



EXHIBIT HH 1.1

AFFIDAVIT & ANNEXURES

OF

ROY JANKIELSOHN



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

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**.IN THE COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE ("THE COMMISSION")**

AN INVESTIGATION INTO THE VREDE DAIRY PROJECT

SWORN AFFIDAVIT

I, the undersigned,



ROY JANKIELSOHN

hereby declare under oath as follows:

1. I am a major male South African citizen currently residing at Bruwershoop, Bethlehem.
2. The content of this affidavit is true and correct and falls within my own personal knowledge, unless the contrary clearly appears from the context or is otherwise stated.
3. I have been approached by investigators associated to the Commission of Inquiry into Allegations of State Capture, Fraud and Corruption in the Public Sector including Organs of State ("the Commission") to provide information with regards to my knowledge as to the affairs and matters relating to the Vrede Dairy Project.
4. In this regard, I am and at all material times have been associated with the Provincial Portfolio Committee on Agriculture in the Free State Provincial Government, in my capacity as a member of the opposition.





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5. As such, I have personal knowledge as to certain of the facts concerning the Vrede Dairy Project and can accordingly swear thereto.
 6. Furthermore, I have access to the relevant documents to which I will refer hereunder and which documents relate to the matter at hand.
 7. More importantly and as will be detailed hereunder I was the complainant who issued the complaints to the Office of the Public Protector, and which referral gave rise to the ultimate issue of a report on the affairs of the Vrede Dairy Project.
 8. The first time I became aware of the Vrede Dairy Project or at least the forerunner to this project was during or about 17 November 2011 when I attended a meeting with the MEC responsible for agriculture in the Free State at that time, Mr Mosebenzi Zwane ("Zwane") at his offices at the Glen Agricultural College.
 9. Zwane explained at the meeting that he intended to initiate a concept called Mahoma Mobung which would encourage agri-processing in the Free State province.
 10. Albeit that I was a member of an opposition party, I supported this idea in principle since Zwane explained that too many agricultural commodities were exported to other provinces where they were packaged and sent back to the Free State at great cost to the consumers in the province.
 11. As I understood from the presentation of Mahoma Mobung, the concept was to create certain agri-centric hubs which would specialise in agri-processing and bring the production and processing of agricultural products back to the Free State for the benefit of the economy within the Free State province.

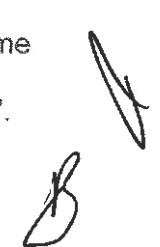
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12. At no stage was the Vrede Dairy Project or any other project mentioned or discussed at this meeting.
 13. During or about 2013 and after becoming aware of the Vrede Dairy Project as a result of it being mentioned in former Premier Ace Magashule's State of The Province Address (SOPA) on 16 February 2012, and again in an article in the Mail and Guardian dated 7 and 13 June 2013 I requested the Department of Agriculture and Rural Development ("DARD") to provide further information on the Vrede Dairy Project during a portfolio meeting for agricultural and rural development. A copy of the Mail and Guardian articles are attached hereto as annexures "RJ1" and "RJ2".
 14. The Portfolio Committee took a decision that a report on this project should be submitted by the DARD.
 15. The DARD responded with a report to the chairperson of the committee (at that stage Ms S Magwandana) which was dated 10 July 2013 and was signed by the then MEC for DARD (at that stage Ms M Qabathe). I attach a copy of the report hereto as annexure "RJ3".
 16. From the content of this report and for the first time I was able to determine that mention was made of a project referred to as "The Vrede Integrated Dairy Initiative" as being part of the Mahoma Mobung initiative.
 17. From a transcription that I managed to obtain of an interview between National Treasury investigators and the former CFO of the DARD, it appeared that Mahoma Mobung was in fact not an initiative but in fact a company. I attach hereto as annexure "RJ4" a copy of the transcription provided to me.
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- 17.1 Later and upon further enquiries from Ms M Qabathe ("Qabathe") I was able to determine that the entire Mahoma Mobung budget was allocated to the Vrede Dairy project. In this regard I refer the above honourable Court to the transcript of the interview referred to above as annexure "RJ4" and more particularly page 52 thereof wherein this is detailed.
18. I was ultimately able to obtain a copy of the agreement which was concluded between Estina and the DARD which was dated 15 July 2012. A copy of this agreement is attached hereto as annexure "RJ5".
- 18.1 From a perusal of the content of this agreement it becomes quite apparent that it was signed by Mr P Thabethe on behalf of the DARD and a certain Sanjeev Gautam as managing director of Estina.
- 18.2 It appears that this agreement was based upon proposals made by the DARD to the Free State Executive Council in which it was stated that they had met with a large Indian dairy company namely Paras Dairy and that Estina had signed a memorandum of understanding with Paras Dairy which is evident from page 3 of the proposal, a copy of which is attached hereto as annexure "RJ6".
- 18.3 However, what is interesting to note is that from investigations conducted by Amabungane and published in an article dated 7 February 2014 it is indicated that Paras Dairy has denied any involvement in this project. I attach a copy of this article hereto marked annexure "RJ7".
- 18.4 From what I have been able to determine it appears that, prior to the signing of the agreement in 2012, Mr Thabethe and/or Zwane, alternatively the then premier of the Free State, Mr Ace Magashule, were taken to India to attend a



