI: I said the Finance Risk Policy, it says all your prices will be rand based, meaning that you must hedge.

MS MDLETSHE: Okay.

MR MZINYATHI: Do you agree with that statement, because... (intervenes)

MS MDLETSHE: I need to go and remember if that, it does say exactly that. It is fine, maybe you have read it recently.

10 MR MZINYATHI: Ja.

MS MDLETSHE: I do not want to agree or disagree.

MR MZINYATHI: Okay.

MS MDLETSHE: I am saying I will have to read it again and say at the time of 2011, was it saying the same thing?

MR MZINYATHI: Okay, okay. Let me maybe put the question to you in a package. How I understand all Transnet contracts or foreign contracts must be rand based.

MS MDLETSHE: Yes.

MR MZINYATHI: All right?

20 MS MDLETSHE: Yes, correct.

MR MZINYATHI: Meaning that if a foreigner comes and says I am bidding for whatever contract with Transnet, they bid in rands and that price is then going to reinforce around that price, it is not going to be affected by foreign fluctuations.

MS MDLETSHE: It does not say it is not, it says if you can open that

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RFP, maybe not here... (intervenes)

MR MZINYATHI: No, I am not opening the RFP, I am talking about...
(intervenes)

MS MDLETSHE: It says that it should be rand based, you are correct, but it does not say you should not, because when someone quote and say part of my quotation though, there is an element of foreign content, in the RFP we normally ask what is foreign content. If you go up it will be there.

MR MZINYATHI: But it only (inaudible).

10 MS MDLETSHE: No, (other official language).

MR MZINYATHI: Ja, that is why we are talking past each other, you get angry at me and all of these things. I have said to you the policy at Transnet is that contracts are going to be rand based, not the RFP, contracts, meaning that...

[End of recording]

SOUND FILE NUMBER: SHOMCHDAIDEAB part 2

MR MZINYATHI: Let me give you an explanation, the iPad. I said to you I want to buy a 1 000 iPads né, over a period of five years from Apple in California right, and I said to them look, I am not going to
20 take these Apple iPads in one batch, I am going to take them in separate batches of hundreds right, or let us say 200 over five years because then it works out.

The value of an iPad in American dollars let us say today, is a 1 000 US dollars right, but if I am going to be acquiring them over a period of five years, it means that if you are applying inflation and all

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of those things and forex, the value of an iPad, in five years' time it will not be a R1 000. Now then, I then say because do not want that to impact me, the fluctuation in between the time that I contract with you... (intervenes)

MS MDLETSHE: So ja.

MR MZINYATHI: Then I want the contract, I want a firm fixed pricing that takes them out.

MS MDLETSHE: So you take the risk right here and you take a forward cover and not on a spot weight?

10 MR MZINYATHI: Yes, correct.

MS MDLETSHE: So that is what you explain?

MR MZINYATHI: Yes.

MS MDLETSHE: And not the inflation and the hedging?

MR MZINYATHI: Yes.

MS MDLETSHE: So you are saying right now I want to pay for this now and as such I want to take, either you take the risk or, because the risk, if you take or they take but it comes to you at the end, I want the forward cover to be taken and the forward cover comes at a cost because the risk that would happen, either it goes up and down.

20 MR MZINYATHI: Sure.

MS MDLETSHE: And if you take a spot then it means as and when you order or you draw from that contract, it changes. It might have happened that it has gone up, so you pay that rate of exchange at the time or it might have gone down which is a win and you pay that, but you are saying now I want five or how many, now for but deliver over

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a period of years, so you are already closing the risk of paying and you are taking a forward cover.

MR MZINYATHI: Yes, sure.

MS MDLETSHE: Yes, I hear you.

MR MZINYATHI: A 110%, now we... (intervenes)

MS MDLETSHE: But that statement, explain that statement and what you are saying.

MR MZINYATHI: No, no, please.

10 MS MDLETSHE: Okay maybe let us... It is fine, it is okay but I hear what you are saying.

MR MZINYATHI: You are presuming where I am going.

MS MDLETSHE: Okay, okay, okay continue, but I hear now the example of the iPads and the difference between the spot and the hedging and the risk, okay.

MR MZINYATHI: Okay, so I am saying trust that policy is that one, is that when they contract they want to deal with the risk at the beginning, so they will contract at a fixed price.

20 MS MDLETSHE: Can I respond? I do not want to go back because if I, if we touch on the policy, I want us to open the policy and we refer and the policy that was applicable at the time which was 2012.... (intervenes)

MR MZINYATHI: Sure.

MS MDLETSHE: When we issued the tender, but right now and again you have used a broader example of an iPad and I am saying based on the RFP, any RFP and maybe I just need to remind myself

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on the locomotives, any RFP it says we prefer a fixed. It says we prefer to have a fixed contract right, it says it is a disclaimer, it is one of the disclaimers, I can open any, it is one of the disclaimers that says we prefer the fixed price.

MR MZINYATHI: Sure.

MS MDLETSHE: Ja, so there is a (inaudible)... (intervenes)

MR MZINYATHI: A 100%... (intervenes)

MS MDLETSHE: No, no, no, but it is not.

MR MZINYATHI: You and I... (intervenes)

10 MS MDLETSHE: No, no, it is not. You are saying a policy. Let me tell you and that is why I was going to say, let us take out a policy, let us put it here, let us refer but the RFP because I am trying to draw you closer to the RFP, things that were... (intervenes)

MR MZINYATHI: Let us get close, okay let us go close.

MS MDLETSHE: Ja.

MR MZINYATHI: Let us work on the other side.

MS MDLETSHE: So it says we would prefer South African rand, fixed price.

20 MR MZINYATHI: Agreed, let us work on the fixed price. Let us work on the fixed price. You received fixed prices including hedging or a rate of exchange if you want to call it. In the evaluation for whatever reason and the reason as I understand it is that other people did not give you the hedged prices or they did not give you a rand based price put differently... (intervenes)

MS MDLETSHE: You are understanding or on the loco to be

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specific?

MR MZINYATHI: Yes, on the locos.

MS MDLETSHE: You understand that some of the OEM did not provide the rand based prices?

MR MZINYATHI: They would provide a euro but they would not provide the, when they then convert it and then....

MS MDLETSHE: Ai ja jaai, jaai, jaai, Leo honestly I do not want to say yes because the RFP, it says you provide that if it is the dollar, the rate of exchange at that time, whatever the rate of exchange, if it
10 is dollar or whatever, you provide it and then you are saying the one others did not provide a rand based.

MR MZINYATHI: Yes, sure.

MS MDLETSHE: It might have happened that others, I do not want to say yes or no, it might have happened that others did not provide the rand based.

MR MZINYATHI: Okay all right, and I am putting to you it is a factual statement.

MS MDLETSHE: Okay, based on what you have seen, okay.

MR MZINYATHI: Of what I have seen and then the cross function
20 and evaluation team, Finances, says we cannot evaluate because we are not able to compare apples with apples.

MS MDLETSHE: Yes.

MR MZINYATHI: You understand? And then they come to you for clarity. When I say you, I mean SCS.

MS MDLETSHE: SCS, ja, ja, ja.

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MR MZINYATHI: SCS then, I do not know where they go and a decision is then made, guys, you can normalise. If one weight excluding the hedged prices and I use hedged loosely né, because I see... (intervenes)

MS MDLETSHE: Ja, ja, no you are... (intervenes)

MR MZINYATHI: Ja, I am using hedged loosely because I know this... (intervenes)

MS MDLETSHE: I think that is what makes me uncomfortable because it is the fact that you are using it loosely like okay, that is
10 fine.

MR MZINYATHI: Okay, let me say let us use the language as (other official language) a copy?

FEMALE SPEAKER: I am trying to find it.

MR MZINYATHI: No, no, I wanted the RFP. So let us say the respondents, they did not try, some of them they did not disclose the cost of hedges.

MS MDLETSHE: Ja, sure.

MR MZINYATHI: Right?

MS MDLETSHE: Sure.

20 MR MZINYATHI: I am using the language RFP now. Some of them they do not use that and then some do. Now because we have a problem evaluating them... (intervenes)

MS MDLETSHE: We cannot compare.

MR MZINYATHI: We cannot compare apples with apples.

MS MDLETSHE: Ja?

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MR MZINYATHI: Then Finance says, no please, assist us and then you say no, normalise, meaning that those that have provided us with the prices including cost of hedging, we are going to separate those costs.

MS MDLETSHE: Ja, to be able to compare... (intervenes)

MR MZINYATHI: Apples with apples.

MS MDLETSHE: Ja.

MR MZINYATHI: No right, this is what happens at evaluation and I am putting to you that this, I have read the reporting cross-functional, evaluating team, I have read the TIA Report, they say the same thing as far as I am concerned.

MS MDLETSHE: Just a statement before you continue, then the SCS will say whatever that you are doing, as long as and it is governance, it will not give one advantage to another.

MR MZINYATHI: Sure.

MS MDLETSHE: Right, so either you when you normalise, maybe you do not go and clarify to say can you give us your hedging or can you give us separate? As long as what is, that disclaimer is important that you do not give advantage to some by file.

MR MZINYATHI: Yes, I know that is the reason that it was done.

MS MDLETSHE: Okay.

MR MZINYATHI: And then you evaluated without the hedged prices and then you went for bafo, right. At bafo do you include this, the rand based?

MS MDLETSHE: I think you need to ask yourself if it was included or

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not.

MR MZINYATHI: Why do you not answer?

MS MDLETSHE: I do not evaluate. You are saying do I include? I do not evaluate.

MR MZINYATHI: No, no... (intervenes)

MS MDLETSHE: They evaluate. SCS role, you do not evaluate. If the decision is to normalise without, I do not evaluate.

MR MZINYATHI: No, no, let me tell you in which context I am asking the question. I am asking because you as... (intervenes)

10 MS MDLETSHE: You are saying include.

MR MZINYATHI: No, no, you as SCS, you are going to receive the bafo prices to see, not necessarily evaluate them but to see that the, to oversee the process that it is still going according to what SCS, your PPM requires.

MS MDLETSHE: Sure.

MR MZINYATHI: It is in that context. If you do not remember just say I do not... (intervenes)

MS MDLETSHE: Uhm-uhm, I do not want to say I do not remember.

MR MZINYATHI: Okay.

20 MS MDLETSHE: We do not evaluate PPM. If you are a SCS specialist... (intervenes)

MR MZINYATHI: I never suggested that you are... (intervenes)

MS MDLETSHE: You are saying that... SCS does not evaluate. When we receive clarification... (intervenes)

MR MZINYATHI: You pass the (inaudible)... (intervenes)

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MS MDLETSHE: You give it to the people who request it.

MR MZINYATHI: Sure.

MS MDLETSHE: But you ask is there information that was requested in this document and then will allow you to be able to evaluate fairly.

MR MZINYATHI: Okay, all right. We, okay where I was going is that when you removed né, the hedge, the foreign component or the hedged price and I say again loosely because you are now *lispens*, when you remove it are you not disadvantaging yourself now because now you are not able to see how much this locomotive is going to cost us in South African rands?

MS MDLETSHE: In South African rand? I need to have asked for a price in South African rands, but separate the hedging. It does not say... RFP is saying yes, quote in SA rands, but separate those... (intervenes)

MR MZINYATHI: The hedging.

MS MDLETSHE: Those foreign content portion. Right, it says so we can see. It does not say put it so we can see what of this is foreign, right. So if you are saying should, if we take it out we are then disadvantaging ourselves, right, is that a policy?

20 FEMALE SPEAKER: Uhm-uhm.

MS MDLETSHE: Okay, what does it say?

MR MZINYATHI: Wherever possible, foreign currency, risk exposure should be limited by entering into a fixed... (intervenes)

MS MDLETSHE: Contract.

MR MZINYATHI: Rand contracts.

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MS MDLETSHE: Wherever possible, right, and the RFP then takes it over to say and I do not, I am not sure if it says prefer or a fixed, but it does not say if you do not give a fixed term then you are out. Either it says we prefer to have a fixed and especially for five years, the longer term contract to again curb the risk that might happen at a later stage, so wherever possible, right. But the way you said it, honestly the way you said it, it is like a killer criteria, you would give us a fix then that is it, but there it says whatever cost... (intervenes)

MR MZINYATHI: No, I never said it is a killer criteria.

10 MS MDLETSHE: No, no, no, I am saying the way you said it, the way I have... (intervenes)

MR MZINYATHI: Interpreted it.

MS MDLETSHE: Interpreted, it sounded as if it says but the RFP does not say that, the RFP says we prefer or something. There is a word that is used there.

MR MZINYATHI: But you see, you are answering the question with the, and this is how I respectfully understand you. I was not going to say people should have been eliminated.

MS MDLETSHE: No, no, no, no.

20 MR MZINYATHI: For not doing that, as if this was a mandatory requirement in terms of the RFP. I wanted to test in whether you think it is fair to you guys as Transnet to accept bids when you do not understand the foreign fixed element.

MS SELOKELA: Can I answer that?

MS MDLETSHE: Sure.

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MS SELOKELA: When there is a clear policy purpose of the whole risk and exposure to the fluctuations of forex... (intervenes)

MS MDLETSHE: It says there where possible, where possible. The risk is identified upfront, so where and it is there in the RFP and we want it and the local RFP says you include it, right. So if the decision was made to say for us to have, to compare apples with apples because some did not exclude and not that they did not include it because my understanding, you say based on what you have read, they all responded with in terms of the full value, but where they
10 needed to then take that and put it on the side to say the hedging then is this must, there is some that they did not do that. Is that correct? That is my understanding.

MR MZINYATHI: Yes.

MS MDLETSHE: So then you further take it to say the decision was made to say let us normalise it, remove it for us to be able to compare apples with apples.

MR MZINYATHI: Sure.

MS MDLETSHE: Right?

MR MZINYATHI: Sure.

20 MS MDLETSHE: Of which that was done, to say that we, the team then continued without the (other official language) so the team then continued with the evaluation without the hedging. So you are saying was there a risk or did you guys see the risk in there to say if you continue without the hedging, there is a high risk or exposure in terms of Transnet? So my understanding again based on what you have

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said in your statement, it is not that the hedging was not there as part of the whole price.

The hedging was there, the only thing that they did not do is to separate but later the team then removed it and I am sure there was a reason and my request to you guys, I cannot confirm right now, was the recommendation at the end of the day based on the price without hedging or it was hedging? I cannot, I do not remember because I do not evaluate and if it was without the hedging, what did you do to take care of the hedging risks?

10 And I am saying can you please ask people who evaluate it to say because you have taken it out, how did you deal with the risk if that was your question.

MR MZINYATHI: Okay, so I must ask Yousuf in other words?

MS MDLETSHE: And the evaluating team, ja.

MR MZINYATHI: Okay. Again on evaluation, I hear you are saying that later when we were negotiating, we included exercisable options.

MS MDLETSHE: I think there were options or variation orders, but there was a memo written by Technical.

MR MZINYATHI: Okay, all right. Maybe let me tell you what I
20 understand from Technical. Technical says and this is Mr JD Phele (Inaudible) he says in all the years and including (inaudible), in all the years that we have been buying locomotives, we have always purchased locomotives with spares.

MS MDLETSHE: Sure, okay.

MR MZINYATHI: Right, it is included in the cost of the locomotives.

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Right, because some of the spares are warrantees, that is number one, some I think they call them strategic plan, Mr Sprong will assist me with that one.

MS MDLETSHE: Uhm-uhm.

MR MZINYATHI: Right, but in all of the years these, when we buy these things they are included. The ones that are long term is after their warrantee period expires, already as we understand it, that no longer becomes our problem, that becomes TE's problem because we are servicing our trains with TE. So now the question then is, and
10 as I understand it, these spares in actual fact, they formed part of the evaluation criteria and formed part of the price of the locomotives.

MS MDLETSHE: Which one, the long term or the major spares that after the warrant that we need to keep, the 10%, there is a 10% spare that we need to keep besides the long term. There is a 10% spares that we as TFR keep beyond the warrant period.

MR MZINYATHI: Ja.

MS MDLETSHE: So which ones? Ja, okay... (intervenes)

MR MZINYATHI: Ja, both of them were there.

MS MDLETSHE: They are confirming that they were there?

20 MR MZINYATHI: According to what they prepared or what they understood... (intervenes)

MS MDLETSHE: The spares... (intervenes)

MR MZINYATHI: That they should, yes the spares.

MS MDLETSHE: Okay. No, no, I am not going to say yes or no. Yes, so you want me to confirm if why the exercisable options or the

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variation... (intervenes)

MR MZINYATHI: Correct.

MS MDLETSHE: Where negotiated or... (intervenes)

MR MZINYATHI: Why they had to be negotiated, for instance here...
(intervenes)

MS MDLETSHE: The holding, they want the spare holdings, the 10%
that we have to have.

MR MZINYATHI: Ja.

MS MDLETSHE: Ja.

10 MR MZINYATHI: Right and then there is this one, spare holding
details must be provided attached to spare holding sheets.

MS MDLETSHE: But can I request? I think your suggestion earlier
on of saying you do not want to engage me on this, but there are
clarifications around, I think during negotiations where we have asked
them if we were to include that can we quote or something. I have
seen some of those clarifications along those lines.

MR MZINYATHI: Okay, okay.

MS MDLETSHE: To confirm if there were, why were they included
because that is where... (intervenes)

20 MR MZINYATHI: Now why were they excluded and later negotiated,
because... (intervenes)

MS MDLETSHE: Later included, ja.

MR MZINYATHI: Because there they failed of inflating the price of
the locomotive.

MS MDLETSHE: Okay, no I hear you.

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MR SPRONG: It is exaggerated by the fact that you split it before suppliers.

MS MDLETSHE: Okay.

MR SPRONG: This phase issue.

MS MDLETSHE: Oh, so the fact that it is now different OEMs, then they will come in with different prices?

MR SPRONG: The capital spares issue, they have inflated that because it was all of a sudden four suppliers instead of one, ja.

MS MDLETSHE: Broken into four. Okay, it makes... (intervenes)

10 FEMALE SPEAKER: And if it was one, let us say it is an issue when it is one and it is even a greater issue when it is four.

MS MDLETSHE: No, no, and I hear the point to say obviously if you are buying with the two or one, it will not be the same as now by the two, you know. No, I hear the comment.

MR SPRONG: Ja.

MS MDLETSHE: Do you, you guys are going to engage yourself or you want me to check? But I think it is better if you engage. Yousuf, we can provide him with clarifications of which we did provide you guys with those if he needs to remind you.

20 MS SELOKELA: Okay.

MR MZINYATHI: Okay, is it part of the RFP? Let me put it that way.

MS MDLETSHE: Is it part of the RFP?

MR MZINYATHI: Yes.

MS MDLETSHE: As in the actual...? Anything that comes with, right with the RFP, it is always... (intervenes)

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MR MZINYATHI: Where would I find it in the RFP what the...
(intervenes)

MS MDLETSHE: If it is there you will find it under technical.

MR MZINYATHI: Okay, can we check technical in your RFP?

MS MDLETSHE: I do not have RFP, that is why I was trying to over...
(intervenes)

MR MZINYATHI: Oh, let us open this one, at diesel for instance.
Because you know what I want to... (intervenes)

MS SELOKELA: Check annexure, I think it is annexure, technical or
10 also check section 3 under Finance if... (intervenes)

MR MZINYATHI: Where are you referring?

MS SELOKELA: There is any mention of spares under section 3.

MR MZINYATHI: Because I just wanted to clear this one aspect of it.

MS MDLETSHE: Okay. I am going to ask Gungule for that clause in
the meeting.

MR MZINYATHI: It is an annexure?

MS MDLETSHE: Annexure K, check annexure K which is the
specific... Uhm-uhm, no, no, not here, annexure comes an annexure
of the RFP, so it will not be here.

20 MS SELOKELA: Go to the folder.

MS MDLETSHE: Ja, so before you go, before you go out, check
under C or you can say "find spares".

MR MZINYATHI: Spares?

MS MDLETSHE: Ja, I imagine you want to check the spares, right.
No match?

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MR MZINYATHI: No match.

MS MDLETSHE: Ja, go to annexure K.

MR MZINYATHI: Can you assist me Thula with annexure K?

MS MDLETSHE: Because that is the technical requirement and I do not see why, it would not be on any other annexure except K if it is there.

MR MZINYATHI: I know there is something else that (Inaudible) has referred to.

MS MDLETSHE: But if I am thinking of the sections, maybe under
10 maintenance... (intervenes)

MR MZINYATHI: Let me tell you what, the problem I have is from what I get from Pillay, he says they would have provided you with what they want in these locomotives, right, their wish list.

MS MDLETSHE: Okay.

MR MZINYATHI: Ja, a wish list that forms part of the technical things that you are requesting from the bidders. Tell me if anything is wrong with what I am suggesting as, would go to Supply Chain for the purposes of preparing a RFP.

MS MDLETSHE: Okay, so OJD right now he is not LI, so when he
20 was making a comment, LI is responsible for locomotives, right, even maintenance. So he is saying that as a part of him requesting us to buy locomotives or him, because at the time he was definitely LI and they prepared... (intervenes)

MR SPRONG: It is L here, I do not know.

MS MDLETSHE: Is it L? No, no, no, open up.

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MR MZINYATHI: Technical, it is technical specs.

MS MDLETSHE: Where, is it this one? Ja, ja.

MS SELOKELA: As in SABC, SABS... (intervenes)

MS MDLETSHE: No, no, that is the local content.

MR MZINYATHI: Oh.

MS MDLETSHE: This one is. No, no, check part... Go back, sorry.

MR MZINYATHI: Okay, ja... (intervenes)

MS MDLETSHE: I think it was annexure K.

MR MZINYATHI: You will see... (intervenes)

10 MS MDLETSHE: Is there an annexure K here? Now go back to maybe to another section.

MR MZINYATHI: So you are saying he was LI, so what is LI?

MS MDLETSHE: No, no, no, locomotives at the time, OJD was responsible for locomotives, the deployment, where they go, what they need, what type of locos they want and so forth.

MR MZINYATHI: Yes, yes.

MS MDLETSHE: But and I think he was part of the business case or something... (intervenes)

MR MZINYATHI: He was part of the business case.

20 MS MDLETSHE: Ja, if I am not mistaken, so he is saying the spares or he is saying any requirement that is needed by business as him, LI, they will give it to Supply Chain, correct, that is what he said.

MR MZINYATHI: More or less, via I think the engineers and whatever was there.

MS MDLETSHE: Ja, because they will talk... (intervenes)

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MR MZINYATHI: Correct.

MS MDLETSHE: Whoever will sign off, the agreed engineers will say it is doable and so forth.

MR MZINYATHI: Yes.

MS MDLETSHE: So they would then as business come to Supply Chain and if there is approval, they would then say this is what we need you guys to buy for us.

MR MZINYATHI: Correct.

MS MDLETSHE: Which is the specification.

10 MR MZINYATHI: Sure.

MS MDLETSHE: The technical specification.

MR MZINYATHI: Sure. So he then says they give you all of that and then it would also include, it included I cannot remember what, he made an example of what. Was it this (inaudible)?

MS MDLETSHE: Because ja... (intervenes)

MR SPRONG: Ja, it was some testing equipment and a (inaudible) equipment, ja.

MR MZINYATHI: Ja, he made an example of something. He says you know, it was important for him so that for instance, he knew what
20 kind of wagons he had and for you to get the locomotive to connect with that wagon he would need that type of a... (intervenes)

MS MDLETSHE: Yes, yes, yes, yes, yes, ja.

MR MZINYATHI: And whatever, whatever, engineering, electronics, whatever is called.

MS MDLETSHE: Okay.

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MR MZINYATHI: But then now he comes there with the people that are building this locomotive, he says man, there is this thing, they say no, no, no... (intervenes)

MS MDLETSHE: It is not there.

MR MZINYATHI: This thing is an exercisable option. He says no man, how can it be an exercisable option because it formed part of the specs.

MS MDLETSHE: Sure, so that was discussed.

MR MZINYATHI: All right.

10 MS MDLETSHE: During the evaluations.

MR MZINYATHI: All right.

MS MDLETSHE: If I remember and they did pick up, I think the evaluators, but to say... (intervenes)

MR MZINYATHI: Pick up what?

MS MDLETSHE: They picked up that some of the things that we had included in the specification.

MR MZINYATHI: Ja.

MS MDLETSHE: Whatever it was that we included, the OEM, some of the tenderers are responding saying if you need this, it is not part
20 of my best price that I have quoted there. I will provide but it comes at this cost. Anoj Singh when we did my evaluations, would separate it, Finance was not privy to what Technical did, right. So we wanted evaluations not to price, not to influence the technical requirement and so forth.

MR MZINYATHI: Ja, but the point I am trying to make, I am

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assuming the people that made it pass technical or functional, I get you require 80%, right... (intervenes)

MS MDLETSHE: Ja.

MR MZINYATHI: The people that made it there, I would expect for you to say no, no, you guys, 80% of what we have, of what we have asked for you have provided us at least.

MS MDLETSHE: Yes.

MR MZINYATHI: Ja.

MS MDLETSHE: Ja.

10 MR MZINYATHI: Now then, let us say you are negotiating, if someone says no, you did not provide me with that, you go back to the document and say no, you see... (intervenes)

MS MDLETSHE: No, no, no, options or exercisable options, exercisable options is things that as Transnet later would might want to include in a loco, but that the decision is not done upfront to say do we want the loco to come with it or not.

MR MZINYATHI: Ja, but that is why I am saying.

MS MDLETSHE: But the difference is, if someone is saying no, I can do this according to the specification but my price that I have, the
20 base price that I have quoted does not include this, so this person, it does not mean that technicality they are not compliant or they do not meet the 80%. It only means that you have to then go and adjust your price by what I did not include in the base price.

MR MZINYATHI: Okay, no I think I cannot take it further. Until I have a specific example, you see, perhaps we can take it further. Unless

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Mr Sprong wants to help me.

MS MDLETSHE: JD's explanation and I want to understand, JD, let us say it is spare parts, if they are saying parts or components or parts were included in the specification, I am saying I need to go back and check. We were trying to find annexure, I think it is annexure K... (intervenes)

FEMALE SPEAKER: I think this is it.

MS MDLETSHE: No, uhm-uhm, the spec is bigger than this, so then maybe we did not provide. We then need to provide and say which
10 clause the spares were supposed to... (intervenes)

FEMALE SPEAKER: There are about 326 pages in here.

MS MDLETSHE: Yes, yes, yes.

FEMALE SPEAKER: This is, because we could not find an empty one but this is the one that also has the requirements of the specification and the response. I think it is GE's one and the (inaudible) documents that you shared with us.

MS MDLETSHE: Ja, if I can find a clean one because we do not know if GE will include what they are offering and maybe part of the original spec it was not, so let us find the clean, we will find the clean
20 one and then we check.

MR MZINYATHI: Okay. No that is, I suppose that for me is that in so far as these issues are concerned. If perhaps you have any additional questions, I think Thulaganyo will probably ask you, we will send you an e-mail... (intervenes)

MS SELOKELA: I already have questions I was asked to ask.

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MR MZINYATHI: Is it? Oh, ask them.

MS SELOKELA: It goes back to the very beginning. If I understand you correctly, at the beginning you said when you were giving us just a general background in terms of you know, your employment here at Transnet, okay there was a part you said you signed it off, please correct me if I am wrong, as a commodity manager?

MR MZINYATHI: Commercial specialist in terms of the... (intervenes)

MS SELOKELA: Okay, the commodity manager in the... (intervenes)

MR MZINYATHI: I think at the time of the locomotives that it...

10 (intervenes)

MS SELOKELA: At the time of the locomotives.

MS MDLETSHE: I was in commercial, ja.

MS SELOKELA: You were a?

MS MDLETSHE: Commercial.

MS SELOKELA: Commercial.

MR MZINYATHI: You see, I hear you and I deferred you. [Laughs].

MS SELOKELA: Commercial specialist?

MR MZINYATHI: Specialist.

MS SELOKELA: Specialist, okay.

20 MR MZINYATHI: It is in the employment contract they provided.

MS SELOKELA: No, that is fine, I am just... (intervenes)

MR MZINYATHI: No I know, I know, so...

MS SELOKELA: All right and usually there is that intern having a...
Let me put a question instead of us being... Usually what does it entail in terms of qualifications, that position? You would be required

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to... (intervenes)

MS MDLETSHE: You will have to, I do not want to say this is the...
(intervenes)

MR MZINYATHI: Job specifics.

MS MDLETSHE: The standard. I think I do not want to say this is the standard job equivalent (inaudible) or when the tender, ag I mean if there is a tender, when they advertise they will say these depending on the job that you are applying for, they can change, they can review, they can... So I think it is best to get from HR what is the job
10 description of that. I can get it for you, for commercial specialist.

MS SELOKELA: Okay but you personally, what have your...?

MS MDLETSHE: I have a degree but I will respond né, I will. It is a very interesting question, because I would like to find out on all people that you have interviewed, right, and the good thing is I have been involved, I have arranged.

MS SELOKELA: Yes.

MS MDLETSHE: Have you asked the same question in terms of their qualification?

MS SELOKELA: Yes and I (inaudible) experience.

20 MS MDLETSHE: No, no, background is fine but their qualifications, because I saw (inaudible) and I am asking this, again guys I am just asking, like other three or four, sorry, others we were arranging their interviews, I did not see letters.

MS SELOKELA: Yes.

MS MDLETSHE: That are detailed and I did not see or I saw one

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Ravi's because he was checking the memo with me, I saw Ravi's, there was no qualification and specification, so are you confirming to me that that is the standard question?

MS SELOKELA: That is the standard questions that we have.

MS MDLETSHE: No, that is fine. I have... (intervenes)

MS SELOKELA: The reason you saw it, I just want to clarify in case you think there are some inconsistencies, so the reason a letter, we have not addressed letters to the other people that specifically you know, because of the, if you look at the letters, towards the end we
10 have got something like you know, it is not limited only to these questions based on what you are saying and the interactions when the interview may lead to other questions. The reason specifically that we wrote to Mr Ravi is because he did request for a (inaudible)... (intervenes)

MS MDLETSHE: No, and me.

MS SELOKELA: And higher, higher level and you, yes. Higher level, what do we want to see you about and that standard thing that we are saying the letter is just your role in this thing and based on the type of questions that you do give in terms of your role and subsequent
20 information that we see through perusal of documentation and we come up with questions. You know, unfortunately we cannot give you questions beforehand because of the engagement.

MS MDLETSHE: No, I understand but you are saying... (intervenes)

MS SELOKELA: But we have asked, we have asked for qualifications with other interviews.

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MS MDLETSHE: And job description have been asked from all other interviewing... (intervenes)

MS SELOKELA: Yes.

MS MDLETSHE: People?

MS SELOKELA: Yes, we have asked.

MS MDLETSHE: Okay, so I have a B.Com Degree in Management and Economics and also I am doing CIPS which is through Chartered Institute of Supply Chain.

MS SELOKELA: Okay, sorry just say that again, CIPS is Chartered?

10 MS MDLETSHE: Institute of Supply Chain.

MS SELOKELA: Institute of Supply Chain. Okay, that is Chartered Institute of Supply Chain

MS MDLETSHE: It is C-I-P-S.

MS SELOKELA: C-I-P-S and then just to confirm, you said it is a Bachelor's Degree in Economics?

MS MDLETSHE: Management and Economics.

MS SELOKELA: Okay, that was my only one question that I had, to refer to questions. I do not know, do you have any more questions, Doctor Sprong?

20 MR SPRONG: No, no, thanks, I am fine. Thank you very much.

MS SELOKELA: Mr Mzinyathi?

MR MZINYATHI: No, no, I am done. Ms Mdletshe...

MS MDLETSHE: Yes.

MR MZINYATHI: (Other official language) for your time, for sharing the information as well with us, it is valuable to us in the overall

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investigation, it assists and clarifies a lot of grey areas that we had when we walked into the room. We will obviously talk to other people that can provide further clarity, but I just wanted to say thank you for your time and for the information.

MS MDLETSHE: Thank you.

MR MZINYATHI: And maybe to the extent that we butted heads, I apologise, it was not, you know intentional. I think that is the word I am looking for, it was because mostly misunderstanding and I think that we did find a common ground at some point. So with that said I
10 am happy that you took it in that spirit and we continued in a professional manner and (other official language) if we send an e-mail to say please clarify this, I do not think we will call you for an additional interview, you know I trust that you will continue to assist us as you have been all along. I thank you once again.

MS MDLETSHE: Thank you. (Other official language)... Apologies, apologies. [Laughs].

MR SPRONG: No, do not worry, do not worry, I understand.

MS MDLETSHE: As (Inaudible) in all of these things (other official language) and maybe one need to share that with higher powers.
20 This is one thing that drains an employee. You know, you feel that when you are being interviewed, either one, you are not being heard what you want to say and it might be translated differently, or certain questions, because we talk after interviews. We talk.

Certain questions that are asked that you feel that it is, there is nothing wrong, you can respond to them but if others were not

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asked the same question, what does it mean, you know. So (other official language) and I hope (other official language) record, it is okay but I just... (intervenes)

MS SELOKELA: I can switch it off.

MS MDLETSHE: Switch it off, please switch it off.

MS SELOKELA: (Other official language).

[End of recording]

MEETING ADJOURNS

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that **as far as it is audible**, the foregoing is a true and correct transcript of the digitally recorded proceedings in the matter of:

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APPENDIX 22

Appendix 22

TRANSNET 1064 LOCOMOTIVES INVESTIGATION

INTERVIEW WITH MR NDIPHIWE SILINGA

HELD AT:

DATE: 2018-08-16

Mncedisi Ndlovu & Sedumedi Attorneys
2nd Floor
Illovo, Johannesburg

ATTENDEES:

1. Mncedisi Ndlovu (MNS)
2. Tshiamo Sedumedi (MNS)
3. Mandla Mnisi (MNS)
4. Nkosenhle Mzinyathi (MNS)
5. Mampho Motsomi (MNS)
6. Eugene Clayton (Ukhozi Forensics)
7. Pieter Smit (Ukhozi Forensics)
8. Leon Schlebusch (Ukhozi Forensics)

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SOUND FILE : Ndiphiwe Silinga 16 August 2018

MR SILINGA: How much time do you have?

CHAIRPERSON: We said an hour. You will remind us when we get excited.

MR SILINGA: An hour? Okay, so we will stick to an hour. Okay, let me remind you now, please do not get carried away. [Laughs].

CHAIRPERSON: Mr Silinga, good morning.

MR SILINGA: Morning.

CHAIRPERSON: Once again. As you are aware we are investigating
10 irregularities related to the 1064 locomotives.

MR SILINGA: Please speak up a little bit?

CHAIRPERSON: Okay, we are investigating the irregularities in the procurement of the tender, irregularities in the tender, procurement of 1064 locomotives for TFR, in particular the GFB business. This is the team, maybe let me just start by introducing the team. That is Mr Ndlovu at the head, he is the project leader. Mampe, she is the lady that is assisting us with the labour aspects of the investigation.

Maybe whilst I am there, this is a multi-disciplinary team including of labour people, commercial, procurement, forensic
20 investigators, finance people, but you will see that the team is a bit limited today because other people have other engagements. So this is Mandla Mnisi, I am sure you have met him, he is leading Internal Head MNS, the commercial aspects of procurement, of this investigation. Nkosenhle Mzinyathi, I am assisting Mampe(?) with the employment aspects.

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That is Eugene Clayton sitting at the opposite end of Mr Ndlovu, he is from Ukhozi(?) Forensics, they are assisting us with the forensic aspects. Maybe, I am not sure, you can elaborate on your role there.

MALE SPEAKER: No, that is fine.

CHAIRPERSON: That is fine. Peter?

MR SMITH: Peter Smith, ja.

CHAIRPERSON: Ja, Peter I have not met, your surname?

MR SMITH: Smith.

10 CHAIRPERSON: Peter Smith also from Ukhozi and Leon, I struggle with your surname, sir.

MALE SPEAKER: Schlebusch (?).

CHAIRPERSON: Schlebusch, ja okay. Shoot [Laughs]. And then Mr Tshiamo Sedumedi. We invited you because there are certain issues that we would like to canvass with you. Maybe to start at the top, we know that you are currently the GE, maybe you can then tell us at the time of the 1064, the procurement, what was your position and then when did you become GE, sorry not GE, the Chief Legal and then what was your role as Chief Legal, what committees you sat
20 on and then we can pick it up from there.

MR SILINGA: Okay, thank you, thank you, thank you Mr Mzinyathi or maybe let me just put it that way then you will see which year belongs to what, part of the 1064 when I started at Transnet and what I was and where I am now.

CHAIRPERSON: Ja, I think I already indicate that part was,

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(indistinct) because as I am going, you are going to go beyond 1064.

I think it would be easier if you understand when did you actually start this... (intervenes)

MR SILINGA: Ja.

CHAIRPERSON: That aspect, ja.

MR SILINGA: You plan your actions in there, yes. I started at Transnet on the 1 December 2008 as the Principal Legal Advisor responsible for litigation and admin law. I then was promoted into GM Legal in 2012, then in August 2014 I was appointed as the Group
10 Executive Legal which is now called Chief Legal Counsel. Now as the Principal Legal Advisor it is my responsibility as it says, was to manage the litigation matters as well as administrative law related matters, meaning your PAJA related matters and many other legal admin law related issues.

As you are Legal and you become responsible for, you become the head in a way but not the executive head, the Head of the Legal Services within the Head Office meaning the Group or the Corporate Centre, and maybe let me just to point you to an idea, let me not assume things, as you know, Transnet has got five divisions
20 and about three special units. Each division has a legal function within itself. You go to Transnet Freight Rail (indistinct) authority and so on and so on, and each one of them has a General Manager responsible.

Now if you are the General Manager Group Legal, it means you are sitting there and giving strategic direction to the ODs and also

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taking care of the corporate centre functions. The legal functions within the divisions have a dotted line to you, they report directly to the Chief Executive of that particular division. You should get what I am saying, yes, so to you they have a dotted line. You do not manage them directly but because they are matters that may deal as of (inaudible) importance to the organisation or are of significant risk, you then also get involved in giving direction you know, as to how they should be handled and they must from time to time on a monthly basis report to you so that you report to the various (inaudible) structures up to the Board.

CHAIRPERSON: Okay.

MR SILINGA: You know? Ja, so I think I will just be giving that.

CHAIRPERSON: So they report to you on everything that they do?

MR SILINGA: Not necessarily. For instance if you talk of litigation, I am just making an example, we have a threshold of matters above 5-million, because you know that the matters that you report to, the government structures like the EXCO and the Board and so on about, I mean you report to those structures about. And look, you cannot say they have to report to you on everything, but also under normal circumstances if a matter is going to be signed by the Group Chief Executive or the CFO, it must come to Group Legal.

CHAIRPERSON: Okay.

MR SILINGA: And there is a reason why I am saying this, because it would be relevant for us later on as you are going to (indistinct). Under normal circumstances it is supposed to go and be signed off at

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Group Legal. There must be the signature of the Group Executive Legal before the Group Chief Executive signs off and then the CFO. Then as the Group Executive Legal, you are then responsible again to... You are the executive that is responsible for all the legal related matters, you are accountable to the Board, as a result you sit in all the Board Committees, you sit in the Board not as a member of the Board but as an attendee, permanent attendee, so as to advise and give strategic direction to, legal direction let me say and with governance issues to all those structures, you know. That is at a high
10 level what this function is all about.

CHAIRPERSON: Just a follow-up on that, on the name so that we do not assume, this Group Corporate and Regulatory Office, is it the same with the Group Chief (inaudible)?

MR SILINGA: No, it is not the same.

CHAIRPERSON: Okay.

MR SILINGA: Okay, presently from November I am acting as the Chief Corporate and Regulatory Office, that is acting post until they appoint another. What had happened is in 2016 there was a restructuring that was done or some optimisation as they call it, to
20 reduce EXCO. We used to have EXCO, that is why it is now called GLT. It was reduced from 19 to 9 and one of the positions that was created was the Chief Corporate and Regulatory Officer.

CHAIRPERSON: Okay.

MR SILINGA: Ja, to whom Legal, Regulatory Affairs, Risk and Compliance, sustainability report.

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CHAIRPERSON: Okay.

MR SILINGA: Ja, it is a relatively new thing, it might not be so relevant for purposes of the acquisition of the 1064... (intervenes)

CHAIRPERSON: The 1064?

MR SILINGA: Ja, so that is why for instance I am also not using Chief Legal Counsel.

CHAIRPERSON: Okay.

MR SILINGA: Because you will see Group Executive Legal and Compliance as it then was.

10 CHAIRPERSON: Sure, okay.

MR SILINGA: Ja.

CHAIRPERSON: So if I understand you correctly, you are saying, you said you used the word "normal", so at least all matters that must go to the Group Chief Executive normally and I am assuming you are talking of a particular (inaudible)ment of the transactions, they must best be signed off?

MR SILINGA: Ja, not everything go to the Group Chief Executive, of course the... (intervenes)

CHAIRPERSON: No, no, no, I am saying all matters are supposed to
20 go to the Group Chief Executive.

MR SILINGA: Yes.

CHAIRPERSON: They must first normally go via Group Legal?

MR SILINGA: Ja, that is correct.

CHAIRPERSON: So that is the practice?

MR SILINGA: Uhm.

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CHAIRPERSON: Now the transactions that we are talking about, the principle, you are talking about (inaudible), the 1064 transaction was one of those matters... (intervenes)

MR SILINGA: It was supposed to.

CHAIRPERSON: That was supposed to follow?

MR SILINGA: Was supposed to, yes.

CHAIRPERSON: Maybe let us deal with the supposed versus what happened.

MR SILINGA: Ja, the actual that...

10 CHAIRPERSON: Okay, we will get to that ja, let us (inaudible) it. Let us take it a little bit earlier, there was this LSC.

MALE SPEAKER: What?

MALE SPEAKER: Locomotive Steering Committee.

MALE SPEAKER: Locomotive.

CHAIRPERSON: Locomotive.

MR SILINGA: Oh, okay.

CHAIRPERSON: Ja since it is also called Locomotive Steering Committee and there is also reference to its subcommittee. In a business case in actual fact, where (inaudible) the business case they
20 said to ensure that things, this transaction goes you know, all the (indistinct) the structure called the LSC which shall ensure that all references... (intervenes)

MR SILINGA: Go as per the organogram.

CHAIRPERSON: So you are aware of that structure?

MR SILINGA: Look, I was not very close then, let me answer you

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differently and say our acquisition processes, remember there are acquisition, not acquisition, there is procurement and a structure of functions in the divisions. In the main, the issues that go to the Group... Whenever I say Group you must know I am referring to the Corporate Centre.

CHAIRPERSON: Uhm.

MR SILINGA: Ja, issues that go to Group Procurement or Supply Chain, are mainly in respect of the transversal contracts, the ones that cut across all the divisions. Let us say for instance Audit, if you
10 are going to go out on a tender for Audit, that is not for one division, it cuts across you know, and other similar ones, but if Transnet (inaudible) authority wants to acquire the ledger, they are not going to... They are going to do it within Transnet (Inaudible) Authority. If TFR wants to acquire locomotives or whatever, they are going to do it there but the approval process has to go to Group at the end of the day, that is when you look at the 1064, everything was done at TFR. The CPO for instance, was done (inaudible) it was the CPO and TFR. The CPO at Group at the time was Gary Peter and you do not see him mainly on this thing, you maybe see him during the negotiations.

20 CHAIRPERSON: Ja.

MR SILINGA: So that mainly is the process because these ones, a function or on the specific acquisition it was dealt with at TFR and then they informed the various structures. I am not very certain since I was not even a Group Executive then, who was serving in the LSC and how it was constituted at the time.

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CHAIRPERSON: Ja, so you know the name of LSC?

MR SILINGA: No, because during the acquisition process?

CHAIRPERSON: Ja you see... (intervenes)

MR SILINGA: There is another LSC now that is looking into the delivery and so on which I am a member of.

CHAIRPERSON: No, not that one.

MR SILINGA: Not that one?

CHAIRPERSON: No, I am talking about the one during acquisition, the one that was actually at (inaudible) that was set up, saying for
10 instance how procurement is going to run, that is the one that I am talking about.

MR SILINGA: If there would have been a legal advisor or somebody who would have sat in that, it might have been Ms Mabandla. I am not saying... (intervenes)

CHAIRPERSON: Ja no, sure, sure.

MR SILINGA: With any certainty.

CHAIRPERSON: Sure, sure.

MR SILINGA: Ja, it might have been her, I do not know but personally I was not.

20 CHAIRPERSON: No, I think that is the point that I wanted to clear, I will just (indistinct) you were not in LSC. Now I hear you saying and again you are quite correct, this was a TFR acquisition but (inaudible) given the thresholds that were involved, it exceeded the mandate of the TFR people, so it is one of those that required a Group Chief Executive to say... (intervenes)

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MR SILINGA: For approval.

CHAIRPERSON: For approval, I mean.

MR SILINGA: And actually not even him, the acquisition process was... (intervenes)

CHAIRPERSON: Correct, ja. It is the GCO, BIDC then the Board.

MR SILINGA: Very correct.

CHAIRPERSON: So I guess this is one of those then that would have on its route would have involved Group Legal.

MR SILINGA: Correct.

10 CHAIRPERSON: That is the only thing that I wanted to... Because I want us as you are moving on to... (intervenes)

MR SILINGA: Sign, ja to sign off maybe on certain memos that are going to BDC via the Group Chief Executive, are going to the Group Chief Executive.

CHAIRPERSON: All right so now that is one of those?

MR SILINGA: This is one of those.

CHAIRPERSON: All right. Now the 1064, at that stage you would have been a GM Legal?

MALE SPEAKER: Maybe, I was going to ask this question to you,
20 when did you ceased to be GM Legal and when did you commenced to the Group Executive Legal?

MR SILINGA: It was in August 2014.

MALE SPEAKER: August 2014 you were the Legal Group Executive?

MR SILINGA: Actually to be precise, I acted from I think from 22 or

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23 July 2014. I acted because Ms Mabandla left around those days, then I was confirmed in August of 20... the same year, 2014.

CHAIRPERSON: So at the time when the RFPs were issued...
(intervenes)

MR SILINGA: What year?

CHAIRPERSON: The RFPs were issued in July 2012 and December 2012, so at that stage as GM Legal, who had been involved in providing legal advisory services for (inaudible)?

MR SILINGA: No look, the normal acquisition process, we do not get
10 involved because it is driven in the main by the procurement function and the government's function, but then if there are issues that go as I have said for approval, you do not get involved in the procurement tenders that are received, the evaluation and-and-and. That is not our function.

CHAIRPERSON: Okay.

MR SILINGA: One of that at all.