meeting with Paras Dairy.

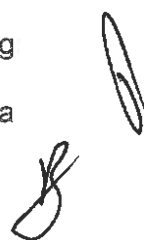
- 18.5 Despite several requests the details relating to this trip have never been revealed although rumour has it that the trip was funded by the now infamous Gupta family.
- 18.6 At that stage and from what I have been able to determine all contracts with the Free State Provincial Government were centralised to a central function and the state legal advisors situated at the Premier's Office held the responsibility to attend to these contracts.
- 18.7 I have personally confirmed with the legal advisor in the office of the Premier, Mr Bertus Venter, that the agreement between the DARD and Estina was in fact drafted by his department and in the Office of the Premier. This was further confirmed by the evidence of the former CFO, Ms Sylvia Dhlamini, in her interview with the National Treasury investigators and in this regard I attach hereto as annexure "RJ8" a copy of the transcript of her evidence and where this is set out at page 60 thereof.
- 18.8 As a result of the abovementioned reports, (SOPA and Mail and Guardian) I submitted formal questions to the MEC of the DARD and the Free State Legislature in terms of the rules and orders and received a reply dated 13 November 2013 signed by the then MEC, Qabathe. I attach a copy of the reply hereto as annexure "RJ9".
- 18.9 The reply indicated that the costs of various items such as cattle were greatly inflated and this prompted me to submit my initial complaint to the Public Protector for an investigation. I attach hereto as annexure "RJ10" a copy of my complaint as was submitted to the Public Protector.
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- 18.10 The reply also raised concerns that Estina was both a partner and the implementing agent on the project and that this could be regarded as a conflict of interest.
- 18.11 Furthermore and in the abovementioned reply Qabathe also indicated that Estina were amongst others *"Trained beneficiaries according to need analysis and marketing of produce and products both nationally and internationally"* and *"Provide beneficiaries with aftercare mentorship in conjunction with extension support from the Department according to the scope of work for each project."*
- 18.12 On the question of what guarantees the DARD had that the private sector partner would meet their commitments, Qabathe replied *"Notwithstanding anything contained in the agreement, the Department reserves the discretion to verify any information or documents submitted by other parties in the performance and execution of its duties and obligations in terms of the agreement."*
- 18.13 As political head of the DARD I submit that Qabathe either never verified this as indicated in her reply or she deliberately ignored the information and indicated a total disregard for Estina's contractual prescripts as contained in the agreement.
- 18.14 In spite of Qabathe mentioning beneficiaries the DARD have disputed the list of beneficiaries which was attached to the beneficiary agreement between the DARD and relating to the Vrede Dairy Project, and as signed by Dr TJ Masiteng on behalf of the DARD and Mr Jun David Mahlaba on behalf of the beneficiaries.
- 18.15 The beneficiary list of eighty individuals is attached to the contract and is drafted on a Phumelela Municipality letterhead and Mr Jun David Mahlaba's name appears on that list. I attach a copy of the said list hereto as annexure "RJ11".
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- 18.16 From what we have been able to determine there was no real cogent method in obtaining the beneficiaries and in fact Zwane was pertinently involved in the selection of these beneficiaries. Rumour in fact had it that Zwane attended the district of Vrede in his vehicle and rounded up any individuals who may have had an interest in dairy farming for a meeting at the Vrede town hall and accordingly compiled the list of beneficiaries from the individuals who attended this meeting. As such there appeared to be no method in the drafting of the list of beneficiaries whatsoever.
- 18.17 On 11 November 2014 the acting MEC for the DARD, Ms O Mlamleli ("Mlamleli") indicated in response to further questions issued by myself, a copy of which questions are attached hereto as annexure "RJ12", that Estina was the sole service provider on the project and that supply chain management procedures were followed. She went on to indicate in the next reply (also in "RJ12") that *"beneficiaries were residents from the areas surrounding the project"* with the same list attached to the beneficiary agreement. I attach hereto as annexure "RJ13" the reply.
- 18.18 I respectfully submit that this confirms that Mlamleli was aware of the beneficiaries and would have known of their exclusion from the project.
- 18.19 I also subsequently became aware of a report issued by National Treasury into an investigation in the Vrede Dairy project which was dated January 2013. I attach a copy of the said report hereto as annexure "RJ14".
- 18.20 The abovementioned report indicates that beneficiaries were only identified after the inquiry by the National Department of Agriculture, Forestry and Fisheries ("DAFF"). As a result of this, National Treasury withheld funding from the projects
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until such time as the beneficiaries had been identified.