CHAIRPERSON: Okay, maybe let me be specific and you are quite correct, actually you have answered some of the questions relating to evaluation, but to an extent that there was a legal issue that was
20 running and there was this practice note actually that was issued in 2012 by Treasury which was changing, almost a debate as to whether it has changed the course of how things were done and that, so that was a direct legal issue, so if you can just zoom on that issue to say what would have been the involvement of...?

MR SILINGA: I am talking to the one where they sought an opinion

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from Advocate Solly... (intervenes)

CHAIRPERSON: Ja, we will get to Solly.

MR SILINGA: (inaudible).

CHAIRPERSON: Ja surely there had been, okay this is what happened, in July 2012 Treasury issued a practice note and it was (indistinct) that was introducing local content requirements for locomotives 55... (intervenes)

MR SILINGA: Okay, okay.

CHAIRPERSON: It is that one.

10 MR SILINGA: Ja.

CHAIRPERSON: Because you are the (inaudible) at that stage, you are an exemption on various issues of Transnet.

MR SILINGA: Yes, yes, yes.

CHAIRPERSON: And then Treasury issued this practice note and then a meeting was held in particular with Treasury, because it was (inaudible) as to whether does this practice note change the whole evaluation criteria of Transnet. We know that a meeting was actually held with Treasury, where Treasury said they shall use the main detail, so that is why I want to understand on that, because that is a
20 legal issue to say what would be the involvement of Mr Silinga if any, around that particular discussion.

MR SILINGA: No, no, I was not involved but let me correct you. Where the (indistinct) even currently, where there are engagements I have never been to National Treasury or met even official even to date. Where there are issues around the instruction notes that need

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clarification and so on and so on, procurement people as well as governance people, attend to that.

CHAIRPERSON: Okay.

MR SILINGA: Ja, it is not necessarily a legal issue rather than it being the governance issue.

CHAIRPERSON: Okay.

MR SILINGA: That is why I am saying even to date I have never been to National Treasury, I have never met.

CHAIRPERSON: Just to tick it off, did Procurement and Supply
10 involved those?

MR SILINGA: Governance (inaudible).

CHAIRPERSON: Did they ever at that stage seek a legal opinion from Legal Department around this particular issue? I know ordinary their involvement (inaudible) inverted by the custodian and so process, did they seek a legal advice from GM... (intervenes)

MR SILINGA: I honestly cannot recall, no I cannot say yes or no. I cannot say yes or no.

MALE SPEAKER: Just as a follow-up on that and I know that there is one memorandum, I just want... I think it was written to the BIDC...
20 (intervenes)

MR SILINGA: It was to?

MALE SPEAKER: It was written to the BIDC.

MR SILINGA: Okay.

MALE SPEAKER: The Board (Indistinct) Committee. In that particular memorandum specifically it provides that the RFP before

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the actuals of the RFP, the review was also done by Legal including external legal advisors, so do you know something regarding that?

MR SILINGA: My observation even during the negotiations, the Legal that was leading there was Gary Diedericks who was the GM Legal at TFR. He was the person who was doing that.

MALE SPEAKER: Okay.

MR SILINGA: And if I can just jump the gun, even, I think even the opinion that I was talking about... (intervenes)

MALE SPEAKER: Solly?

10 MR SILINGA: Ja Solly... (intervenes)

MALE SPEAKER: Might have instructed.

MR SILINGA: No, I think it is...

CHAIRPERSON: Maybe let us talk about that, so you are saying (inaudible) the part that are not clear in your head, so at division level they would have had that and in your opinion you would have briefed Solly?'

MR SILINGA: Solly, ja.

CHAIRPERSON: But this process, you found yourself at the BIDC level, so would it have passed through your process?

20 MR SILINGA: It should have. You mean the approvals?

CHAIRPERSON: Ja... (intervenes)

MR SILINGA: Remember that goes to BIDC and... (intervenes)

CHAIRPERSON: Yes, yes.

MR SILINGA: Under normal circumstances it should have.

CHAIRPERSON: It should have, it is one of those that were

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supposed... (intervenes)

MR SILINGA: Ja... (intervenes)

CHAIRPERSON: Ja, that is the part that I just want to... (intervenes)

MR SILINGA: The reason I am saying it should be... (intervenes)

CHAIRPERSON: I am emphasising that aspect Mr Silinga, we have to be factual in our... (intervenes)

MR SILINGA: Ja, remember the reason I am saying it should have, there was also the Group Executive Legal. I do not know the extent of the involvement. To me it seemed to be very lenient, let us be
10 honest, when I look in retrospect. It seemed to have been very lenient... (intervenes)

CHAIRPERSON: Ms Mabandla?

MR SILINGA: Ms Mabandla, yes.

CHAIRPERSON: Okay.

MR SILINGA: It seemed to have been very lenient.

MALE SPEAKER: Sorry, can I go back to the 1064 Locomotive Steering Committee as it was in 2012/2013? All right, I know it was established and certain people were delegated. I have got some of the minutes. When I read some of the minutes there are those that
20 are present and then those that are attendees.

MR SILINGA: Okay.

MALE SPEAKER: Maybe let us start there, though if you are listed as a present person, it means that you are a permanent member? Maybe when I read the minutes because sometimes that confuses me when I am reading the minutes?

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MR SILINGA: Yes, if you have the documents I can... Ja, those that are listed first. Ja present are members né.

CHAIRPERSON: All right.

MR SILINGA: Then in attendance it is either people who are permanent attendees or are present and able to do a presentation.

MALE SPEAKER: Correct.

MR SILINGA: Or are here because they have to give a certain expert advice. For instance, if MNS goes to a Board meeting, they will not be under the present, they would be under in attendance or in some
10 instances partial attendants.

MALE SPEAKER: Okay, so in this specific one as an example, you will see that in April 2013 where it says Mr Silinga GM on... (intervenes)

MR SILINGA: On behalf of Ms Mabandla, she was (inaudible) on the day.

MALE SPEAKER: Ms Mabandla is the one that is a member?

MR SILINGA: Is a member.

MALE SPEAKER: Is the one with (indistinct)?

MR SILINGA: Yes.

20 MALE SPEAKER: That is... It is safe to assume then that on the basis of what you are saying, then the GM Executive at the time would have been a member of the... (intervenes)

MR SILINGA: Group Executive.

CHAIRPERSON: Yes.

MR SILINGA: Yes, Group Executive.

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MALE SPEAKER: The Group Executive of the Locomotive Steering Committee.

MR SILINGA: Okay.

MALE SPEAKER: Okay, so all right. Whilst we are on this memo, so on the 18 April 2013, this is the time when the business case is on its critical path towards approval of the Board.

MR SILINGA: Which of the memo?

MALE SPEAKER: April 2013, I am not sure which... (intervenes)

MR SILINGA: Which business case?

10 MALE SPEAKER: The final one.

MR SILINGA: Oh, okay, 28 or 34, 38... (intervenes)

MALE SPEAKER: 38 yes.

MR SILINGA: Ja, ja.

MALE SPEAKER: It was 38.6.

MR SILINGA: 38.61.

MALE SPEAKER: 38.61. So on this meeting Ms Mabandla is not there, you are there. The meeting is chaired by Mr Singh.

MR SILINGA: Okay.

MALE SPEAKER: Do you recall that meeting?

20 MR SILINGA: No, not in particular.

MALE SPEAKER: Not particularly, okay. If I, can I give you the minutes and then maybe you can just look at them and then jog your memory?

MR SILINGA: Ja.

MALE SPEAKER: Let us see if they can jog your memory.

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CHAIRPERSON: This is a desktop, it is not touch-screen, I saw you (indistinct). [Laughs].

MALE SPEAKER: Next time I will bring my laptop Mr Silinga, I can see you are frustrated. [Laughs].

MR SILINGA: Okay, what is the date of this meeting?

MALE SPEAKER: 18 April 2013.

MR SILINGA: It was 18 April, ja okay. Look, I am not sure if I am remembering the minute itself because I have read a lot of these things which are around the investigation, but you can ask what you
10 want to ask.

MALE SPEAKER: Okay, as you can see you are present at that meeting on behalf of Ms Mabandla.

MR SILINGA: Ja.

MALE SPEAKER: At that meeting the business case, let me say as it was prepared by McKinsey on the 18 April 2013 it was presented to a Steering Committee, as we understand it, that business case sat and this is from an interview with Mr Francis Callard excluding borrowing cost, because he had prepared it with McKinsey. It did not say excluding forex, AG, escalations, *et cetera*, *et cetera*. So for me it is
20 important that you try and remember because you know, people after some time it becomes whether there was hedging, it was not and whatever the case might be, so I just wanted from your reading of the minute, was hedging included in the business case? Forget about that, we will get to the approval process.

MR SILINGA: Okay, as I have said, my remembrance will not be

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about this meeting and I have read this many times.

MALE SPEAKER: Okay.

MR SILINGA: And the business case itself.

MALE SPEAKER: Sure.

MR SILINGA: And I think I even raised it with you, but now hedging was included here, but I am not sure whether I knew that then, as I am saying I heard this, I have read those things many a time from (Inaudible) Report, from the what do you call and then I now know, but I am not sure whether then I knew and what it raises. You are
10 given a business case on the 17th to be discussed on the 18th, you, I mean how do I know about hedging and so and so, but it had been explained for instance in the (inaudible) what do you call, then I could see myself, but hedging was included.

CHAIRPERSON: Okay.

MR SILINGA: On that 38.6, but I cannot tell whether then I was able to determine whether there was hedging or not hedging, at that time maybe I got the business case for (indistinct) that is coming up on the 17th.

MALE SPEAKER: Okay, (indistinct) but can you remember whether
20 at that time when McKinsey was presenting it, that list? Because you are quite (inaudible) for us, it will not be easy for us decipher as to whether (inaudible). When McKinsey was presenting, can you remember if they did tell you that hedging you know, (indistinct) in the company or what?

MR SILINGA: I will be lying to you, I just cannot. I do not remember

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the meeting itself, the proceedings in the meeting.

MALE SPEAKER: Okay.

MR SILINGA: But the circumstances around the business case which I now even better understand than I did then, I can remember, that is why I was saying right from the word go about these things, I am not sure whether when I am dealing with the information, it is information that I had then and even was able to contextualise and appreciate or it is information that I have now become wiser of because of having read these many other documents that has since been created.

- 10 MALE SPEAKER: Okay, linked to that we are advised that some time before this business case was developed, Transnet used to enter into contracts wherein they would contract on a dollar base price, but then I think it is Ms Ramos at the time said no, no, no, this is too risky because a dollar fluctuates, so let us change, let us enter into a rand base contract, effectively meaning you must hedge priced before you enter into... (intervenes)

MR SILINGA: Okay, ja.

MALE SPEAKER: As we understand it. Are you familiar with that Policy of Hedging or not?

- 20 MR SILINGA: There is a Hedging Policy but look, some other, some of these things are things that you know, there are people in Treasury who are experts in these things.

CHAIRPERSON: Okay.

MR SILINGA: I have no idea what hedging or how much should be hedged for what and when on this (inaudible).

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MALE SPEAKER: Ja, okay sure.

CHAIRPERSON: Let us restrict our questions to legal issues and in particular to the role that Silinga played in 2014 as Group Chief Legal and as GM in 2012 to 2014. So once we go to the hedging, I mean he has explained that.

MALE SPEAKER: He does not know.

CHAIRPERSON: Let us just see whether, because we have got one hour.

MALE SPEAKER: Ja, no sure.

10 CHAIRPERSON: Ja.

MALE SPEAKER: I agree. Ja, I think you have answered this other question because we really need to fast forward certain (inaudible), you have covered (inaudible) on the evaluations you were involved, as to what (indistinct).

MR SILINGA: That is none of my business.

MALE SPEAKER: You have not been on it. Now let us go the negotiations. Look, you know there are (inaudible) evaluations, then you know you sit with the successful vendors... (intervenes)

CHAIRPERSON: Tender negotiations, (inaudible).

20 MALE SPEAKER: But maybe before you go there, you know this, we heard about this legal assurance thing because, and I just want to know if there is anything called legal assurance.

MALE SPEAKER: Ja.

MR SILINGA: The (inaudible) is there and in response to these reports, in particular the (inaudible) Report and the business plan

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says, I think he mentions the 33, there is a 33... (intervenes)

MALE SPEAKER: There is one of 33.

MR SILINGA: Ja.

MALE SPEAKER: It is the annexure that is 33.

MR SILINGA: Oh, okay.

MALE SPEAKER: Yes.

MALE SPEAKER: You see the procurement of the 1064 or any other big number for locomotives, was subjected to legal assurance. Do you know anything about legal assurance?

10 MR SILINGA: It could have been but my personal involvement was not there, that is why I am saying the main person who was being used there was the GM Legal at TFR, Gary Peters.

MALE SPEAKER: No, I am asking you the question because we went to go and ask for the report of assurance.

MR SILINGA: Ja.

MALE SPEAKER: So what I want to find out personally is, is there such a thing?

MR SILINGA: Ja.

MALE SPEAKER: And then if yes, then where can we get it.

20 MR SILINGA: Ja. As GM Legal, what are you expected to know about the organisation on legal issues? Let us forget about Group, just GM. I assure you almost everything, so if there is legal assurance, that should have been part of you, that is why I said practice should have been if there is a matter that then has to go for approval, it has to go via Group Legal. That is the assurance I am

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talking about, but it does not seem to have existed in most cases here and... (intervenes)

CHAIRPERSON: No, no, no, let us be factual.

MR SILINGA: Okay.

CHAIRPERSON: Okay, we do not want speculation because these issues that you are answering impact on the personal role that you as in that period played right, and which as you have (inaudible) seen, have sometimes let people been, (inaudible) people (indistinct) things said, so we want to know you as Ndiphiwe.

10 MR SILINGA: I did not give any assurance on the procurement process of the 1064.

CHAIRPERSON: Ja, as GM Legal you are not aware of anything?

MR SILINGA: No, no, no.

CHAIRPERSON: Okay and it has, your job description as GM Legal? Because I want us to focus first on your role as GM Legal, because that is 2012 to 2014.

MR SILINGA: To give you an answer, it is to mitigate legal risk at Transnet.

CHAIRPERSON: Okay.

20 MR SILINGA: But signing off on memos that go to EXCO were to be Executive Legal.

CHAIRPERSON: Okay, no proceed.

MALE SPEAKER: Okay, is it possible then that we get access? Where would we get access on the supposed memos if they exist, because I would like to call for them?

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MR SILINGA: No, they would be in the pack that goes to the company secretary, the then report.

CHAIRPERSON: Which (indistinct)?

MALE SPEAKER: The legal assurance memos.

MR SILINGA: That, remember that would be a memo that says and the purpose of this memo is to request the BIDC to approve the business case, I am just making an example, da-da-da-da, then you sign. So it means that then which goes to the GCE will form part of the pack that goes to whatever government structure, meaning like
10 the Board.

MALE SPEAKER: Ja.

MR SILINGA: So it would sit with governance secretariat if there is any (inaudible), it will not be sitting at Group Legal. At Group Legal it comes and passes. But let me put Nkosenhle's question differently and guys you are free to ask questions if you want to (inaudible).
CIA... (intervenes)

CHAIRPERSON: You know what (Inaudible) is?

MR SILINGA: Ja, ja, ja. Internal Audit ja, was Legal part of it?

CHAIRPERSON: No, no, separate.

20 MR SILINGA: They are the ones who get more involved in the procurement process, they provide especially what are called HVT tenders, meaning high value tenders.

MALE SPEAKER: Ja.

MR SILINGA: They give them assurance there, they are there or they are supposed to be there right throughout you know, as behind the

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new tender team during the procurement process. Legal does not sit in those, in that process because there is also governance that should be involved and advising procurement.

MALE SPEAKER: So if there are any legal issues that arise in this (indistinct) governance?

MR SILINGA: It can either be governance or governance can refer them to Legal, because remember people at governance themselves, legal (indistinct) Peter (Inaudible) if you know him.

MALE SPEAKER: Ja.

10 MR SILINGA: Ja (indistinct) you know.

MALE SPEAKER: Coming back to that question before we close it, the memos that we are referring to, is like a memo like this. Are you saying that ordinarily the Group Executive should also sign?

[Parties speaking simultaneously].

MR SILINGA: Yes, yes, yes.

MALE SPEAKER: Okay, so ordinarily they should also sign in support?

MR SILINGA: Yes.

MALE SPEAKER: That is how you give (inaudible). I mean that is
20 what legal assurance... Legal assurance means... (intervenes)

MALE SPEAKER: You support... (intervenes)

MALE SPEAKER: There was a portion where place was made for a... (intervenes).

MALE SPEAKER: (Inaudible).

MR SILINGA: Yes.

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MALE SPEAKER: So that is what Legal, that is how much (inaudible) legal assurance.

MR SILINGA: Ja, now that we sit during the procurement process and... (intervenes)

CHAIRPERSON: At a given Board.

MR SILINGA: TIA and BT team.

MALE SPEAKER: Ja.

MR SILINGA: So you then sign.

MALE SPEAKER: In the memorandum, like for example now you
10 were, I am giving an example with this memo where Brian was recommending an increase from 38 to 54, ordinarily you would sign as the Chief Executive, then we have CFO and so forth and TFR, then CE, then he says in addition the legal person, Group Legal should also sign in support of this particular recommendation to the Board or BIDC.

MALE SPEAKER: That is a correct conclusion and I am tapping on the question here, we... (intervenes)

MR SLEBUSH: Wait, I still have a question for this, sir. The legal assurance, so that would come from Group, because this is a high
20 value tender?

MR SILINGA: Ja, you mean the approval of a submission to, I mean part of the recommendation of the submission to a Board structure? Ja, ja, ja, that is true. Is that what you are asking?

MR SLEBUSH: No, no.

MR SILINGA: What are you asking?

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MR SLEBUSH: The legal assurance that you are talking about now, will it come from TIA or TFR or should it... (intervenes)

MR SILINGA: No, no, let us not call it legal assurance because I have said TIA got involved right in the tender process, during the evaluation they are there, (inaudible).

MALE SPEAKER: Do you think there might have been confusion about the technology instead of legal assurance, it is supposed to be compliance assurance?

MR SILINGA: Probably, ja because Legal does not get involved
10 during the procurement process. They just get involved as and when there is something that needs approval, it is TIA who does that and they are called the high value tender (inaudible).

MALE SPEAKER: Ja.

MR SILINGA: TIA and Compliance, they are supposed to be there as well because Compliance is separate from...

MALE SPEAKER: Legal.

MR SILINGA: No, from...

CHAIRPERSON: Procurement?

MR SILINGA: Uhm-uhm, from...

20 MALE SPEAKER: Supply Chain Services?

MR SILINGA: From Internal Audit.

MALE SPEAKER: Oh, okay.

MR SILINGA: Ja, so Compliance would be part of the TIA. Ja, no, no, no, I am saying they are separate from TIA. They are supposed to be there during the high value tender assessment, that is why they

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are called when TIA is there, they are not called TIA, they are called the high value tender team.

MALE SPEAKER: Ja.

MR SILINGA: It means it is composed of various assurance providers.

MALE SPEAKER: Okay, so every step, sorry, sorry, every step will then be certified?

MR SILINGA: Ja.

MALE SPEAKER: And RFP assurance are all (inaudible)? The
10 submission, the proposal received, they are all happy, da-da-da?

MR SILINGA: Ja.

MALE SPEAKER: So that will happen?

MR SILINGA: Ja.

MALE SPEAKER: By whom, by TIA?

MR SILINGA: No, by let us call it HVT, high value tender team.

MALE SPEAKER: As in the HVT team, is there any Legal present there?

MR SILINGA: Uhm-uhm.

MALE SPEAKER: Okay.

20 MR SILINGA: I said governance is part of it, do you not say?

MALE SPEAKER: Governance is partly legal?

MR SILINGA: Partly legal in qualification you are expecting, ja.

MALE SPEAKER: Yes, oh but not... (intervenes)

MR SILINGA: But they do not sit under Legal, they sit under Procurement, Supply Chain.

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MALE SPEAKER: Oh, so they are called... (intervenes)

MR SILINGA: I am not sure of the divisions but even at the Corporate Centre.

MALE SPEAKER: Ja.

MR SILINGA: Ja.

MALE SPEAKER: So their assurance can be attributed if you go to Legal Department you are saying?

MR SILINGA: No, no, they are separate altogether.

MALE SPEAKER: But there is thing that you mentioned earlier on
10 and that is the one that, because I need all these issues... You know this, the usage of the word supposed to, that is the one that confuses me sometimes and I think even (Inaudible) had asked you said it was supposed to and then you mentioned of factual. Let us, I mean, so that I... If in essence that is what you say, there is one matter that was supposed to have been vetted by (inaudible), what about the other matters?

And on a fact it was not. Whose fault would that be? Who is supposed to say but guys wait, I see there is something that was signed off by the BEC yesterday, whatever... (intervenes)

20 MR SILINGA: What informs that supposed (inaudible)?

MALE SPEAKER: Yes.

MR SILINGA: That is a part that (inaudible) source... (intervenes)

MALE SPEAKER: Or supposed to.

MR SILINGA: That exist in the old practice and I am not sure whether it is there particular on the Delegation Of Authority, we would have to

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look at that, I am not sure.

MALE SPEAKER: So if there are documents (inaudible) about the info or your first answer at the beginning of, if we find documents that given the thresholds, if other involved, they were going to the GCO, BIDC and the Board and there was no legal signatory on that thing, what conclusion must we reach on that, on that type of a document?

MR SILINGA: It is that they were not legally reviewed.

MALE SPEAKER: They were not... (intervenes)

MR SILINGA: Or they might have been legally reviewed at division...

10 (intervenes)

MALE SPEAKER: Sure, sure, sure.

MR SILINGA: You know, but not at Group Legal, at Group level.

MALE SPEAKER: No sure and that is exactly the point that I am making. I accept that there would have been a Group (inaudible) at division, but I am saying because of the thresholds that are involved at the beginning, because if you look at the value, the value says this must happen at the Group level... (intervenes)

MR SILINGA: Ja.

MALE SPEAKER: So where there is no provision in a memorandum,
20 yes you are quite correct, the answer is there was no legal, because the (indistinct), so is it fair to assume that this memorandum ought to have passed through the legal hands first before it goes to...?

MR SILINGA: Ja. Then it depends on... That is why I was saying I am not sure whether is it Delegations Of Authority Framework that makes that requirement or it is normal writings where people are

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trying to safeguard the process, because if it is Delegations of Authority Framework requirement, then that would be in contravention of the DOA, but if not, it is normal practice, then nothing goes.

MALE SPEAKER: Nothing goes?

MR SILINGA: Ja.

MALE SPEAKER: Let me ask this question bluntly, if an outsider comes here, but *eintlik*, *eintlik* in all these things where was Legal, Group Legal, in all this stuff that were happening where was Group Legal, what was his or her role, what would be a fair answer or would

10 that be...?

MR SILINGA: I think the right person who would have to answer are those that signed before, because remember I will not know if you come to me tomorrow, what you are doing out there, you know.

MALE SPEAKER: Okay.

MR SILINGA: If you are bypass me, then you bypass me, I will not know.

MALE SPEAKER: All right.

MR SILINGA: Ja.

MALE SPEAKER: Following on that issue, remember at the Board of
20 BEC level, you had said as permanent attendee there would have been a Group Legal? So if there is a memo that (inaudible) I am talking about, now we are sitting at the BEC level and there comes, is the question being raised now guys, this is a matter, how come this matter never come... (intervenes)

MR SILINGA: I suppose then as the person, the legal person sitting

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there, you can say no, I did not review this.

MALE SPEAKER: Okay.

MR SILINGA: Because remember, when you go to BIDC, you go there now as or any Board Committee, you go there now as management, you know (inaudible) you know meaning we are credible to this as management, so you cannot, there is no problem in you saying no, but I do not agree in this or I have not seen this, you know. I am here but I am not seeing this thing.

If you want to raise issues, because if you are going to and
10 under normal circumstances they are supposed to be receiving a
pack seven days before unlike this case where you received it the day
before, but of course then there will be always be exceptions, then it
means you will have an opportunity to go through the pack and then
formally raise what you want to raise, you know, when reading the
pack. You can raise it, before you can even raise it at the meeting.
You say I cannot approve this thing because I have identified this
problem, A, B, C. So there is still an opportunity to rectify anything if
need be, during the signing processes.

CHAIRPERSON: (Inaudible) an opportunity?

20 FEMALE SPEAKER: May I ask (inaudible)?

MALE SPEAKER: On the negotiations, PTM, at the PTM, in terms of
the PTM (indistinct) was supposed to be valid, you get ample, I think
(indistinct) transact. Obviously with the negotiations you would have
a mandate on what is it that you are supposed to be doing, in
negotiating the (inaudible). Maybe let us first start, were you a

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member of the negotiations team?

MR SILINGA: Okay, let me tell you how the negotiations went, but I do not know how dealings were constituted. There were two sets of negotiations, one for the main contracts, the acquisition of the 1064 locomotives, then there was for subcontracts, meaning subcontracts for TE. Remember TE is subcontracted to all those OEMs, now when it comes to Transnet management, the people who are leading the main, the ones that (inaudible) the acquisition for TFR, Thami was the lead, then (Inaudible) was the head, Legal Head who was there.

10 Lindiwe was here. There I cannot remember her role, then that is where the likes of Yusuf as well were there and I do not remember the others.

MALE SPEAKER: Ja.

MR SILINGA: Yes, so that was that team.

MALE SPEAKER: And Singh as well, because I think... (intervenes)

MR SILINGA: Come again?

MALE SPEAKER: And Singh.

MR SILINGA: Okay, okay... (intervenes)

MALE SPEAKER: Anoj Singh.

20 MR SILINGA: Okay Singh, let me tell you about Singh, let us say for instance (indistinct) happening here at (inaudible), there were various boardrooms that were allocated. Singh was not always sitting at the negotiations, he would come in if there is something that the parties are locking on, but he was always sitting there (indistinct) allocated to some small boardroom like an office, so he was not sitting from

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morning to da-da-da-da, but if the parties, there is something that they get locked on, they would defer to him. You get what I am saying?

CHAIRPERSON: No, sure.

MR SILINGA: But I can say yes, he was the executive that was there on a daily basis.

CHAIRPERSON: You see it is important to distinguish, that is why I ask about the issue of the membership, because it comes important to say was the person around at the end of the day. To your
10 knowledge was Mr Silinga officially appointed as a member of the negotiation team? As to your (inaudible) that issue, we are dealing with that aspect of whether you were there or not.

MR SILINGA: No, I do not know where I was officially appointed, I am the official... (intervenes)

CHAIRPERSON: But to your knowledge, you know honestly if it is here in other clauses.

MR SILINGA: Yes.

CHAIRPERSON: Having said that... (intervenes)

MR SILINGA: I am just... (intervenes)

20 CHAIRPERSON: So it is not anywhere he could just rock up, there is only the selected view. Somebody must select the people who are going to go there and negotiate because it is for them to know what is the mandate.

MR SILINGA: No, I cannot remember that detail, as to whether there was something specific, you break it down to say we appoint you, ja.

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CHAIRPERSON: Okay, one thing I am thinking about, were you specifically told that okay fine, you are a member of the PTM... (intervenes)

MR SILINGA: I was invited but I cannot remember how, then I was allocated to the subcontracts, yes.

CHAIRPERSON: Okay, all right.

MALE SPEAKER: Members of the subcontract, okay?

MR SILINGA: Subcontracts mainly were TE people, Legal was not... Okay the leading person in the subcontract was Gary Peter because
10 he was told by Thami to be part of the main contracts, to do the subcontracts, and he wrote something there (indistinct) he did not take it well but (inaudible). So it was Gary Peter, then there was Zondi Masonyana who is part of TE, Manla Hlapolosa(?), then Labour, then other technical people whose names I cannot remember.

MALE SPEAKER: Okay.

MR SILINGA: Yes, because you have got a team constituted of people with various expertise, you have your Legal, you have your Finance, you have your engineers who was going to know if this
20 locomotive is, we need this, we need it to be contemplated like this and so on and so on, you can justify this price and da-da-da-da, and all that.

MALE SPEAKER: Okay, these I am asking purely for sake of confirmation, actually this must not be an assumption. So when you are saying a part of the (inaudible), you are saying to the (inaudible)

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the team that was negotiating the price, okay remember when you, let me just go back, when you went into negotiations, at that stage you get a mandate from the Board, it was an approval of 38.6.

MR SILINGA: Ja.

MALE SPEAKER: We are talking about that issue. By the time you walked in, that is what that team had, the mandate of 38.6 yes, from the Board.

MR SILINGA: The Board.

MALE SPEAKER: We all know that eventually the price for
10 (indistinct) the reasons, what we have known is that the price by the time we finished the negotiations, was no longer 38, it was 49 if you add (inaudible) 54. So were you part of the thing that you were (inaudible) in rooms there, were you part of that group of people that were... (intervenes)

MR SILINGA: (Inaudible) that 38.6 yes.

MALE SPEAKER: And we are aware that now the price is no longer 38, we are now on 49.

MR SILINGA: No, that negotiation would happen in the main negotiations, not in the sub-contractors... The sub-contractors, they
20 have got nothing to do with the 38.6, these escalations to 54 and so on.

CHAIRPERSON: Can I share an opinion?

MR SILINGA: If you have any.

CHAIRPERSON: Ja, in the 38 né, the ETC as it was excluding hedging when they walked into the negotiations, did the negotiating

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team have power if I can call it that, or authorisation to negotiate it outside of the 38.6 to 49.9 for instance?

MR SILINGA: Stick to 54.

CHAIRPERSON: 54?

MR SILINGA: Uhm. Look it is always, it is by its name an estimated total cost.

CHAIRPERSON: Okay.

MR SILINGA: It is expected, it may not be exactly 38.6, but you cannot go far beyond, there is always a limit of about 10%, maybe
10 above and so on and so on, because if you come and negotiate with me to buy this for the (inaudible), I can say okay R2 000, but negotiations is negotiations.

CHAIRPERSON: Sure, sure.

MR SILINGA: And the ETC by its name is estimated total cost, it may not be, but then you go back to the approving Board to say here we are, then you seek a new mandate to say oh, this is where we are and these are the reasons and so on and so on, it was my opinion.

MALE SPEAKER: Can we ask you this opinion, when you say opinion, are you aware of something called BAFO?

20 MR SILINGA: (Inaudible) BAFO, yes.

MALE SPEAKER: Are you aware what comes (indistinct)?

MR SILINGA: No.

MALE SPEAKER: Okay, because BAFO is part of the regulatory documents in Transnet.

CHAIRPERSON: It is in the PPL in particular.

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MALE SPEAKER: The PPL in particular and how you may handle (indistinct) and all that you know. So you say you were not aware of it?

MR SILINGA: No, no, but I know that the other things that influenced the increase of figures... (intervenes)

MALE SPEAKER: No, we will come to the increase, I am just on BAFO.

MR SILINGA: Oh yes, ja.

MALE SPEAKER: The principle as contained in the documents, you
10 are saying you were not (inaudible) or you were not aware, you are still... (intervenes)

MR SILINGA: No, no, no, I am familiar with it, ja.

MALE SPEAKER: But at that time you were not aware of it?

MR SILINGA: No, I was not aware of it.

MALE SPEAKER: Okay, then there are, you are aware that there were videos of the negotiations, video shots? You are not aware that you were video'd, recordings?

MR SILINGA: No...

MALE SPEAKER: There are videos.

20 MR SILINGA: Okay.

MALE SPEAKER: Then there are videos of the recordings and the videos, some of the videos are (indistinct), some of the videos you are in there... (intervenes)

MALE SPEAKER: The main negotiations.

MALE SPEAKER: The main negotiations. What is your take on that?

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MR SILINGA: Oh no, remember when we were negotiating with the sub-contractors, we were told that there must be (inaudible), lawyers like Chinese... (intervenes)

CHAIRPERSON: Chinese also.

MR SILINGA: But because we were told look, let us say BT is being impossible on A, B, C, go guys and sit there, you know, so that you understand what they are saying about this, because (inaudible) was not sharing much with TE, so us, we are neither TE nor... like a spy, you know we would go there so that we can feedback no, this is what
10 they have been given by TFR on this. Let us say for instance if it comes to limited liability, they will say they want 5% limited liability.

When they had been 15%, I am making an example, when they have been given 15% by TFR, so just go to listen to those things, okay no, it is not true, then you come back and feedback here. That was when we would go into the... And I do not think I was even called (inaudible) in those negotiations if you look at those, because it was So-and-So. Mine was to go and listen, then go and advice, you know on this aspect this is what is, because TFR was very, very, very (inaudible).

20 You know Thami, he was just pushing and say no, negotiate your own thing there and the Chinese would come and say no, we want 15% limited liability and us, in the main (inaudible) what have you been given? No we have been given 15%, you know, then you would go and... That was the main role that one was playing in the main negotiations, otherwise there was no negotiation that I know of,

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that I participated in.

MALE SPEAKER: Okay, so you are not aware of the consequences of your presence in those, yours, the impression and this goes to the (inaudible).

MR SILINGA: Okay.

MALE SPEAKER: The impression is that the people that were sitting there, agreed to the escalation of the estimated total costs from 38.6-billion to 54-billion without the consent of the Board at that time. Are you aware?

10 MR SILINGA: No, I was not a negotiator.

MALE SPEAKER: Okay, so you are not aware that your presence might have... (intervenes)

MR SILINGA: No, no, not at all.

MALE SPEAKER: Oh, thank you.

MR SILINGA: Not at all.

MALE SPEAKER: So you spoke about 10%, is it in principal, is it in a policy or something?

MR SILINGA: No, I was just making an example.

MALE SPEAKER: Yes okay, but is there a policy that would mention
20 that?

MR SILINGA: I think there is... (intervenes)

CHAIRPERSON: (Inaudible) of the operations (inaudible)...
(intervenes)

MR SILINGA: Ja, I think there is (inaudible) where it is, the variation of you know, a go between, because you cannot say it is going to be

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38-billion and nothing more. It is always expected there will be this and remember, some would be negotiated, technical people are here. You came with your spec as BT, say the locomotive is 29-billion, then they will say no, I do not want this kind of... Let us say you are buying yourself a Mercedes because I do not know train parts, buy yourself a Mercedes, say no, I do not want this kind of mag because of the type of roads that I am going to travel in. Okay, if you want that type of mag then it is going to push the price a little bit by, you know.

MALE SPEAKER: Sure.

10 MR SILINGA: So that is why you cannot settle on.

MALE SPEAKER: No, but there is a difference with due respect to your example, there is a difference on my personal choices that I make as a person.

MR SILINGA: No, very sure.

MALE SPEAKER: And then decisions that you make as a member of Transnet, because personal it will be guided by personal choices. As a member of Transnet it will be guided by Transnet policies.

MR SILINGA: Maybe you took my example too literal.

MALE SPEAKER: Ja.

20 MR SILINGA: Ja, I am saying you are a technical person, you know the environment in South Africa, you know that this type of locomotive on our (inaudible) and problems being A, B, C, the maintenance being low, maybe for this it would not be fine, it is not going to last for long and that is not your personal interest, it is in the interest of... You know the business better than the tenderer, you know.

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MALE SPEAKER: Yes.

MR SILINGA: That is what I am saying.

MALE SPEAKER: Okay no, that is fine. I want us to look into it, because...

MALE SPEAKER: On that point because Mr (Inaudible) had made a similar... (intervenes)

MR SILINGA: Mister who?

MALE SPEAKER: Laher.

MR SILINGA: Okay.

10 MALE SPEAKER: Made a similar argument... (intervenes)

CHAIRPERSON: Use his example of cars, he will know (inaudible).

MALE SPEAKER: Ja. [Laughs].

MR SILINGA: No, I am just trying to simplify.

CHAIRPERSON: Ja no, but yours is fine.

MALE SPEAKER: But where I get confused and maybe you can assist me, because this is where I do not understand this example, you have technical specifications of the locomotive that you want in the RFP document. Why would you then come and negotiate again in there, because well my understanding when you are given BAFO, it
20 includes all of those specifications.

MR SILINGA: I do not know, you would have to ask technical people on that one.

CHAIRPERSON: Let us not zoom into the other issues. Take the point that some of the things he does not know. February 2014, transaction agreements have been negotiated or before March, this is

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after the negotiations in (Inaudible).

CHAIRPERSON: You as PTM, did you play any role in the finalisation of the transaction (inaudible)?

MR SILINGA: Uhm-uhm, I was in the subcontracts, not the main agreements.

CHAIRPERSON: Okay.

MR SILINGA: In the main agreements, the lawyers that were there was Kenny then the external lawyers.

CHAIRPERSON: The Group?

10 MALE SPEAKER: There were (inaudible) agreements.

MR SILINGA: No, no, no, there was no one. I know Ms Mabandla was not there, specifically I know. I do not know why.

MALE SPEAKER: So none of the Group Legal people were involved... (intervenes)

MR SILINGA: In the negotiations?

MALE SPEAKER: In the finalisation of Transnet agreements. Have you had sight of the transaction agreements?

MR SILINGA: Yes, I have.

MALE SPEAKER: When?

20 MR SILINGA: (Inaudible) subsequent let me say, I have had sight of it.

MALE SPEAKER: Subsequent is being... (intervenes)

MR SILINGA: After they signed, yes.

MALE SPEAKER: Okay, so... Okay, that is fine. I am trying to push things, man... (intervenes)

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MALE SPEAKER: Just move on, (inaudible). At what point did you become aware that the price, whatever the prices are ... (intervenes)

MALE SPEAKER: Yes, we wanted to ask that question yes.

MALE SPEAKER: Okay, at what point did you become aware that the price was no longer 38, it was now 54?

MALE SPEAKER: Ja, did you know that? Sorry, maybe let us start here, did you know that the prices of the locomotives is 38.6-billion throughout, whether it was in that April 13 meeting or in the corridors? Were you aware?

10 MR SILINGA: I think yes, ja I was.

MALE SPEAKER: There was a general understanding in Transnet?

MR SILINGA: Ja, acquiring (indistinct) not necessarily 38.6 but in that range.

CHAIRPERSON: In that range, ja.

MALE SPEAKER: Okay.

MR SILINGA: Then when did I become aware?

MALE SPEAKER: Ja, that it is 54-billion now?

MR SILINGA: On the... Okay, I would say 50 né, and you will hear me out. The signing of the locomotives happened here at, some
20 place né, it was on Monday the 17 March.

MALE SPEAKER: Can you recall people who were present?

MR SILINGA: Some. Brian was there, I was there, Anoj was there. The main Transnet people were there.

MALE SPEAKER: Okay, Mr Gama?

MR SILINGA: I cannot recall the minister.

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MALE SPEAKER: (Inaudible) the minister?

MR SILINGA: Who was the minister at the time?

MALE SPEAKER: (Inaudible).

MR SILINGA: No, I do not think he was there, I do not remember him at all.

MALE SPEAKER: But is there any, sorry Mandla, is there any event where you recall where you were present and the minister was present on the announcement of the 1064 locomotives?

MR SILINGA: Uhm-uhm.

10 CHAIRPERSON: Okay. Maybe you must be explaining this (inaudible)... (intervenes)

MR SILINGA: The 50-billion, yes. No, we got there.

MALE SPEAKER: And why you say 50 and not 54.

MR SILINGA: Ja, ja, ja, I know. We got there, then Brian was making a speech and saying this is a huge what do we call, maybe bigger than that, (inaudible) 54-billion and what do you call. So that is where I got to know about it, not 54 but 50.

MALE SPEAKER: 50, sorry 50.

MR SILINGA: 50-billion, that is why I am saying not 64. 50. I am not
20 sure whether he was just taking a round figure.

CHAIRPERSON: No, sure.

MR SILINGA: Ja.

CHAIRPERSON: (Inaudible) the personal?

MR SILINGA: No, he was just saying this is huge. No look, I am not involved, I do not know why we got to what and whatever. 60-billion

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whether it has been approved or not approved, I have no knowledge but I know this is huge, 50-billion ja.

MALE SPEAKER: So as GM Legal, what do you say, it is fine? You just hope that everything is being complied with?

MR SILINGA: Look... (intervenes)

MALE SPEAKER: At that point?

MR SILINGA: Uhm.

MALE SPEAKER: Or are you saying Ms Mabandla is there, she must be responsible for what is there?

- 10 MR SILINGA: Yes, because my role was complying to and also bear in mind, we have got people here who have expertise. How it is arrived at and whether they have sought approval or not, it is not something that I knew.

MALE SPEAKER: You must remember... (intervenes)

MR SILINGA: They were running their courses.

MALE SPEAKER: Remember this, you said to us your main responsibilities as GM Legal, is to know, how did you put it, everything... (intervenes)

MALE SPEAKER: Governance (indistinct).

- 20 MR SILINGA: Correct.

MALE SPEAKER: That is what you said.

MR SILINGA: Ja, that is correct.

MALE SPEAKER: So as GM Legal your position is to make sure that everything that happens at least you contribute to the legal end thereof... (intervenes)

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MR SILINGA: There is something that you are missing out, you are not seeing.

MALE SPEAKER: Okay.

MR SILINGA: And I said there was also Ms Mabandla.

MALE SPEAKER: Yes.

MR SILINGA: So these things might have gone to her and she does not have to defer to me if she thinks it is... So I am saying there is nothing that seems to be straight, in fact that I did not know that it is reasoned from 38 to 50 and what has been done or not done and...

10 (intervenes)

MALE SPEAKER: And during the negotiations with TE, that was not, that did not come out? That the present... (intervenes)

MR SILINGA: No, no, no.

MALE SPEAKER: It is 37 now... (intervenes)

MR SILINGA: No, no, not at all. Actually that was none of our business to be honest.

MALE SPEAKER: So your business was what?

MR SILINGA: The subcontract.

MALE SPEAKER: To do or to check what as a subcontractor?

20 MR SILINGA: To ensure that TE enters into contracts, into subcontracts to provide selling services to the main contractors. The issue of acquisition of the locomotives was not where I was involved in, where you think maybe 40 to 49 would be discussed.

MALE SPEAKER: Okay.

MR SILINGA: Ja, I was just a small what we call a subcontractor.

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MALE SPEAKER: Ja, let us use that sentence, so it means the person, the legal person responsible for ensuring that things at the main negotiations, that person as a matter of fact, you are saying is Mabandla?

MR SILINGA: Mabandla.

MALE SPEAKER: No (inaudible).

MR SILINGA: No, I am saying it was... (intervenes)

MALE SPEAKER: Just hold on, there are mandates ja. The thing is... (intervenes)

10 MALE SPEAKER: TFR.

MR SILINGA: Oh you mean supposed to?

MALE SPEAKER: Yes, supposed to.

CHAIRPERSON: Remember again, we are binding Transnet to 50-billion, right?

MR SILINGA: Oh yes.

CHAIRPERSON: Here is (inaudible) money for 50-billion, so it would be somebody from Group Legal who was supposed to do whatever. Whether I accept it was not you, whether it was (inaudible) for (indistinct). So the missing link for legal issues means that can you

20 confirm that it is Ms Mabandla?

MR SILINGA: Yes, because when these things were to go to BIDC and Board for approval in the increase of the ATC, Ms Mabandla should have been involved.

CHAIRPERSON: Okay.

MALE SPEAKER: Do you know whether she was or she was not

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involved?

MR SILINGA: In the negotiations she was not there but I am not sure whether then in the process of getting the matter for approval, she was involved.

CHAIRPERSON: Okay.

MR SILINGA: Her memos would (inaudible).

CHAIRPERSON: Remember she was not there (inaudible).

MALE SPEAKER: Ja, she was not there. No, I think you have covered my question.

10 MALE SPEAKER: Ndiphiwe, but there is this thing called relocation, (inaudible).

CHAIRPERSON: No, I am covered.

MR SILINGA: Relocation, yes.

MALE SPEAKER: Relocation, ja. You probably had been expecting the question.

MR SILINGA: Eish, ja. [Laughs].

MALE SPEAKER: Ja, let us come to relocation. Ja, so relocation happens after the signing of the agreements.

MR SILINGA: In doing actually... Yes.

20 MALE SPEAKER: The relocation happened in 2016.

MR SILINGA: Ja, the actual relocation.

MALE SPEAKER: Yes, okay.

MR SILINGA: The actual relocation agreements, meaning the negotiations.

MALE SPEAKER: Ja.

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MR SILINGA: Yes, yes, yes.

MALE SPEAKER: The negotiations happened in 2015, so you are now the boss now of (inaudible). Maybe to go back to (Inaudible) point or concern, what was your role in the relocation?

MR SILINGA: I was appointed to be in the committee or (inaudible) was it called, for to negotiate a relocation.

MALE SPEAKER: Okay.

MR SILINGA: Of course with other people with their various expertise and, but at no stage, I do not remember having an interaction with BT
10 or CNR, because I know for a fact the meeting that ultimately the parties seemed to be agreeing on, was sometime in, I cannot remember (inaudible) what is that, 19 June 2015. That one happened at Southern International Hotel, OR Tambo, Southern OR Tambo ja, the Board, BT and what do you call were there and then here were the representatives for Transnet... (intervenes)

MALE SPEAKER: (Inaudible).

MR SILINGA: It is the attendance register.

MALE SPEAKER: Can we also ask for a copy?

CHAIRPERSON: It is a variation order for relocation of BT and CNR
20 to TE facilities in Durban.

MR SILINGA: So... (intervenes)

CHAIRPERSON: Just to get a picture on this.

MR SILINGA: No, I will leave it with you.

CHAIRPERSON: Oh okay.

MR SILINGA: I will leave it with you.

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CHAIRPERSON: Thank you.

MR SILINGA: So present there was (Inaudible), Gary Peter, Lindiwe Mdletshe, Anoj Singh, the first thing apologies, Mamo Motsane. Mamo Motsane is TIA, she is from is it SNG or what? I am not external. This is the one then that came up with an agreement, they said there is a document that I think I sent you by, where you asked for an opinion that I gave at the request of Gary Peter.

MALE SPEAKER: Ja.

MR SILINGA: Where (Inaudible) from Bombardier confirming that we
10 have agreed from the cost of relocation, we have agreed on revising the schedule. That was now, I cannot remember now and my response was, I did not give a legal opinion. I just went on A, if the price is agreed, then (inaudible), you know. Then B, the change of the schedule, delivery schedule, (inaudible) because I have got to move them a bit late and so on and so on. I do not remember the other but I said it depends on the others, you know.

So it is not that it was an opinion that I was not in the meeting, I was not... And we were presented with documents that show how the price of relocation was arrived at and to be honest, I
20 would not know what was reasonable and what was not reasonable and that is not my role. You know, but my role is, that is why we have different expertise. Okay, to build a railway line in Durban would be so much. Okay, the (inaudible) would be so much and this would be so much, you know. So following the CNR on what I just (inaudible) to...

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MALE SPEAKER: Can we get a copy of that?

MR SILINGA: Okay, I suspect you have, there must be. It is an annexure to one of the... Uhm?

MALE SPEAKER: I think he wants to... (intervenes)

MR SILINGA: You want to ask?

MALE SPEAKER: Ja (inaudible) the one I am interested in is the Bombardier one.

MR SILINGA: I tried to look at it, I did not get it.

MALE SPEAKER: Okay.

10 MR SILINGA: Ja, I did not get it.

MALE SPEAKER: So but on that issue, and I accept that we (indistinct) the lawyers, the figures, were you aware as at the beginning, I think you were part of this issue?

MR SILINGA: Ja.

MALE SPEAKER: Yes, I accept Mr Silinga, you were not part of the meeting but are you aware that the first proposal that came on relocation was 5-million, 4?

MR SILINGA: Oh is it?

MALE SPEAKER: There was one for 4.

20 MR SILINGA: No, no, I only became aware of all these varying prices for (inaudible) and so on and so on, in 20... Is it last year 2016? I suspect last year, and if you ask me how, there was these OEMs, for them to meet maybe some BEE requirements, the partner... (intervenes)

MALE SPEAKER: Supply and Development, ja.

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MR SILINGA: Supply and Development, partnered with some smaller companies here in South Africa and so on and so. Now the CNR South African partners, I mean Legate, the other two (inaudible) Convalence, I am avoiding the third one, one that was at the meeting with us then with Gama, Gama then called me and Gary. It was last year, I suspect it was last year, it will be 2016, that they came and said look, we are being undermined by CNR, they are taking decisions without us and-and-and, so we want your intervention and so on and so on and so.

10 I then said to them but guys, there must be a document that regulates your relationship with these guys and it must be held with some dispute resolution clause, why can you not do that? Why do you want to involve us, because we are contracted, you decided to negotiate with them and you have got your own terms. They said okay, that is fine. But now here is the problem, that they came up with some dossier which I am not sure whether you have or not, which says we see that there was the initial price here was 9-million, then they brought in a certain company called BAX, I am not... (intervenes)

20 CHAIRPERSON: BEX.

MR SILINGA: BEX, yes. They brought it in and they said the benchmark price would be 250-million but anything above that is yours, BEX. And of course it means BEX was going to get a commission or ultimately got a commission that far exceeded the capital amount with 250 that was the amount that was supposed to

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have been paid. That is when then I became suspicious of them, there must have been something wrong with the price of relocation.

FEMALE SPEAKER: Mr Silinga, can I just take you back maybe?

MR SILINGA: Yes, madam.

FEMALE SPEAKER: Do you recall the e-mail correspondence that was exchanged leading up to when you were requested to comment on the clauses to BT?

MR SILINGA: BT, yes.

FEMALE SPEAKER: Do you recall Yusuf Laher's e-mail, the detailed
10 e-mail he was talking about? I only ask this question because you mentioned you only found out or you thought (indistinct) link.

MR SILINGA: Ja.

FEMALE SPEAKER: There is an e-mail by Yusuf Laher where he raises certain issues in relation to CNR, CNR's proposal where he mentions for example that the storage cost be excessive, *et cetera* and now I know this is not something that you would know as probably as a legal person, but I mean if something from Finance is questioning the financial aspect of that proposal, when you had a look at the clauses, did you not confine yourself to just the clauses or did
20 you also have the bigger picture in mind to say but I was copied in that e-mail by Mr Laher that raised these issues.

MR SILINGA: Do not look at the clauses as long as this was an agreement. It was just a letter confirming certain things. I wish you would pull it out. It was not something like this or this is not even an agreement as such.

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MALE SPEAKER: The e-mail that you are referring to?

MR SILINGA: No, not the e-mail, the BT... (intervenes)

MALE SPEAKER: Ja, but the question is... (intervenes)

MR SILINGA: Ja, ja, I am coming to that.

MALE SPEAKER: Ja.

MR SILINGA: Yes I am coming to that because I understand the question. I am saying when you talk of the clauses, it is not that it was an agreement detailing exactly, exactly what was going on there, it was something like we agreed on 600 and whatever, then we
10 agreed on moving out the delivery schedule and so on and so on, just a short what we call... I think it is a one-page.

CHAIRPERSON: Can I show you? We are talking about that memorandum.

MR SILINGA: It is not a memorandum, it is just a letter. Okay, maybe I will try and put it that what then come, coming to your question, I think in that memo I was Cc'ing it.

FEMALE SPEAKER: Yes, it is the e-mail, you were copied, you were Cc'd in that.

MR SILINGA: I was Cc'd, it was not coming to me because there is
20 somebody that it is directed to and to be honest with you, it is not my fault here. I would be guided by the other people you know, it is not my fault here, honestly. And maybe that could be the reason, that could have been the reason why they Cc'd me. I do not know it is, I am saying that could have been.

CHAIRPERSON: You see its relevance is this Silinga and I take your

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point is you are being Cc'd, that he raised this, Mr Laher and then there is a memorandum approving the relocation where you said, and remember that issue that was saying the legal assurance issue?

MR SILINGA: Uhm-uhm.

CHAIRPERSON: The signatory of a document means at least he is saying you need to, so it is in that context that these issues are coming up. There was this query that Mr Laher raised about the cost and then now out of the blue there is no other document that seems to be shared... (intervenes)

10 MR SILINGA: Corresponding.

CHAIRPERSON: That addresses the queries that were raised by, not only Laher by the way, even Gary Peter.

MR SILINGA: Ja.

FEMALE SPEAKER: Ja, initially then it subsequently changed.

MR SILINGA: Ja, augmented.

CHAIRPERSON: Correct, yes. Then... (intervenes)

FEMALE SPEAKER: And Laher is not copied in that e-mail.

CHAIRPERSON: That is right, then now you sign off that.

MALE SPEAKER: Maybe tell Ndiphiwe who these (inaudible) are
20 (inaudible).

FEMALE SPEAKER: It is Lindiwe Mdletshe, it was compiled by her and then Mr Ravi Nair who recommends and then Mr Silinga recommends as well, as well as Mr Anoj Singh, then Mr Jiyane and Mr Peter.

CHAIRPERSON: Okay, let me take (inaudible) the breakdown.

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MR SILINGA: Because the finance people would engage on their own, I have not even been invited to the finance people's meetings and so on and what they agree on? What, when I sign on such a memo, I can even sign on the memo that is talking on hedging and so on and not because I am saying this hedging is perfect and correct, I am saying there is nothing legally that is wrong, but whether the price is wrong, I rely on you as the person who is an expert in pricing, whether this is the type of locomotive we want, I rely on you as an expert in locomotives. It is not for me to say no but at the locomotive
10 you brought, I asked you to buy this type of a locomotive.

That is exactly my reason of signing. Mine is to say legally the parties have agreed on this and then on the face of it, forget about what you know now, there is nothing wrong with that now.

CHAIRPERSON: No, I think the context because of the...
(intervenes)

FEMALE SPEAKER: The e-mail.

CHAIRPERSON: The... (intervenes)

MR SILINGA: Hence I am saying they said to me in their meetings and actually even why she sent the e-mail to Lindiwe where I do not
20 know where and when they engaged around this issue, I absolutely have no idea. I have never sat in a meeting where maybe Yusuf or whoever would say guys, this price is rather (inaudible). I said in the e-mail, but I do not know where its origins are, not origins as informed, what informs it, you know. But when it comes to me, I see nothing wrong.

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MALE SPEAKER: No, no, would you agree then (indistinct) that a reasonable Group Legal under the circumstances would have questioned to say guys, here is an e-mail that was sent by Yusuf Laher, no one is responding to this e-mail, Gary Peter who is the Chief Procurement Officer (inaudible) your questions, issues... (intervenes)

MR SILINGA: What is the question?

MALE SPEAKER: He also sent some queries.

CHAIRPERSON: Querying, what had happened because (indistinct)
10 that there was a proposal that came from the two e-mails.

MR SILINGA: Okay.

CHAIRPERSON: Like I said the first one we know it was from (inaudible).

MR SILINGA: Yes.

CHAIRPERSON: (Inaudible) was another one.

MR SILINGA: For 9-million.

CHAIRPERSON: For 9-million. Now Mr Gary Peter at the beginning raised queries, why is this (inaudible) no I cannot accept this in essence.

20 MR SILINGA: Ja.

CHAIRPERSON: Laher is (inaudible) independent, not in chaos, independently either as well, question it.

FEMALE SPEAKER: Can I say something?

MR SILINGA: On the Gary Peter one?

FEMALE SPEAKER: Okay let me find it for you. He also questions

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the issue of storage as well.

CHAIRPERSON: The one that he is questioning for.

MR SILINGA: Questions?

CHAIRPERSON: 4-million, I get it, they are questioning 4-million, these people, these to be independent. Ja, that is what they question... (intervenes)

MR SILINGA: I am not aware of this 1.2-billion or 600-million.

CHAIRPERSON: Yes, yes.

MR SILINGA: At that point.

- 10 CHAIRPERSON: At that point. Now when the actual memo is signed for 6 and that is why I say maybe you are copied, fair enough, I (indistinct) it is not up to you can (indistinct) because it is reasonable or not, but at least you are aware that somebody is questioning 4-million and (inaudible) is supposed to be questioning, not you.

MR SILINGA: Ja.

CHAIRPERSON: Sharp. Then by the 10th a memorandum is prepared, it is now not only on 5-million, it is the 10%... (intervenes)

MR SILINGA: One times three.

- CHAIRPERSON: Ja, okay let me say 600-million. Now going to
20 (inaudible) but then we just sign as a...

MR SILINGA: No, I do not remember the 4-million and the... (intervenes)

CHAIRPERSON: Okay, the 9, okay... (intervenes)

FEMALE SPEAKER: The question is 600 because the... (intervenes)

CHAIRPERSON: (Inaudible).

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FEMALE SPEAKER: Ja, because the 4-million was in 2014.

MALE SPEAKER: Yes.

MR SILINGA: Ja, ja.

FEMALE SPEAKER: In 2014, so at this time because Yusuf Laher, what he did, what Lindiwe did, I think she went back to CNR to say, I do not know what she said to them but there is an e-mail where she subsequently resends the CNR proposal back to Mr Laher. Mr Laher says these people have not addressed my queries, so my comments still stand.

10 MR SILINGA: When is that Mampe?

FEMALE SPEAKER: Okay, let me give you this e-mail so that you can just have a look at them quickly; it is not wrong, here.

MR SILINGA: (Inaudible).

CHAIRPERSON: But I think the principle being, whatever the queries are, as Chief Legal person, a reasonable... They queried, they have not, I do not want in any way telling you whether the queries were... (intervenes)

MR SILINGA: Addressed.

CHAIRPERSON: They were addressed, but nevertheless.

20 MR SILINGA: But then, remember this then comes back from, it is coming from the memorandum, for this is the TFR team doing the negotiations, né. Then it is coming back from them to say we have agreed on this, because it cannot be signed by everybody.

MALE SPEAKER: Ja.

MR SILINGA: I have no reason not to believe that there is somebody

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who there is not agreeing to this thing, because this is all the TFR team. They are the originators of the memorandum and now attached something that justifies the price that has to be paid, you know, you will say oh okay, okay this is the breakdown and so on and so on. What was happening when them and TFR amongst themselves, maybe whether they have responded to him or not, verbally or otherwise, I would not know, honestly, because I have never sat with them as a TFR dealer.

CHAIRPERSON: Mampe?

- 10 FEMALE SPEAKER: I do not think I have got any further questions. If I can just keep that in our... Because I know the similarity between Gary Peter's e-mail and Mr Laher was that they both raised the issue about excessive storage costs, so I think you know, as a person you know... (intervenes)

MR SILINGA: It is okay, was only complaining about the storage costs and not these other things.

FEMALE SPEAKER: No, no, no, I am not saying he was not, I do not have the inside... (intervenes)

MR SILINGA: Oh okay, okay, okay.

- 20 FEMALE SPEAKER: But that is what comes to my mind right now.

MR SILINGA: Okay no, it is fine.

FEMALE SPEAKER: It is one of the issues that they both raised. And then subsequent to that, he sort of changed his tune but he did not copy Mr Laher, but you are on that e-mail, so my question is, I do not know, you are saying you were Cc'd but I mean if initially I would

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imagine as a legal person, yes I am asked to give my input in terms of clauses *et cetera* but I will then look at who is compiling the e-mails so but initially there was this long e-mail where I was copied and there were those issues raised. Have these been addressed before we say we can go on?

MR SILINGA: Ja, that is why I am saying this, that argument emanated within the TFR negotiating team, so I am sure that from time to time that is why I assumed, if it is signed by Ravi and whoever else, TFR people, I have no reason to believe that these people did
10 not agree to this thing you know, and also bear in mind, you have no, you are not suspecting anything untoward around this whole thing, you know you are just...

And you are not mistrusting anyone there, these are colleagues, they know this and that, this is the purpose, da-da-da-da. Maybe knowing what we know now, if we knew it then, maybe the approach would have been different.

MALE SPEAKER: I just want to go to the signing of the memorandum.

MR SILINGA: Which one, the relocation?

20 MALE SPEAKER: The relocation, ja. Where was it, were you all present at the same time?

MR SILINGA: No, it usually... (intervenes)

MALE SPEAKER: (Inaudible).

MR SILINGA: I do not remember the exact signing but I will just generalise.

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MALE SPEAKER: Ja.

MR SILINGA: It does not usually happen like that. The person who is drafting it will sign it, it then goes to whatever senior levels. If for instance there is (Inaudible) to sign then it goes to him, I do not know the sequence in that (inaudible), then it will go to Ravi Nair and so on and so on. I cannot remember this particular one, then it will come to head office, then head office and so on and so on.

MALE SPEAKER: You must remember, this particular one was at Magaliesburg if my memory serves me well.

10 MR SILINGA: Well, ja.

MALE SPEAKER: You had a, let us call it Transnet (Inaudible).

MR SILINGA: Okay.

MALE SPEAKER: It is one of those issues where people go on a, to administrate or whatever.

MR SILINGA: Oh, okay.

FEMALE SPEAKER: No, no...

MALE SPEAKER: Sorry, if I remember well, I cannot, my (indistinct) this memorandum is the one that was signed at magistrate or... Magistrate Magaliesburg.

20 MALE SPEAKER: Magalies, ja.

MALE SPEAKER: Magalies, what is that road?

MR SILINGA: Was it, is it dated, the same date by everyone?

MALE SPEAKER: Ja, we are trying to locate the memorandum.

FEMALE SPEAKER: It is in July, I think you signed on the 20...

MALE SPEAKER: I think everyone signed on, everyone else signed

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on the same date and then you signed the following date. Mr Gama signed the following day because...

MALE SPEAKER: Just one question from me, a bit later on, I have got... Someone needs to see me.

MALE SPEAKER: Okay.

MALE SPEAKER: The issue... (intervenes)

MALE SPEAKER: Maybe let us park this one, (indistinct).

MALE SPEAKER: And then Ndiphiwe can address us. Here I just want clarity.

10 MALE SPEAKER: Okay.

MALE SPEAKER: CNR seems to be having a bit of a dispute with TE, heading towards, there is a deadlock of some sort.

MR SILINGA: When?

MALE SPEAKER: Now.

MALE SPEAKER: Currently.

MR SILINGA: Okay.

MALE SPEAKER: About the delivery programmes.

MR SILINGA: Oh I see.

MALE SPEAKER: Ja, and there is a blame game going on at CNR
20 saying but you, TE, you know... (intervenes)

MALE SPEAKER: And BT as well I am sure.

MALE SPEAKER: With CNR.

MALE SPEAKER: So what is the legal position for Transnet when it comes to this?

MR SILINGA: Okay, okay... (intervenes)

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MALE SPEAKER: Let us say, let us assume you want to revoke, what is the term, invoke?

MR SILINGA: Ja, on the (indistinct).

MALE SPEAKER: Ja, you know you have the (inaudible).

MR SILINGA: Ja let me quickly answer you and this thing is something that we are working on as we speak, because what happens is, TFR and bearing in mind at the end of the day (indistinct) for localisation, TE and TFR... (intervenes)

MALE SPEAKER: And these are divisions.

- 10 MR SILINGA: Those are the divisions, yes. Once you leave it then it is against CNR augmenting. They say no, you can levy them because we will push them to TE, because it is TE who is not doing this. You will find all sorts of stories from TE. What we have requested is that TFR before we get ourselves into trouble, because at the end of the day... (intervenes).

MALE SPEAKER: (Inaudible) hear from you.

MR SILINGA: Let us say... (intervenes)

MALE SPEAKER: (Inaudible) the meeting.

MALE SPEAKER: No, sure.

- 20 MR SILINGA: Let us say a bill of a 100-million, and then it is all forwarded to TE. Well they are saying TE, what is the extent of your capability in this and they said no, we have not engaged with TFR. I said guys, go and engage with TFR because of course they are the subcontractor to, and it should not be known that they are talking to TFR.

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MALE SPEAKER: Yes.

MR SILINGA: You know? When they are (inaudible). I said but guys let us do the honest thing, go and talk to TFR, find out what is it that they want to penalise them on, then advise us on the extent of your capabilities in so far as it relates to the issues that they want to penalise you on, you know. We have not received an answer even to date, we are still waiting.

MALE SPEAKER: From whom, from TE?

MR SILINGA: From TE because TFR has submitted something to
10 say look, these are the provisions you can invoke, but we want TE now to give us exactly because we do not want to be (indistinct) and hit on BT or CNR when actually at the end of the day... If for instance... (intervenes)

MALE SPEAKER: (Inaudible) is not performing.

MR SILINGA: Ja, you know, if for instance we were to say in this 100-million, TE's capability is 50-million, then we can (inaudible) that plate, I mean it is going to be a set off, you know. So that is where we are doing that, we are still waiting for them to give us what-what.

MALE SPEAKER: But tell me Mr Ndiphiwe on that, does TE have a
20 separate subcontractor agreement?

MR SILINGA: Ja.

MALE SPEAKER: Which is what he was negotiating at... (intervenes)

MALE SPEAKER: Yes, which we were negotiating, signed by TE...
(intervenes)

MR SILINGA: No, (indistinct).

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MALE SPEAKER: Oh okay, by the Group, oh okay.

MR SILINGA: Ja, they are all signed by the GCE.

MALE SPEAKER: (Inaudible) relationship there.

MR SILINGA: Ja it is (inaudible) solutions.

MALE SPEAKER: So do you know if, because we found a memo, where is that now... As was explained now, because we are talking of how long... Let us go back to this one, ja this issue of TE, CNR on delivery, because is there any reason because when BT, CNR were relocated to Durban, there was actually a delivery schedule that was
10 initially agreed to.

MR SILINGA: Yes, yes, yes.

MALE SPEAKER: It was put on hold to allow them to relocate.

MR SILINGA: Ja.

MALE SPEAKER: And then you then agreed to another (inaudible). I am advised that the proviso was that in the event that you are not agreeing on a revised schedule... Oh no, no, yes within six months I think... (intervenes)

MR SILINGA: Yes.

MALE SPEAKER: Yes, then the old delivery schedule will kick in. Is
20 there any reason why we are not implementing that?

MR SILINGA: That?

MALE SPEAKER: Are you aware of this thing?

MR SILINGA: But that will be basically impossible (inaudible), because it is, at Transnet's instance there is being a delay, but these people have not moved at the time. Remember let us say the

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contracts were signed on the 17 March né and the first locomotive they were going to set up, listen the first locomotive was to be delivered on the 1 December 2014, now we said you know, they tendered to do all these things here in Gauteng let me say. And I said no guys, move.

MALE SPEAKER: Ja, in South Africa.

MR SILINGA: No, no, no, no, no, there was Koedoespoort and...
(intervenes)

MALE SPEAKER: No, in the RFP it said South Africa.

10 MR SILINGA: No, but in the, there was in their time now, it was Koedoespoort, it was not South Africa.

MALE SPEAKER: In the RFP... (intervenes)

MALE SPEAKER: Where is it prescribed?

MALE SPEAKER: In the RFP it is in South Africa.

MR SILINGA: Where then does it become... (intervenes)

CHAIRPERSON: During the negotiations.

MALE SPEAKER: Yes.

CHAIRPERSON: During the negotiations one of the things that Mr Gama says at the beginning, he says guys, you might have to
20 negotiate one of your or two of your, the OEMs might be relocating to Durban.

MALE SPEAKER: Durban, ja.

CHAIRPERSON: That is how he sets the tone to start the negotiations amongst other things.

MR SILINGA: No, but there is something that says, I cannot

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remember if it is the RFP or what, where the parties as (indistinct) tendered, it was about building in Pretoria but I cannot exactly put my finger on... (intervenes)

MALE SPEAKER: Ja, maybe, I can tell you on RFP South Africa... (intervenes)

MR SILINGA: Is it South Africa?

MALE SPEAKER: On the agreement.

MALE SPEAKER: On the agreement it is only one where they specify the (inaudible) is Koedoespoort.

10 MALE SPEAKER: Okay let me ask this question because what I do not understand né and this is where Mr Gama as head is saying, you might negotiate the relocation to Durban, even negotiations, and then (inaudible) I do not understand why relocation because as, our view is that it was always South Africa in the RFP, but let us say they were supposed to negotiate it during the negotiations, why not negotiate it because at least at that stage Transnet I think new that they could not accommodate all of them in Pretoria?

MR SILINGA: I honestly have no idea there. I do not know.

MALE SPEAKER: So they brought all of them and tendered for
20 Koedoespoort, for Gauteng (inaudible).

MALE SPEAKER: Ja, it was South Africa. So the second point, on a (inaudible) issue, we should just digress... (intervenes)

MR SILINGA: No, no, I am still fine.

MALE SPEAKER: It is part of it.

MALE SPEAKER: Ja, we just want to start the issue of the...

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MALE SPEAKER: The memo.

MALE SPEAKER: The main list.

MR SILINGA: There are two memos that is?

FEMALE SPEAKER: CNR, (inaudible).

MR SILINGA: Ja, all signed on the same day, okay. So this one is signed on the 22 July... (intervenes)

FEMALE SPEAKER: And this one is May.

MR SILINGA: 19 May, we met on that date. So you say it was signed at Magalies?

10 MALE SPEAKER: As I said, I know one of these memorandums was brought by... (intervenes)

MR SILINGA: And this one is 22 July.

MALE SPEAKER: 22 July?

MALE SPEAKER: Two people sitting at Magaliesburg.

MALE SPEAKER: And then the 22 July one is the one at Magaliesburg?

MALE SPEAKER: 22 July.

MR SILINGA: This one as well was signed almost the same day, 19 May (inaudible) there are two people who did not sign, I mean who
20 signed, Gama and Ravi. They did not put dates, the rest signed on the 19 May. I am not so certain where it was signed.

MALE SPEAKER: Ravi did not sign the 19 May one.

MR SILINGA: No, he signed the 19 May... (intervenes)

MALE SPEAKER: No, no, no, it was Duda, Patrick Duda signed there, or Patrick Dada (inaudible) on the day.

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MR SILINGA: Oh okay, Patrick Dada. Oh okay yes, he signed.

MALE SPEAKER: Ja, Patrick Dada signed that one because according to Ravi at the time he was doing some course at WITS or something, so someone was acting.

MR SILINGA: That one I was at.

MALE SPEAKER: Yes, so that is what he says.

MR SILINGA: Okay.

MALE SPEAKER: When we interviewed him. So he says he remembers both incidences very well because on the one incident he
10 was not there when the first memo was signed, on the second incident he says no, there it was a strategic breakaway in Magalies, I was tired, actually I did not want to be there because I wanted to spend some time with my family after studying or whatever the case might be and then I am presented with this memo, I asked the question, guys, because I know nothing about this thing, I am going to rely on you, that is what he tells us and then he then says they gave him assurances, the people.

MR SILINGA: Ja. No I am not sure where this one was signed, I would be lying to you, honestly I cannot...

20 MALE SPEAKER: On that issue, the point I think why we are talking about the venue, is to talk about your role to say, because this specific one, memorandum, it was signed in the company of all of the signatories who were there, where like others you will come, (inaudible) senior office, you make an assumption that people down there, they have done their part but this specific one, it was Nkomedi,

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you know all the relevant players on this memo, they are all sitting in the same area, against a context of objections that we have raised about the amounts, where now there is no any indication that those objections were ever clarified.

Now we are here, all of us again. Did you ask the people around the table that guys, those queries that were raised by whoever, I am assuming you guys you are now fine with them? Was that question asked?

MR SILINGA: I cannot remember the minute detail on the moment of
10 signing.

MALE SPEAKER: Okay.

MR SILINGA: You know that is why I am saying I do not even remember that it was signed at Magalies or wherever, I do not remember the minute detail around the signatures.

MALE SPEAKER: They showed you the one of 19 May.

MR SILINGA: Ja, I have seen the 19 May one.

MALE SPEAKER: You saw that Mr Gama makes a note or notes?

MR SILINGA: He signs after me, long after me.

MALE SPEAKER: Yes, yes.

20 FEMALE SPEAKER: Ja wait, there are two signature...

MR SILINGA: Papers.

FEMALE SPEAKER: Papers, ja.

MALE SPEAKER: No, no, no, the one...

FEMALE SPEAKER: But the one where he is making a note...

(intervenes)

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MALE SPEAKER: That one was signed on the 19 May... (intervenes)

MR SILINGA: But I suspect the one that includes signatories, might have been done away with because if you look at the amounts, they are not the same. Look, and on this (indistinct) on the signatories.

MALE SPEAKER: 635 and then the other one is 618.

MALE SPEAKER: Ja, remember the one is Bombardier, the other one is (Inaudible)... (intervenes)

MR SILINGA: Oh, I see. You are saying they are the same thing.

FEMALE SPEAKER: I think I do not (indistinct) there.

10 MALE SPEAKER: Okay this one, please (inaudible) us.

MR SILINGA: Ja.

MALE SPEAKER: Because it is not dated, I do not know which one you signed.

MR SILINGA: But what he does, I do not sign before...

MALE SPEAKER: He.

MR SILINGA: He does not sign before me.

CHAIRPERSON: Okay, so these queries were now for your attention?

MR SILINGA: No, what happened is, when you sign the memo once
20 you query, it does not go back to each and every signatory, it goes back to where it originated from.

CHAIRPERSON: Okay.

MR SILINGA: To attend the queries.

MR SLEBUSH: Sorry, just a question from our side, at the time when all these participants were present, when you were signing this

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memorandum, I would assume that there was a discussion on the document?

MR SILINGA: I said I do not remember this signing event, whether maybe we were sitting in one place or somebody would go to... You know that minute detail, I do not know the exact signing process. But okay there is... Look, you sign many memos.

MR SLEBUSH: Sure.

MR SILINGA: Let us be honest about that. Later the (indistinct) are unrelated.

- 10 MR SLEBUSH: I am just trying to determine if it was done on a (inaudible) basis or whether at the time when everybody was there, there was some sort of minutes taken on that or... (intervenes)

MR SILINGA: And I am sure it could also be that a draft memo was signed by you, where you would then look at it and satisfy yourself, then the actual one comes for signature, but that also is the practice as well. But I am not saying it was, I am just saying those are the things that usually happen.

MALE SPEAKER: And the amount is the same. Just to wrap up... (intervenes)

- 20 CHAIRPERSON: Ja please man, because... (intervenes)

MALE SPEAKER: There are just two last questions from me... (intervenes)

MR SILINGA: (Inaudible) by half past.

MALE SPEAKER: These questions will not take us more than ten minutes.

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MR SILINGA: Okay, you can raise your other questions. [Laughs].

MALE SPEAKER: Ja, I just want to confirm the issue of the increase, and this one is more of a legal issue now.

MR SILINGA: With the (inaudible).

MALE SPEAKER: Ja, the whole issue was section 54.

MR SILINGA: (Inaudible) yes.

MALE SPEAKER: You will recall that (inaudible) if people are...
(intervenes)

MR SILINGA: Yes, (inaudible).

10 MALE SPEAKER: (Inaudible) transaction, you must get this, wharra-wharra, section 54 approval.

MR SILINGA: Approval and the rest.

MALE SPEAKER: Now the increase, you know that there was an increase from 38 to 54?

MR SILINGA: To 54, ja.

MALE SPEAKER: Good. Was Legal ever involved in providing advice on whether is there a need for this matter to go back to the minister and Treasury for section 54?

MR SILINGA: Personally I was never... But I do not know if anyone
20 else would have been either there, whether it Mabandla or whoever inside, I... (intervenes)

MALE SPEAKER: Because that was during Mabandla's time as well.

MR SILINGA: Ja.

MALE SPEAKER: Yes.

MR SILINGA: That was around May 2014, but I do not know whether

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she was consulted.

MALE SPEAKER: No, no, sure. No, no, no, as I said, like (inaudible)
I think it is more of trying to look at Mr Silinga. There is an issue of
Silinga, there is an issue of Group Legal and supposed versus what
happened.

MR SILINGA: It was supposed to but... (intervenes)

MALE SPEAKER: It was supposed to but as to what happened,
somebody else must answer that question. So all things (inaudible)
issues. One last part on my side Mr Silinga, the increase again.

10 MR SILINGA: Yes.

MALE SPEAKER: And I think actually you did confirm it even during
our earlier questions, that when you went to negotiate (inaudible),
whoever that were there, these were not part of the main
negotiations, the mandate was 38, we got 54.

MR SILINGA: 54.

MALE SPEAKER: You confirmed that do you know when did the
Board of Transnet approve the 54?

MR SILINGA: Now that guided by the documents... (intervenes)

MALE SPEAKER: No, no, yes, guided by the documents.

20 MR SILINGA: Ah, prior or... (intervenes)

MALE SPEAKER: No, no, no, guided... (intervenes)

MR SILINGA: What I know now?

MALE SPEAKER: What you know now.

MR SILINGA: It was late, it was May, in May 2014.

MALE SPEAKER: It was May, so which is the memorandum that was

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prepared by Brian in April and was approved, because it was going to cause, the memorandum... (intervenes)

MALE SPEAKER: It was not in May.

FEMALE SPEAKER: In May.

MR SILINGA: Both BIDC and (inaudible)... (intervenes)

MALE SPEAKER: So that is the only two structures, the BIDC and the Board in May that was seized with 38 moving to 54?

MR SILINGA: When they excluded?

MALE SPEAKER: No, no, no, I am not there about that issue, no I
10 am just looking at the figures. Remember at the beginning of the negotiations you were on 38. At the end of the negotiations you were on 54. We sought Board approval in May.

MR SILINGA: After the contracts had, long after the contracts had expired.

MALE SPEAKER: Long after the contracts have expired. I would say it was only during that time that the Board actually did the approval (inaudible) meaning from 38 to 54.

MR SILINGA: And if the documents we have are complete, then that is a true record.

20 MALE SPEAKER: That is the last... (intervenes)

MR SILINGA: Ja, I know nothing else.

MALE SPEAKER: Okay.

MR SILINGA: Not unless there is a surprise document somewhere.

MALE SPEAKER: No. [Laughs]. I am not sure if I heard you correctly at the beginning, you said which negotiations were Mr

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(Inaudible) leading?

MR SILINGA: Main.

MALE SPEAKER: The main, the main.

MR SILINGA: The ones (inaudible).

MALE SPEAKER: Oh, okay.

MR SILINGA: Remember that the chief (inaudible) of TFR and TFR is the business that required the locomotives.

MALE SPEAKER: Okay.

MR SILINGA: And that is why I was saying most of the people there
10 in the negotiations of the main contracts are the TFR people.

MALE SPEAKER: Okay.

MALE SPEAKER: Therefore the subcontractor, who was leading?

MR SILINGA: Gary Peter.

MALE SPEAKER: So on these minutes, the company secretary is a person that obviously has all... There will not be, if the company secretary does not have any other record of any...

MR SILINGA: No, that is all... (intervenes)

MALE SPEAKER: And you said it may be a surprise that if...
(intervenes)

20 MR SILINGA: You would have to require that, she is the only one, she is the only keeper of all that documents that served before Board Committees and the Board itself.

MALE SPEAKER: Okay.

MR CLAYTON: (Indistinct) because I just want to come back to this signing of the memos, the one on 22 July 2015 for BT, I accept that

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you have already said that you cannot remember if it was done individually or together, but it is my understanding, please correct me if I am wrong, that Mr Nair said everybody was at Magalies. Is there a possibility that you can go back to your diary to show... (intervenes)

MR SILINGA: What is the date?

MR CLAYTON: The 22 July 2015.

FEMALE SPEAKER: 22 July 2015.

MR SILINGA: What was happening in?

MR CLAYTON: Ja.

10 MR SILINGA: You mean now, if I can go back now?

MR CLAYTON: Not... (intervenes)

MR SILINGA: You mean later?

MR CLAYTON: Ja, when you... (intervenes)

MR SILINGA: Can you just send me something and then I think I will check for you?

MR CLAYTON: If you can just revert on this.

MR SILINGA: On my diary, ja.

MALE SPEAKER: To check what Eugene, to check?

MR CLAYTON: Where he was... (intervenes)

20 CHAIRPERSON: His diary, where he was on that particular...

MR CLAYTON: On that specific day, ja.

MR SILINGA: Okay no, that is fine. 22, was it 22?

MR CLAYTON: 22 July 2015.

FEMALE SPEAKER: 22 July 2015.

MALE SPEAKER: I will send you a one-line request.

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MR SILINGA: Ja, to mail.

MALE SPEAKER: But currently on both meetings or maybe even before, is it my understanding that normally the proceedings of the Boards are also recorded and that recording is supposed to be kept by (indistinct).

MR SILINGA: But I do not know for how long (indistinct).

MALE SPEAKER: That 10% man, I know you said it is not 10%, just help us here, I would like a policy document or something if the one exists, that guides.

10 MR SILINGA: The range, the variation, the negotiation?

MALE SPEAKER: Yes.

MR SILINGA: The negotiating prices?

MALE SPEAKER: Yes.

MR SILINGA: Okay, make it the second line. [Laughs].

CHAIRPERSON: Okay, those are the requests that my colleagues wanted to make regarding what is it, you know that legal terms?

MR CLAYTON: Yes sir, your, do you make use of a laptop or do you have a desktop as well at the office?

MR SILINGA: It is a laptop.

20 MR CLAYTON: A laptop and... (intervenes)

MR SILINGA: I have lost laptops now.

MR CLAYTON: Okay, when you say you have lost it?

MR SILINGA: Physically but I am sure (Inaudible) and so would help you on those things.

MR CLAYTON: Ja, if you may please (inaudible) phone?

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MR SILINGA: No, no, company phone.

MR CLAYTON: Company phone?

MR SILINGA: Uhm.

MR CLAYTON: We would just like to image it.

MR SILINGA: No, that is fine. How long will you take?

MR CLAYTON: We are going to phone you.

CHAIRPERSON: They will make arrangements.

MR SILINGA: Through Samsung?

MR CLAYTON: With Samsung. I think that is... I will arrange with

10 Bennie. Okay, can I also contact you directly?

MR SILINGA: That is fine.

MR CLAYTON: We can make arrangements to visit you at your office
ASAP.

MR SILINGA: Okay.

MR CLAYTON: Thank you.

MR SILINGA: Dial you maybe there... (intervenes)

MALE SPEAKER: One part in short, another question, how does
that... I am closing, just to confirm, this question that initially it was
asked innocently with other people, initially it was an innocent
20 question but it has now snowballed into difficulties and I think...
(intervenes)

MR SILINGA: I suspect Monday I might have... Monday the 20th
because ja, but let us first confirm. Yes?

MALE SPEAKER: That question that we at one of the many meetings
that we had, it was an innocent question and then it became an issue

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then, so we then agreed that I think for the sake of consistency we will ask... (intervenes)

MR SILINGA: You will ask that question.

MALE SPEAKER: Ask that question to anybody, ja. You do not have to make any assumptions because initially when we asked, somebody took offence, we have got to be mixing this. I will take... (intervenes)

MR SILINGA: No look... (intervenes)

MALE SPEAKER: Ja, so (indistinct). The contents are viewed.

MR SILINGA: I am an admitted attorney... Ja.

10 MALE SPEAKER: Okay, thanks.

MR SILINGA: I am angry. [Laughs].

CHAIRPERSON: No Silinga, I thank you so much for... I know we agreed on one hour but I think we moved over one... (intervenes)

MR SILINGA: No, that is fine.

CHAIRPERSON: It is quite much appreciated, your assistance. Any other questions that we might have, the investigation must sit and reflect on the answers. If there are any other further queries that we might have, we will actually raise them with yourself. I thank you so much.

20 MR SILINGA: Thank you very much.

CHAIRPERSON: Okay.

[End of recording]

INTERVIEW ADJOURNS

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that **as far as it is audible**, the foregoing is a true and correct transcript of the digitally recorded proceedings in the interview of:

TRANSNET 1064 LOCOMOTIVES INVESTIGATION**INTERVIEW WITH MR NDIPHIWE SILINGA**

TRANSCRIBER : M Botha
DATE COMPLETED : 10 October 2018
NUMBER OF PAGES : 84

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APPENDIX 23

Appendix 23

Komilla Moodley Transnet Corporate JHB

From: Garry Pita Transnet Corporate JHB
Sent: 14 July 2015 11:25 AM
To: Lindiwe Mdletshe Transnet Freight Rail JHB
Cc: Anoj Singh Corporate JHB; Thamsanqa Jiyane Transnet Engineering PTA; Ndiphiwe Silinga Transnet Corporate JHB; Emma Molotsane (emolotsane@tia-snk.co.za)
Subject: Re: TFR Class 23E, BT/TFR/00608: Locomotive Supply Agreement - Durban Variation Order
Attachments: image002.jpg; image004.jpg; image002.jpg; image004.jpg

Thank you

Ndiphiwe, can I ask that you please review the legal clauses and caveats raised in both proposals, especially in the BT offer. They raised some clauses which might have a significant impact. Please advise so that we can sign this off ASAP.

Best regards
 Garry

Sent from my iPad

On 10 Jul 2015, at 4:14 PM, Lindiwe Mdletshe Transnet Freight Rail JHB
 <Lindiwe.Mdletshe@transnet.net> wrote:

Hi Garry,

I will prepare as requested and circulate for comments by Monday.

Kind Regards

<image001.gif> Lindiwe Mdletshe
 Snr Manager: Strategic Sourcing (Locomotives)
 Supply Chain Services
 Transnet Freight Rail
 ☎ 011 584 0620 <image003.jpg> 083 2683365
 011 773 0832 ✉ Lindiwe.Mdletshe@transnet.net
www.transnet.net

<image005.jpg>

From: Garry Pita Transnet Corporate JHB
Sent: 10 July 2015 03:46 PM
To: Lindiwe Mdletshe Transnet Freight Rail JHB
Cc: Anoj Singh Corporate JHB; Thamsanqa Jiyane Transnet Engineering PTA; Ndiphiwe Silinga Transnet Corporate JHB; Emma Molotsane (emolotsane@tia-snk.co.za)
Subject: RE: TFR Class 23E, BT/TFR/00608: Locomotive Supply Agreement - Durban Variation Order

Hi Lindiwe

Feedback from the meeting this morning is that BT will be sending us another letter providing further clarity on their offer. This is expected on Monday.

Can I ask that you update all the documentation ie memo for us to send to the acting GCE for approval of CNR and BT proposals and letter from GCE to CNR and BT accepting proposals in order to save time. Should the team copied be happy with the proposals we can then effect sign off quickly. Please also ensure that the TIA sign off from Emma is included in the memo.

Best regards

<image006.gif>

Garry Pita
Group Chief Supply Chain Officer

Transnet SOC Ltd

<image007.gif>(011)308 1282

<image008.gif>083 447 1209

<image009.gif>(011)308 2601

<image010.gif>garry.pita@transnet.net

www.transnet.net

From: Lindiwe Mdletshe Transnet Freight Rail JHB

Sent: 07 July 2015 01:57 PM

To: ramon.perez_perez@es.transport.bombardier.com; Frikkie Harris Transnet Freight Rail JHB

Cc: Anoj Singh Corporate JHB; Thamsanqa Jiyane Transnet Engineering PTA; Garry Pita Transnet Corporate JHB; aubrey Lekwane; mathias.papritz@de.transport.bombardier.com;

dobri.makhubela@za.transport.bombardier.com; david.anglin@de.transport.bombardier.com

Subject: RE: TFR Class 23E, BT/TFR/00608: Locomotive Supply Agreement - Durban Variation Order

Dear Ramon,

We acknowledge receipt of your letter.

As indicated in our last meeting, Transnet will require \pm 14 business days to respond to your proposal.

Kind regards

<image001.gif>

Lindiwe Mdletshe
Snr Manager; Strategic Sourcing (Locomotives)
Supply Chain Services
Transnet Freight Rail

☎ 011 584 0620

011 773 0832

www.transnet.net

<image003.jpg>083 2683365

✉ Lindiwe.Mdletshe@transnet.net

<image005.jpg>

APPENDIX 24

Appendix 24

Komilla Moodley Transnet Corporate JHB

From: Ndiphiwe Silinga Transnet Corporate JHB
Sent: 17 July 2015 10:42 AM
To: Garry Pita Transnet Corporate JHB
Subject: FW: TFR Class 23E, BT/TFR/C/15/0056: Additional information on the Durban VO - Price reduction
Attachments: 20150716134213407.pdf

Hi Garry

The first and second paragraphs of the BT letter make sense, however the parties need to agree to the revised timelines, taking into account the delays caused by the relocation negotiations and the relocation itself.

Ad paragraph number 1: If R618 457 125 is the agreed price, the proposal is acceptable.

Ad paragraph number 2: Acceptable

Ad paragraph number 3 : Acceptable

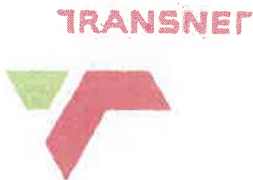
Ad paragraph number 4: Any amendments to Clause 9.1.1, if required, can only be made once the parties have agreed on new timelines. I assume the revised timelines have not been agreed to yet. If so, I suggest that we pack any proposals made under paragraph number 4.

Regards,

Ndiphiwe

From: Garry Pita Transnet Corporate JHB
Sent: 16 July 2015 03:29 PM
To: Ndiphiwe Silinga Transnet Corporate JHB
Subject: FW: TFR Class 23E, BT/TFR/C/15/0056: Additional information on the Durban VO - Price reduction

FYA



Garry Pita
 Group Chief Supply Chain Officer

Transnet SOC Ltd

☎ (011)308 1282 ☎ 083 447 1209
 📠 (011)308 2601 ✉ garry.pita@transnet.net
www.transnet.net

From: mathias.papritz@de.transport.bombardier.com [<mailto:mathias.papritz@de.transport.bombardier.com>]
Sent: 16 July 2015 03:21 PM
To: Lindiwe Mdletshe Transnet Freight Rail JHB; Frikkie Harris Transnet Freight Rail JHB
Cc: Anoj Singh Corporate JHB; Thamsanqa Jiyane Transnet Engineering PTA; Garry Pita Transnet Corporate JHB; aubrey Lekwane; dobri.makhubela@za.transport.bombardier.com; david.anglin@de.transport.bombardier.com;

ramon.perez_perez@es.transport.bombardier.com

Subject: TFR Class 23E, BT/TFR/C/15/0056: Additional information on the Durban VO - Price reduction

Dear Lindiwe, Dear Frikkie,

I trust you are well.

As agreed during last week's discussion please find enclosed our additional information on the Durban VO for your attention.

Best regards

Mathias Papritz
Project Director - Locomotives
Bombardier Transportation

Tel. +49 621 7001 1544

mathias.papritz@de.transport.bombardier.com

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Thank you.

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Merci.

Johannesburg, 16 July 2015

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TRANSPORTATION
Bombardier Transportation
South Africa (Pty) Ltd
1st Floor Balaleur Place,
Hertford Office Park
90 Bekker Road, Midrand
Johannesburg, South Africa
Tel +27 (0) 11 997 8500
Fax +27 (0) 11 997 8502
www.bombardier.com

Company Registration No 1995/011405/07
VAT Registration No 4280158546

Chairman: Xolani Mupfema Mkhwanazi
Managing Director: Aubrey Lekwana
Non Executive Directors: Violeta Dias, Dumisa
Dlambo, Armstrong Ncube, Paul Sampson
Executive Directors: Sajeeth Dayanand, Calvin
Fether, Aubrey Lekwana, Johann van Biljon,
Christie Els

Transnet Freight Rail
Inyanda House 4, Parktown
Johannesburg
2193
South Africa

Att. Ms. Lindiwe Mdletshe
Att. Mr. Frikkie Harris

BT/TFR/C/15/0056

Re: Additional information on the Durban VO - Price reduction

Dear Lindiwe/Frikkie,

As expressed on many occasions since May 2014, the change of Transnet Engineering (TE) Facility from Koedoespoort to Durban has significant impacts to the project deliverables, especially the contractually agreed timelines indicated in our Project Schedule. Bombardier Transportation South Africa (BT) cannot commit to the initial timelines as the final assembly in Durban is not advanced to the level of Koedoespoort and therefore we had to adjust our initial process planning to accommodate the new facility. However, we will continue to execute the project effectively and efficiently in accordance with the revised Schedule 2 Scheduled Handover and Scheduled Acceptance Dates submitted on 10 April 2015 and again as Appendix 1 to this letter.

As a result, we deem it proper that our contractual commitments in relation to value of the contract, project schedule, TE Facility and Delay Penalties have to be amended accordingly to reflect our common agreement on the consequences of the Variation requested by Transnet Freight Rail (TFR). We value this project highly and we will ensure, by working together with TFR, that it becomes a success and that we remain aligned.

Please find a consolidation of the caveats included in our Notice of Company Proposed Variation which requires attention. BT kindly requests that these caveats be specifically incorporated in the final Variation Order to be issued by TFR on or before 20 July 2015.

The Variation Order shall specifically state:

1. The agreed price for the Variation Order of R618, 457,125.
2. The extension of time granted in accordance with revised Schedule 2 Scheduled Handover and Scheduled Acceptance Dates. Such revised Schedule 2 shall be specifically included in the Variation Order as replacing the Schedule 2 originally included in the Locomotive Supply Agreement of 17 March, 2014.

3. Definition – TE Facility

As it reads currently

"Koedoespoort, Gauteng;"

Amendment to Definition – TE Facility

"Durban, Kwa-Zulu Natal"

4. Clause 9.1.1

As it reads currently clause 9.1.1

"If the Acceptance of a Locomotive occurs after its Scheduled Acceptance Date (a Delay), the Contractor shall (subject to Clause 9.2 (Delay Penalty Cap), pay a Delay Penalty to the Company in respect of that Delayed Locomotive at the Applicable Rate. A Delay Penalty grace period of 3 months shall apply to the initial 6 (six) Locomotives Scheduled Acceptance Date".

Amendment to clause 9.1.1

"If the Acceptance of a Locomotive occurs after its Scheduled Acceptance Date (a Delay), the Contractor shall (subject to Clause 9.2 (Delay Penalty Cap), pay a Delay Penalty to the Company in respect of that Delayed Locomotive at the Applicable Rate. A Delay Penalty grace period of 3 (three) months shall apply to the initial 35 (thirty-five) Locomotives Scheduled Acceptance Date. An additional grace period of 2 (two) months shall apply to the remainder of the Fleet"

We clearly understand that the Notice of Company Proposed Variation will be finalised as a Variation Order and that the impacts on the project shall be addressed by amendment of the above-stated contractual provisions. Clause 1.2.1.4. states that, an amendment includes an amendment, supplement, novation, re-enactment, replacement, restatement or variation and amend will be construed accordingly. BT does not request a specific Locomotive Supply Agreement contract amendment and thus accepts the inclusion of the above proposed amendments in the final Variation Order to be issued by TFR.

Kind regards



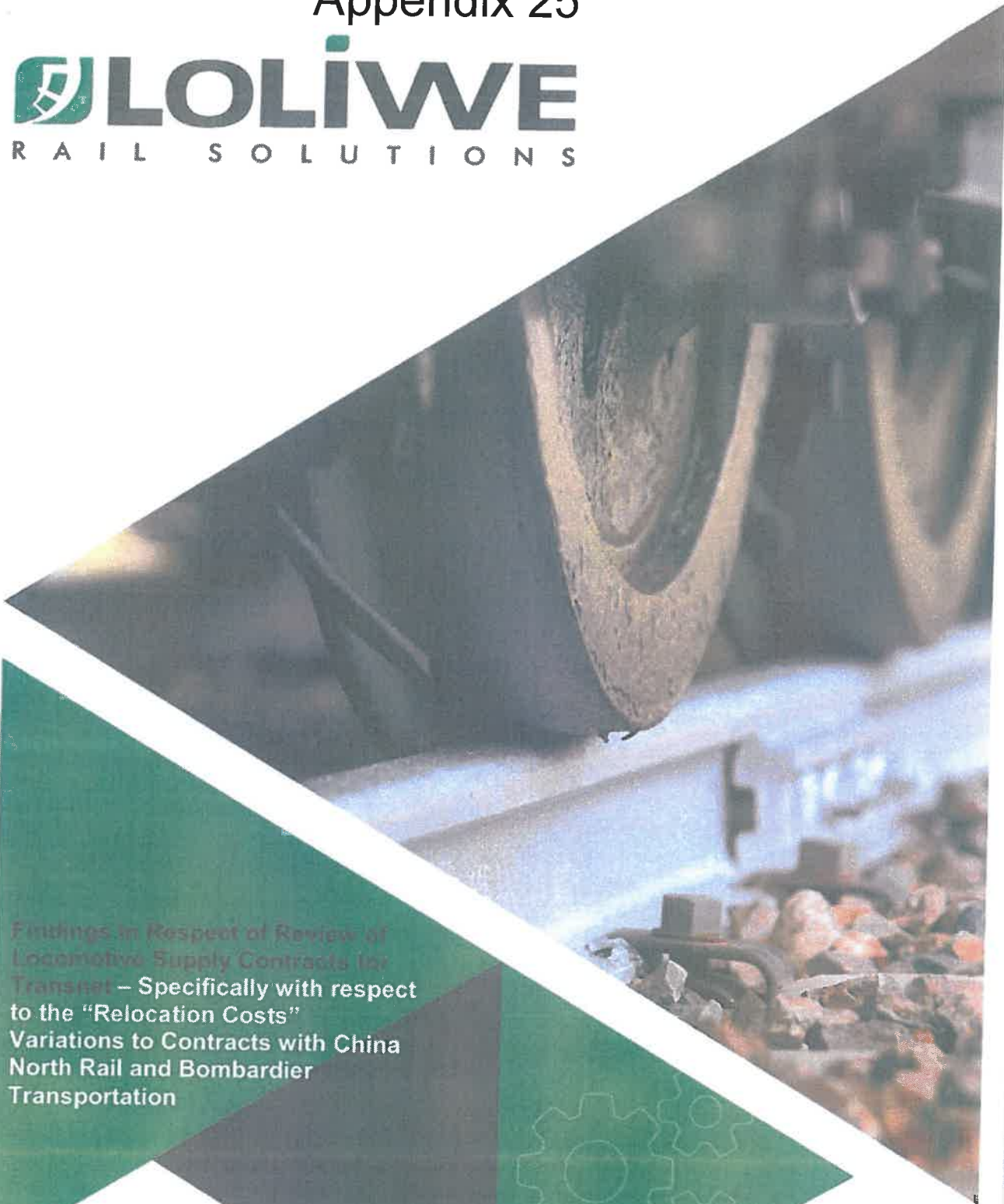
Mathias Papritz
Project Director



Dobri Makhubela
Project Contract Manager

APPENDIX 25

Appendix 25

A large, diagonal photograph of a train wheel on a track, with gravel visible in the foreground. The image is partially obscured by green geometric shapes.

Findings in Respect of Review of
Locomotive Supply Contracts for
Transnet – Specifically with respect
to the “Relocation Costs”
Variations to Contracts with China
North Rail and Bombardier
Transportation

REPORT:	REVISION 0
CLIENT:	MNS ATTORNEYS
ATTENTION:	Mr Mnyandu
DATE:	FEBRUARY 2019

ISSUE AND REVISION RECORD

PROJECT CLIENT : MNS ATTORNEYS

PROJECT TITLE : Findings and Report into Transnet Locomotive Manufacture Relocation

PROJECT NUMBER :

DOCUMENT TITLE : Project Report



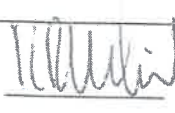

DOCUMENT FILE REF. : PL 2018/09 - MNS

ELECTRONIC FILE REF. :



Loliwe Rail Solutions

110 Umhlanga Rocks Drive,
Durban North, 4051
P.O Box 727, Sloane Park, 2152
Telephone: +27 31 312 2093
Facsimile: +27 31 312 5663

DATE:	REVISION:	PREPARED BY:	EDITED BY:	COMPILED BY:	APPROVED BY:	CLIENT ACCEPTANCE:
February 2019	0.	 Kevin McGill Mukthar Ismail Rob Marius	 Kevin McGill	 Kevin McGill Mukthar Ismail Rob Marius	 Kevin McGill	 Mr Mnyandu

ISSUED TO:	PHYSICAL ADDRESS:	POSTAL ADDRESS:	CONTACT PERSON:	EMAIL:	TELEPHONE:	FACSIMILE:
Mr Mnyandu	2nd Floor 16 Fricker Road Illovo 2196	Umjantshi House 30 Woolmarans, Braamfontein 2017	Mr Mnyandu	Thobani@ndlovu-sedumedi.co.za	(011) 268 5225	(011) 268 6805

Queries and Comments:

All queries and comments in respect of this document must be addressed in writing to:

Loliwe Rail Solutions
110 Umhlanga Rocks Drive
Durban North
4051

Telephone: +27 31 312 2093
Facsimile: +27 31 312 5663

E- Mail: Kevin@loliwerail.co.za

For the attention of: Kevin McGill

4th February 2019

MNS Attorneys
Mr T Mnyandu
Director
2nd Floor, Fricker Road
Illovo
2196
South Africa

Dear Mr Mnyandu

Findings and final Report into Transnet Locomotive Manufacture Relocation

As part of MNS' "Investigation of Allegations into Irregularities in the Procurement and Award of the 1064 Locomotives Tender by Transnet, Loliwe Rail Solutions includes herewith our findings and opinion contained within our final report.

Yours faithfully



Kevin McGill
Managing Director
Loliwe Rail Solutions

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1. EXECUTIVE SUMMARY

Loliwe Rail Solutions was appointed on 1st October by MNS to provide specialist opinion specifically regarding the relocation or rather, the change in location of the local manufacturing facility of two of the Original Equipment Manufacturers (OEM's) who were successful in securing tenders in respect of the 1064 Locomotives for Transnet.

The location of the local manufacturing facility as contained in the tender, returned bids, and contracts was Koedoesport in Gauteng. Post award, Transnet made a decision to split the manufacture of the 1064 locomotives between two of Transnet Engineering's (TE) facilities, Koedoespoort and Bayhead, Durban. 2 OEM's would manufacture at each of the locations.

Two OEM's (CNR and Bombardier Transportation) were instructed through the contract to manufacture in TE's Durban manufacturing facility raised early warnings based upon the increased costs over and above their original budgets as their contention was that the change in location would result in higher manufacturing costs.

During the period from 2014 to 2015 several motivations were submitted to Transnet Freight Rail (TFR) to substantiate the escalations in budget resulting from the change in manufacturing location. TFR approved the variations and amendments to the contract – which were effectively lump sum amounts encapsulating direct costs as well as escalation / hedging for the variation amounts. A review of the invoices demonstrates that the payment terms were different. With CNR there was a lump sum payment whilst with BT, the payments were spread out in invoices (4% of the total in each invoice). In the body of this report we will unpack the submissions and items and amounts approved in the claims from CNR and BT.

This report aims to clarify the following;

- Was there a rational argument for an increase in costs?
- Were the approved variation orders justified in terms of direct and indirect costs?
- Was the form of the approved variation orders in line with contractual and institutional terms and conditions.
- Did the OEM's achieve the targets and deliverables that the variation orders were intended to compensate them for.

Considering the above, we note that although we have visited the TE facility in Durban and reviewed the contractual documents furnished to us, our opinion will be based upon our experience of similar OEM contract management scenarios and the regulatory framework within which contracts such as these are placed. On the face of it the variation orders should not, in our view, have been agreed in a lump sum form. We believe that because the direct and indirect costs were difficult to accurately calculate at the time of the decision to proceed with the change in manufacturing location, the financial impacts should have been agreed as a ceiling budget, and the actual proven costs or accurate calculations be presented for approval once they became known, or were incurred. An unjustified inflation of the direct and indirect costs is worrying in respect of origination or generation of the variation order values as well as the approval of the lump sum amounts without adequate diligence and care.



What we have found during our review is that although lump sum variation orders were agreed, the achievement of the targets in terms of locomotive delivery were missed through reasons outside of the change of location.

It is difficult to call into question a variation order that was approved in accordance with the contract's provisions. The variations did follow due process (albeit approved without due care in evaluating the build-up of costs) and we believe that querying the validity and quantum of the approved amounts post implementation of the instruction will require a review of actual costs and ultimately lead to a test of unjust enrichment.

In this document we will highlight that in our experience, with the information provided as backup and justification for the increase in costs as a result of the "relocation" variation order approved, there is insufficient basis for us supporting such increases. In addition and by extension, the information provided at time of the claim as supporting documents for the variation orders was insufficient to approve such variations and thus not supported by us. Our later analysis will distil costs claimed and approved by TFR that are;

- justified and adequately motivated and thus supported by us
- potentially justified, however inadequately motivated and thus unsupported
- unjustified and/or documentation disputed and thus unsupported.

These items categorised above will be contained within a schedule highlighting supported and unsupported claims.

2. REVIEW OF RELOCATION

2.1 WAS THE RELOCATION TO DURBAN ENVISAGED IN THE RFP

An alternate site to the Koedoespoort Transnet Engineering Facility was not considered in the RFP for the OEM's. Therefore the decision to use the Durban TE facility was made post award and hence the contractor would have priced the project anticipating having to use the TE facility at Koedoespoort.

The instruction issued by TFR to set up site in Durban would be correctly construed as a variation order. The LSAs stated that the location for the manufacturing and the delivery point was Pretoria or any other site agreed between the Parties. The original pricing and agreement was based upon the Koedoespoort facility being used, and as such TFR would need to instruct the OEM's in terms of the contract should the location of the manufacturing facility be altered. No instruction or VO can automatically give rise to additional costs however, and the assessment of the impact would need to be undertaken prior to the agreement of any costs being recognised as valid.

Variation Order

The variation order results from approved changes in the contract items between the client and the contractor, a variation (sometimes referred to as a variation instruction, variation order or change order) is an alteration to the scope of works in a construction contract in the form of an addition, substitution or omission from the original scope of works that may affect one or more aspects of time, cost and quality.

An excerpt from the FIDIC Contract reading Variation Orders

Clause 13.1 Right to Vary

Variations may be initiated by the Employer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. A Variation shall not comprise the omission of any work which is to be carried out by others. The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Employer stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, (ii) it will reduce the safety or suitability of the Works, or (iii) it will have an adverse impact on the achievement of the Performance Guarantees. Upon receiving this notice, the Employer shall cancel, confirm or vary the instruction.

Although the variation orders were reviewed and accepted, we offer our advice as to the validity, value and achievement of the items that were claimed and awarded as an extension or variation to the contracts. The decision to change the manufacturing facility location was made early on in the contract and as such, no set up had been done – therefore no abortive costs were incurred. The setting up of production lines for the OEM's in Durban was completed (as verified in the site visit to Durban TE) and the cost would have been the same as it would have should the production lines have been set up in Koedoespoort. TE confirmed during our visit of 12th October 2018 that there was no additional cost for the setting up of facility in Durban as compared with Koedoespoort.

2.2 INVESTIGATION INTO WHETHER THE COSTS OF THE RELOCATION WERE REASONABLE AND JUSTIFIABLE.

The table below captures the approved Variation Order sums agreed and approved by the Client on 15 July 2015 for the "Relocation" from Koedoespoort to Durban for each OEM is

	No of locos	Rate	Total Price
Bombardier			
23E (Electric	240	R 54 371 693,00	R 13 049 206 320,00
<i>Variation Order (Client Approved)</i>			<i>R 618 457 000,00</i>
		Revised Contract Sum	R 13 667 663 320,00
Bombardier TE Subcontract	240	R 3 154 652,00	R 757 116 480,00
<i>Variation Order (Client Approved)</i>			<i>R 618 457 000,00</i>
Time related Costs Inflation, hedging, bonding and additional efforts for project bound resources <u>Overall delay of 13 weeks</u> 9 weeks delay in bogie frame and component machining due to new equipment being installed and commissioned at a later date 3 weeks delay in first bogie fabrication due to later installation and commissioning of welding robots, which is mitigated slightly by use of hand-welding (still requiring extra time and training) 1 week delay in first bogie assembly, due to less experienced staff in Durban <u>13 week delay results in costs due to</u> Inflation for additional 3 months on fixed price contract Shifting of delivery payment hedging by three months Additional costs to extend bonding by 3 months Additional costs for staff and facilities that are dedicated to this project		R347 000 000,00	
Direct Costs <u>Transportation,</u> Additional transportation costs for equipment from BT facilities to Durban, instead of Koedoespoort Additional transportation costs for suppliers from BT facilities to Durban, instead of Koedoespoort Additional costs for managing more complex supply and transportation network, including kitting and heavy equipment transport <u>Logistics Costs</u> Additional costs for warehousing and manpower in Durban, as compared to use of BT facilities in Gauteng Additional costs for warehousing and manpower in Durban, as compared to use of TE facilities in Gauteng Loss of industrial footprint synergies Additional costs for production Introduction team separate from BT facility in Gauteng Additional costs for local site team in Durban, instead of sharing resources with BT propulsion facility in Gauteng Additional cost for suppliers management and support		R 287 000 000,00	

	No	Rate	Total Price
CNR			
45D (Diesel)	232	R 42 875 502,00	R 9 947 116 464,00
<i>Variation Order</i>			<i>R 647 181 494,00</i>
		Revised Contract Sum	R 10 594 297 958,00
CNR TE Subcontract	232	R 9 565 086,11	R 2 219 099 977,00

<i>Variation Order (Client Approved)</i>		<i>R 647 181 494,00</i>
Labour Costs	R 54 367 333,00	
Material Costs	R 223 982 441,00	
Logistical Costs	R 6 420 941,00	
Technical Costs	R 70 000 000,00	
Transportation	R 94 194 785,00	
Incremental Warehousing Costs	R 75 650 745,00	
Financial and Risk costs due to time constraints and delays	R 194 474 302,00	
Sub Total	R 719 090 547,00	
Discount of 10%	(R 71 909 054,70)	

We note that the Transnet personnel that were tasked with negotiating the commercial terms of the relocation costs were not provided with any documentation that would have served as back-up information to the alleged costs. In the absence of such information, Transnet could have undertaken a due-diligence in interrogating the proposals of the OEMs. Stated differently, both OEMs did not as a matter of fact provide any information that could have served as a justification for either the direct or indirect costs associated with the relocation. In any event, even if both OEMs had been able to demonstrate any costs (from downstream suppliers) Transnet would not have automatically been liable for such costs.

This is principally because the LSAs were concluded with the possibility that the manufacturing could take place, either in Pretoria or anywhere else in South Africa. A Rough Order of Magnitude for Bombardier we estimate for the effect of working from Durban would be very difficult to ascertain comfortably as significant amounts of information are not available for review. The delivery of locomotives is a unique acquisition requiring comparative pricing that is not readily available in the market. Pricing for the manufacture and supply of locomotive specific Carbodies, Main Transformers, Traction and Auxiliary Converters, Full modular Driver's Cab, Electrical Cubicles, Traction Motors, Wheelsets, Bake Systems, Air-conditioning, etc. units require in depth research as well as the costs of transportation, logistic and loss of industrial footprint synergies, etc. R287 million was claimed as the direct costs by Bombardier but cannot be validated without reviewing a detailed breakdown of these costs. We do not consider the R347million for (indirect) Time related cost being a valid part of the increase in costs for Variation Order as outlined further in this document.

The Rough Order of Magnitude cost for CNR has been assessed with the assumptions that there are similarities in respect of the activities and deliverables that impact Bombardier as noted above. We have however evaluated in detail all items claimed by CNR in the variation order and this amount we believe due is reflected in section 2.6 below.

The time related costs allocated to inflation, hedging and bonding are not considered legitimate hence should not be associated with these variation orders. Stated more emphatically, those costs should not have been allowed by Transnet.

On review we believe if Transnet was minded to agree to a payment for the direct costs associated with manufacturing from Durban, then the values of variation orders ought to have been agreed as Transnet internal budget ceilings. In essence, this would have translated reimbursing the OEMs for the actual costs justified and / or incurred on an as-and-when basis.

We have not experienced previous occurrences where lump sum variation orders are accepted with "contingencies", "risk" and escalation included. Further we are of the view that, as the escalation, hedging and inflation were provided in the main contracts they have been duplicated in the variation orders. As such we are of the view that these costs are wholly unjustifiable.

Transnet issued the instruction to BT and CNR to 'Relocate' the Assembly Workshops from Koedoespoort to Durban and having to adjudicate the Variation Order based on the information submitted by both the OEM's, Transnet was obliged to ensure that all information presented was adequately detailed to make a decision and that the submission should have been accurate, current, in accordance with the signed contract, address time, cost and quality, value to money, etc. Transnet should have requested additional detailed information and if this was not forthcoming the instruction should have been cancelled. We find in this case that inadequate information was presented, and that Transnet was not in an informed position to accept the submissions from both the OEMs hence Transnet should not have approved the Variation Orders.

2.3 THE DECISION TO RELOCATE TRANSNET ENGINEERING FROM PRETORIA TO DURBAN AND WHETHER SUCH RELOCATION ACTUALLY TOOK PLACE.

We believe that the decision to move the production facility to Durban was made upon a sound principle given the capacity and technical ability of the Durban TE operations, and separating risk of all OEM's in one facility. A full study was done By PWC and this document was used as the basis for the decision to proceed with the relocation. We do not believe that the estimation of actual cost impact of the intended change in facility was well understood by TFR at that point however, and as such the decision to proceed was done on the basis of principle rather than an appreciation of the financial and time implications.

The reason for the lack of information is that the OEMs did not provide compelling evidence of costs that would result from the change in location. Whilst we accept the principle(s) associated with some of the direct costs increasing, they are not backed up by any quotations and/or estimates from sub-contractors, suppliers, transporters, insurers etc. these would normally be requested when evaluating material impacts to contract budgets and ultimately contract amendments.

It is our view therefore that insufficient due care and diligence was placed upon the evaluation of the variations and quotations from OEMs, and ultimately the award of those variation orders flawed. Furthermore, payment of substantial portions of the variations ahead of any delivery is questioned. The costs included in the claims are generally incurred / accrued either at or after

the activities and not required for ordering of material etc in advance. The costs could have been paid as incurred on a milestone or monthly basis rather than up-front. We do not support the upfront payment for the variation.

During the visit to TE's Durban Manufacturing Facility undertaken on the 19 October 2018 we noted that both the OEMS have indeed set-up operations in Durban at Bayhead area off Solomon Mahlangu Drive. Currently, Bombardier is manufacturing locomotives but CNR had a Stop Order in place and was not producing any locomotives.

During the visit and discussions with TE personnel it appears that the BT contract and manufacture of locomotives is meeting standards and although they are meeting adjusted timelines, they remain well behind the contractual delivery dates as at October 2018 (70 locomotives short). The CNR production has been delayed due to problems in design, manufacturing processes and equipment (jigs not appropriate), as well as certain parts imported from CNR's Chinese operations not conforming to the anticipated sizing. All these have delayed production and resulted in internal issues regarding CNR and their sub-contractor, TE.

Penalty Clause as reflected in the Contract Document

Clause 11 Mission Reliability and Availability
Sub Clause 11.1 For the purpose of this Clause 11 only, Batch means, in relation to each Delivery Year, all of the Locomotives Accepted or scheduled to be Accepted in accordance with the Master Programme, in that Delivery Year
Sub Clause 11.5.5.2 the average monthly Mission Reliability, as measured for that 6 month period, amounted 20 (twenty) Faults or more per 1,000,000 (one million) kilometres travelled by the Fleet in that Batch, The Contractor shall pay to the Company, on demand, an amount equal to 1.5 (one and a half) per cent of the Total Contract Price for the all Locomotives for failing to achieve the Fleet Availability and similarly 1.5 (one and a half) per cent of the Total Contract Price for the all Locomotives failing to achieve Mission Reliability

It is our view that although the decision to change location of manufacturing facility occurred as instructed by TFR, the ability to meet the targets and commitments required in the variation order and main contract have not been fulfilled. It would appear that the ability to produce the locomotives to the design and specification is still not yet in place. We are not certain of the reasons as they may be numerous and complicated, however the gap between design and manufacturing to specifications appears poorly managed – lack of appropriate method statements for processes and ultimately Quality Assurance.

2.4 GENERAL NOTES COMMON TO BOTH OEM'S:

Variation Order

The Variation Order is a fixed priced option, clarity is requested if the entire VO is fixed or if the client fixed the scope of the VO as the original tender has an escalation/fluctuation provision.

As we understand the overarching process regarding the inflation aspect, the original tender documentation generally addresses escalation providing for reimbursement of price fluctuations on an average basis with the proportions and Pricing Indexes applied being indicative of average price movements unless the conditions of contract specifically call for a fixed price contract that is not subject to fluctuations.

Fluctuations in costs shall normally be for the contractor's account subject to the contract value being adjusted by the sum of the amounts calculated in respect of each payment certificate according to the conditions described, with the final amounts addressed at the end of the project using accurate and published pricing indexes.

We have observed that the inflation aspect has been applied to the variation order to address the time adjustment of costs affected in the original contract value due to the increase of the three-month period. Our notes below capture the issues we have with the application of inflation;

- Inflation is incorrectly applied due to the fact that a variation order which requires work not priced in the original tender, is priced at current pricing (at the point in time when the instruction was received on instruction from the client for the Variation Order). Variation orders are not priced on future values as they cover costs incurred, or rather are intended to protect against impact of losses incurred by either party.
- the variation is costed at present prices as they are incurred at the time of the instruction, hence should not be affected by fluctuation
- further, any aspect of the Variation order that does have items priced in the original tender will be priced using the tendered rates and the fluctuation is managed as noted above in the payment certification and final accounts that sit outside of the Variation order.

There is no detailed breakdown of Variation Order costings for each Contractor, and nor are there any submissions of real costs incurred related to the items resulting from relocation of the manufacturing facility.

Escalation Provision – Contracts in General

CONTRACT PRICE ADJUSTMENT: Provision used for the adjustment of the contract value (using information published monthly by Statistics South Africa)

The objective of CFA is to promote fair risk sharing between the employer and the contractor. CFA is considered an equitable risk-sharing mechanism, as payments to the contractor can be adjusted either upwards or downwards in response to actual changes in costs of labour and selected key materials during the course of the contract. With CFA provisions, the contractor is made aware at the time of tender that the contract will be subject to CFA. This awareness helps to remove the uncertainty of inflation/deflation and hence the contractor can price his tender based on the current market value without including an additional premium to take account of possible movement. At the same time, CFA ensures the employer pays what should be paid, taking into account prevailing inflation or deflation

Special Note: in all the different provisions for Escalation in the Industry, a portion of the of the contract value is fixed and is not subject to adjustment, the fixed portion may vary due to type of project but generally around 15% to 20% of the cost element is fixed

FIDIC (Extract from FIDIC contract)

CONTRACT PRICE ADJUSTMENT - The value of each monthly certificate shall be increased or decreased by the amount obtained by multiplying "Ac", defined in Clause 2 of this Schedule, by the Contract Price Adjustment Factor, rounded off to the fourth decimal place, determined according to the formula: $(1 - x) [aLt/Lo + bPt/Po + cMt/Mo + dFt/Fo - 1]$ in which the symbols have the following meaning:

"x" is the proportion of "Ac" which is not subject to adjustment. Unless otherwise stated in the Contract Data, this proportion shall be 0,10.

"a", "b", "c" and "d" are the coefficients contained in the Contract Data, which are deemed, irrespective of the actual constituents of the work, to represent the proportionate value of labour, contractors' equipment, material (other than "special materials" specified in the Contract Data) and fuel respectively. The arithmetical sum of "a", "b", "c" and "d" shall be unity. SAFCEC have published recommendations for the allocation of these Indices for various types of Work. These are shown on the SAFCEC website.

"L" is the "Labour Index" and shall be the Consumer Price Index (CPI) for the urban area nearest to the Site, as stated in the Contract Data, and as published in the Statistical News Release P0141 Additional Tables: Table 14 "CPI – all items, according to area" of Statistics South Africa.

"P" is the "Plant Index" and shall be the Producer Price Index (PPI) applicable to the industry as stated in the Contract Data and as published in the Statistical News Release P0142.1, Table 12 – "Concrete Works Plant" and/or "Roads and Earthworks Plant" of Statistics South Africa.

"M" is the "Materials Index" and shall be the Producer Price Index (PPI) applicable to the industry as stated in the Contract Data and as published in the Statistical News Release P0142.1, Table 12 – "Concrete Works Material" and/or "Roads and Earthworks Material" of Statistics South Africa.

"F" is the "Fuel Index" and shall be the Producer Price Index (PPI) for Diesel at wholesale level for the area as stated in the Contract Data and as published in the Statistical News Release P0142.1, Table 12 of Statistics South Africa.

JBCC (Extract from JBCC contract)

The CPAP provides for reimbursement of price fluctuations on an average basis with the proportions and indices applied being indicative of average price movements. Such fluctuations in costs shall be for the contractor's account subject to the contract value being adjusted by the sum of the amounts calculated in respect of each payment certificate according to the conditions described

The CPAP provides for the adjustment of contracts in respect of; General building work,

Subcontract work and Direct contractor's work

CALCULATION OF ADJUSTMENT

5.1 The principal agent shall calculate an adjustment amount for each valuation period in respect of each work

group by the application of the formula:

$$A = 0.85 \times V (X_e/X_o - 1)$$

Where:

- A = the adjustment amount
- 0.85 = a constant which provides for a 15% non-adjustable element
- V = the work value in such work group and the valuation period
- X_e = the value of the index applicable to such work group and the valuation period for the
- calendar month during which the payment certificate is dated
- X_o = the value of the index applicable to such work group for the base month

In the CNR schedule an escalation provision has been made but has been calculated using the entire contract sum as opposed to that component of costs which is subject to escalation thus artificially inflating the value for such provision. For BT a note is made that an escalation provision has been allocated to their costs in the Variation Order as well with no breakdown provided for evaluation. However, it should be noted that escalation is provided for in the contract and should have been managed outside of the Variation Order

2.5 BOMBARDIER – DETAILS OF CLAIM SUBMITTED AND APPROVED

2.5.1 Direct Costs

In our analysis, we have determined that there are some components of the locomotives that will be imported and will have reduced transportation costs due to them no longer requiring transportation from the Durban port terminals to Koedoespoort. Unfortunately, *there is no list and costs of these items*. We are of the view however, that the initial offer of CNR (which lists such items) dated 11 April 2014 provides an accurate assessment even for Bombardier. This is based on the consideration that the designated threshold for local content in rolling stock is almost similar in relation to diesel (CNR) and electric (BT) locomotives. Accordingly, both OEMs would have been and are importing more or less similar components.

Virtually all subsystems have significant value-add within South Africa and these are mostly produced in Gauteng Province. Accordingly, the components that are imported from overseas will need to be transported to Gauteng, assembled into major subsystem components, and then returned to Durban for final installation in the locomotive. These major components and subsystems require final assembly and testing in Durban listed as Complete Carbodies, Main Transformers, Traction and Auxiliary Converters, Full modular Driver's Cab, Electrical Cubicles, Traction Motors, Wheelsets, Brake Systems, Air-conditioning.

Although the principle that there are additional costs relating to the transport of the sub-systems to the assembly line, as well as having the teams from the manufacturers of the sub-systems at hand in Durban to supervise assembly and commissioning, the detail was not submitted. Quotes from each supplier, and transport companies could, and should, have been provided prior to the approval of the VO. As no backup and information relating to the suppliers affected, nor any indication of how the additional costs were actually incurred, we are unable to support this claim and thus reject it. The principle may exist, however there is no supporting documentation and as we are unable to support it now, the team reviewing the claim at the time the VO was considered would similarly not have been able to make a ruling without sufficient and acceptable supporting documentation.

No details are provided and as such, we cannot with support such costs.

2.5.2 Schedule related costs

Cashflow

"Prices offered above are based on milestone payments as shown below (same as in LSA) 18.0% of the total offered price at the acceptance of this offer"

The Contract notes that the client was to affect payment after 10 (ten) business days with tax invoice

There is no detail regarding the payment terms being implemented and thus cannot support the validity of inclusion of this as an additional cost.

Escalation

Time Related Cost

Bombardier note a sum of R347 million for Inflation, hedging, bonding and additional efforts for the project bound resources etc.

We understand that resourcing the project and bonding are legitimate in terms of time related variation orders, Hedging needs to be clarified as this item requires forward strategizing for international currency funds over the duration of the project, clarity is required on the initial allowances and the extent to the provisions made at the outset of the project. We have not found any rationale for the hedging of a component of the VO. Moreover, the

Inflation does not apply to the variation order and should not have been allocated here. Firstly, the contract signed with the Transnet is subject to escalation/inflation, hence the client would have provided for these funds in the Transnet's budget. Secondly, inflation is affected by the progress of the works during the entire duration of the project, items that affect inflation are variation orders as well progress of the works fast- track and slow progress. We note that Transnet has, in our opinion, erroneously approved an inflation amount in the Variation Order that has a negative impact upon the client's budget. Furthermore, as the contractor has not

progressed in accordance with the contract, and is currently significantly behind on progress, the contractor should not have benefitted from the proved inflation sum. We are of the view that these costs were not valid, nor actually incurred, and thus not recoverable.

The Variation Order was approved as a fixed priced option, where the client has fixed the scope of the VO, but the original tender has an escalation/fluctuation provision.

The original tender documentation addresses escalation which provides for reimbursement of price fluctuations on an average basis with the proportions and Pricing Indexes applied being indicative of average price movements unless the conditions of contract specifically call for a fixed price contract that is not subject to fluctuations.

Hedging

Hedging costs appear to be allocated in the VO cost provision but the contract documentation adequately addresses Hedging and Currency Exposures hence these allocations should not be allocated as costs to the Variation Order

Extract from Contract Pace 66

"Clause 8.11 Hedging and Currency Exposures

Sub Clause 8.11.1 : The Contractor shall, in its discretion whether it wishes to enter into any interest rate or foreign currency hedging arrangements in relation to the performance of its and/or the Guarantor's obligations under the Project Documents or the transactions contemplated thereby (Hedging Contracts)

Sub Clause 8.11.2 In relation to any such Hedging Contract, the Contractor confirms that: it has the sole responsibility for the implementation and management of each such Hedging Contract; the Company has not liability, financial or otherwise, to the Contractor or any other person under or in connection with the Hedging Contracts; it has made its own independent appraisal of all arising under or in connection with the Hedging Contracts (including the financial condition and affairs of the relevant hedge counterparty); and it has not relied on ant information provided to it by the Company in connection with the relevant hedge counterparty or the Hedging Contracts"

Bonding costs

Bonding costs appear to be allocated in the VO cost provision, these costs are for the contractors account and may not be passed onto the clients account nor should it be reflected in the Variation Order.

Staff costs

They used peak scheduled monthly costs as basis for extension of 3 months staff costs. This may be valid.

Contractor Warehouse

No provision allowed for Transnet warehouse to Bombardier.



Office Space

Monthly Office Rental for 2014/15 provided by Transnet for the Sum of 55 470.00 per month for three months equates to R 166 410,00 (180m2 at 308,17m2)

The additional warehousing required in Durban is warranted. A copy of the agreement is to be provided to validate the actual costing for the Warehousing.

Note: "Duration of the rental commences 3 months prior to delivery of the first locomotive and terminates 3 months after the delivery of the last locomotive"

Client Affected delays

Client issues letter on 6 June 2014 (Transnet Memorandum dated 15 May 2014) for the relocation to Durban and the approval of the VO issued by the client

Contractor delays

Two months of delays from the contractor on the delivery of the locomotives – letter dated 26 September 2014

The statement was made in the claim "TE will not have sufficient robotic welding or large-capacity machining in time for the project start, due the long lead-times in procuring such capital equipment"

TE did weld the components despite the robotic welding not having been in place.

2.6 CNR – DETAILS OF CLAIM SUBMITTED AND APPROVED

2.6.1 Direct Costs

The items listed below were contained within the claim for variation by CNR and ultimately accepted by Transnet as justification for the claim. Below, we examine the line items associated with proposal that was submitted by CNR.

Cashflow

"Prices offered above are based on milestone payments as shown below (same as in LSA) 10.0% of the total offered price at the acceptance of this offer being the Effective Date"

Contract notes that the client was to affect payment after 10 (ten) business days with tax invoice

The sum of R 68 million equating to 31% of the VO amount paid upfront is queried as an advance payment should be made for a Variation Order.

Section 14 covering advance payment bond not reflected in the contract document

Labour

"Increase in team size to maintain production of 12 locomotives per month. Average team size increased from 25 to 31. R38.3m total cost over the entire production period."



There is no evidence to support the fact that there are additional teams allocated in Durban as compared to Koedoespoort. Further, they have not achieved 12 locomotives per month. We believe this cost to be invalid and unsupported.

Quality assurance

"Increase in supervision staff to inspect and monitor production in the new factory.

An additional 6 specialists for 12 locomotives per month.

Each supervisor responsible for 2 locomotives at a time.

This is R4.6m over the period"

There is no evidence to support the fact that there are additional teams allocated in Durban as compared to Koedoespoort. Further, they have not achieved 12 locomotives per month. We believe this cost to be invalid and unsupported.

Customer service team

"Increase of team to deal with more suppliers and client issues from a remote location

8 additional agents and setting up of CST infrastructure to manage CST requirements.

Total of R8.1m over the period."

There is no evidence to support the fact that there are additional teams allocated in Durban as compared to Koedoespoort. Further, they have not achieved 12 locomotives per month. We believe this cost to be invalid.

Programme managers

"Additional 3 programme managers for substantial increase in team size, logistical complexity and initial production phase."

There is no evidence to support the fact that there are additional teams allocated in Durban as compared to Koedoespoort. They would always have had to have a team to train for the initial production phase, and through inspections of Durban TE facility, it appears that insufficient initial production phase training and support was provided. Further, they have not achieved 12 locomotives per month. We believe this cost to be invalid

Material

Inflationary costs R162.1m based on 4 month delay

1.8% (5.5% per annum/3). Calculations consider entire original tender amount but notation in the tender documentation states "A portion of the Contract Price may even be fixed"

VO make up includes for actual costs of the work to be undertaken due to the change order. Inflationary and Escalations cost are allocated in the original contract which covers all VOs and this amount is finalized at the end of the project. *We believe this item to be invalid*

Incremental estimated procurement costs

R16.8m

"Certain raw materials not available in RSA". There is no detail as to what materials these are and how they differ from the Pretoria facility to Durban.

We do not believe that this item should have been considered as there is insufficient reasonable justification for such incremental increase in procurement cost due to the difference in location of production facility. We do not support this additional cost.

12 locomotives per month impact upon the warehouse as 3 months storage required.

9% per annum increase (9/3)

We do not have sufficient detail to verify the additional warehousing for the 3 month period as it appears that the initial period of the project entailed haphazard delivery of prototypes, jigs and templates. The warehousing for completed sub-systems ready for assembly does not appear justified.

We do not support this additional cost.

Logistical

"Administrative costs to rework the logistics R1.7m" – this may have been required to create the new plan for manufacture from Durban. However no breakdown of how those costs would have been calculated, and thus do not accept this as an additional cost.

New environment testing R475k – testing would have been necessary at either facility. We do not support this cost.

Higher staff travel costs R2m – possibly valid, however no detail.

Higher inventory due to distance from Gauteng R2.2m – We do not believe there are sufficient grounds to justify this additional cost. We do not support this cost.

Technical Support

"Additional technical support and engineering teams to be available on the ground beyond the initial 19 month period" – we are not in support of this as this would have been required at both facilities and in any event, we have seen that this was insufficient to ensure the production commenced properly as there are numerous quality issues that have hamstrung the locomotive production and assembly.

"These teams to be available due to lack of expertise in maintenance and post production servicing currently available in Durban. R24.5m"

Tech support R17.5m

Engineering R7m



We do not believe there is any justification for this item as the teams would need to be available regardless of the location of the facility. The notion of additional expertise being required at this facility is unfounded and the costs rejected.

"Increased cost of on-site service by suppliers due to the increase in travel and relocation of Gauteng based suppliers."

Estimated at R45.5m over pre and post production periods.

Comments as above. Possible escalation in cost, however on the face of it the higher costs are excessive and not detailed or broken down.

Transportation

"Saving of R567k in transport from Durban to JHB of imported goods – check the breakdown of this. Does it include all items such as insurance, storage, security, extra manpower."

Sub- assembly components shipped from China directly to Durban, CNR to validate component assembly in JHB prior to delivery in Durban

Transport of assembly parts estimated at R50.4m. Road logistics estimated at 5% of pre-transport costs. Assumption of R1b raw material costs which is R50.4m

Transport protection, express shipments – trucks for handover and testing goods when received are directly inherited costs of the relocation – R7.6m

Transportation – total R79 794 785 – see breakdown in file CRRC tab1.

All the items above may be justified, however in reality we have seen no pre-assembled parts having arrived in Durban and requiring such high costs to be incurred over and above the original contract value. Without detail regarding indicative lists of equipment and where possible quotes from suppliers and transport companies, it is difficult to assess with confidence, however we are not in support with the numbers tabled, and question the original approval of such. A ceiling price should have been agreed and the accurate estimates and / or quotes submitted for verification and awarded as variation order/s. As no quotations or backup provided during the variation order claim process, we do not support this cost.

Incremental Warehouse Costs

Higher lease for warehousing

Etc as per page 9/12 – confirm that additional warehousing is required as Transnet have appeared to have provided warehousing in Durban. There is no backup or evidence of this however and as such do not support this additional cost.

2.6.2 Schedule related costs

Other Costs (incorporating financing, escalation and risk)

Labour inflation – 4 months delay R3.7m

Legislated movement in Labour inflation is an annual event and any movement in these costs may be considered after the event if any, however this item appears to be priced as a risk item which in contracting principals is flawed as such risk items are covered comprehensively in the inflation provision allocated in the contract Refer Schedule 17

Further we note that in the initial project charter, CNR committed to manufacture the first 20 locomotives as CBU's in China.

"Contractor Hourly Labour Rates – All rates are as at February 2014 and are subject to an annual escalation"

Extract from the contract Page 324

"Clause 8 Currency Indemnity –

Sub Clause 8.1.1 TFR shall have any liability in respect of any cost, loss or liability resulting from and fluctuation in exchange rate"

Forward cover on currency R63m

The contract document adequately addresses Hedging and Currency Exposures hence these allocations should not be allocated as costs to the Variation Order.

Extract from Contract Page 66

"Clause 8.11 Hedging and Foreign Currency Exposures

Sub Clause 8.11.1 The Contractor shall, in its discretion whether it wishes to enter into any interest rate or foreign currency hedging arrangements in relation to the performance of its and/or the Guarantor's obligations under the Project Documents or the transactions contemplated thereby (Hedging Contracts)

Sub Clause 8.11.2 In relation to any such Hedging Contract, the Contractor confirms that: it has the sole responsibility for the implementation and management of each such Hedging Contract; the Company has no liability, financial or otherwise, to the Contractor or any other person under or in connection with the Hedging Contracts; it has made its own independent appraisal of all arising under or in connection with the Hedging Contracts (including the financial condition and affairs of the relevant hedge counterparty); and it has not relied on ant information provided to it by the Company in connection with the relevant hedge counterparty or the Hedging Contracts"

Bond / Debt instruments

These costs are for the contractors account and may not be passed onto the clients account nor should it be reflected in the Variation Order.

Contingency risk R25 m – this should never have been included in a variation order. Projects normally have overarching contingencies and variation orders come out of these contingencies. Should a justifiable new event arise, another variation could be applied for rather than a contingency placed on the variation order. We do not support this cost.

Training costs for additional teams R3.6m – we do not believe this is justified as training should have occurred at both facilities. The TE team in Durban is as experienced as the Koedoespoort team.

Risk provision 9% - R54.7m – as with contingency, we do not understand the justification for it, and thus do not support this additional cost.

Extract from the contract

"Clause 22.3 **Consequential Loss** - Neither Party shall be liable to the other, whether arising from breach of contract, delict or otherwise, for any Indirect Loss, except for any element of revenue or profit which has been included within the calculation of any penalty regime under any Project Document or any similar or other amount expressly payable by either Party under connection with any Project Document."

3. CONCLUSION

In order for the analysis to be undertaken on the "relocation" variation order, we have reviewed the information provided.

Our findings are that the variation orders were flawed in both value and process.

- The absolute correct value is difficult to assess without full equipment lists, details of vendors and the resultant transport, insurance and labour costs.
- The process to evaluate and approve an accurate variation order was not, we believe, in line with standard contract management protocol. Accurate details of the items giving rise to additional costs were not submitted. In addition, the escalation provisions are not supported by us. Furthermore the decision to pay for the variation in a lump sum and upfront payment is contrary to the principle of a variation order. Normally a value is agreed and the payment made upon achievement of such milestone, or the event and increase in cost incurred by the OEM's.
- It is concerning that the list of queries raised internally by TFR in respect of the variation orders were never responded to. The committee that was appointed to review the variation orders therefore never closed out concerns raised, nor obtained satisfactory information with which to fully evaluate and validate the amounts claimed.
- Linked to the above, we find it concerning that the variation order principles and values were never referred to a team of specialists to evaluate and to assist the officials with making such a large contract amendment.
- PWC were tasked to undertake a study as to the merits of a relocation and spreading of work across the regions. The decision to proceed with the relocation and instruct the OEMs was made on the basis of the findings of the study. It would have been prudent to request PWC to review the variation orders against the principles contained within their findings and also to provide feedback on whether the claimed costs matched their expectations of the costs as they anticipated. The decision not to use PWC to review the VO's appears inconsistent and very concerning

Taking the matters discussed throughout the report into consideration, it is our view that the variation orders were inflated intentionally by the OEMs and inadequately evaluated by Transnet prior to concluding the approval and amendment of the contracts. The rigour and care with which such variations were evaluated and approved is not consistent with contract management practice on similar projects we have had experience with. In normal practice, a claim for variation would be submitted together with details and specific information pertaining the breakdown of items claimed for and how each were affected by the unforeseen event. In the case of the variation orders of CNR and BT, only line items were provided and amounts provided. No detail as to how the OEMs incurred additional costs through their suppliers and sub-contractors was provided. Without such backup an approval of those claimed items would have been open for review. It is on this basis that without sufficient and accurate backup information to support the claims, we are unable to accept them as valid. The amounts are not supported as per the schedule provided in section 2.5.2 and 2.6.2 above.



4. REFERENCES

Letter from BTSA dated 6 June 2014 around the approach for the move to Durban.

Proposal from BTSA dated 26 September 2014 for the move to Durban (Initial proposal).

Letter from BTSA dated 2 October 2014, providing additional information to a proposal from BTSA dated 26 September 2014.

Letter from BTSA dated 10 October 2014, providing clarity to a letter dated 2 October 2014.

Letter from BTSA dated 3 November 2014, showing a detailed explanation of the "Final Notice of Contractor Proposed Variation".

Proposal from BTSA dated 10 April 2015, showing a detailed analysis and breakdown of the costs associated with the move to Durban.

Letter from BTSA dated 15 May 2015, highlighting progress on the execution of the works and the potential impact from the delayed approval of the Durban Variation Order.

Letter from the GCE dated 9 June 2015 providing BTSA with a progress update for the move to Durban.

Letter from BTSA dated 15 June 2015 stating their concerns of TFR not accepting their proposal that aligns to them moving to Durban and the associated risks thereof.

BTSA's attendance register for negotiations held at OR Tambo Airport on 19 June 2015.

TFR's attendance register for negotiations held at OR Tambo Airports on 19 June 2015.

Letter from BTSA dated 7 July 2015, providing a proposed reduction of 2.5% to the original R634m previously quoted.

Emails giving direction to accept BT and CRRC's proposal and to compile memos for the GCE's approval.

Letter from BTSA dated 16 July 2015, providing a price reduction to R618m.

Memo to the GCE requesting approval to accept BTSA's proposal.

Memo to the GCE requesting approval to accept CNR's proposal.

Letter from TFR accepting BTSA's proposal for the move to Durban.

FIDIC Contract Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works Designed by the Contractor: The Plant and Design-Build Contract

Joint Building Contracts Committee Principal Building Agreement

Locomotive Supply Agreement between Transnet SOC LTD and Friedshel 1507 Proprietary Limited

Locomotive Supply Agreement between Transnet SOC LTD and Bombardier Transportation South Africa (Pty) Ltd

Subcontract Agreement Transnet SOC Limited and Friedshel 1507 Proprietary Limited

Subcontract Agreement Transnet SOC Limited and Bombardier Transportation South Africa (Pty) Ltd