- 18.21 The recommendations in the report (more particularly at page 34 thereof) indicate that "*disciplinary action*" be taken against Mr Thabethe (HOD) and Ms Dlamini (CFO).
- 18.22 Finally, the report indicates that "*ultimately the project should be reassessed and the necessary due diligence should be completed to ensure that the project is viable. In its current form the project is not likely to yield a value for money to the State*". In this regard see page 34 of the report.
- 18.23 I respectfully submit that this should have raised serious questions on the part of the Premier of the Free State as well as the MEC for Finance and the then DARD. In spite of the above various MECs from the DARD and the MEC for Finance, Ms E Rockman, continued to allocate provincial funding to the project. Furthermore, the Premier is responsible for the appointment and performance of Heads of Departments in the Province and in spite of the report recommending disciplinary action be taken against the Heads of Department, the Premier wilfully ignored this. I respectfully submit that this clearly indicates their complicity in the projects and more particularly, the possible criminal nature thereof.
- 18.24 I subsequently became aware of the fact that the agreement was cancelled during or about April 2016. In this regard, an agreement was concluded between the parties cancelling the initial agreement. A copy of this agreement is attached here to as annexure "RJ15".
- 18.25 The abovementioned raises certain pertinent questions particularly considering that the following payments were made by *inter alia* the DARD to the Estina



project:

| | | |
|---------|------------------|------------------|
| 18.25.1 | 9 July 2012 | R 30,000,000.00; |
| 18.25.2 | 18 April 2013 | R 34,950,000.00; |
| 18.25.3 | 26 April 2013 | R 30,000,000.00; |
| 18.25.4 | 3 May 2013 | R 19,050,000.00; |
| 18.25.5 | 24 July 2014 | R 30,000,000.00; |
| 18.25.6 | 20 December 2014 | R 29,950,000.00; |
| 18.25.7 | 8 May 2015 | R 60,000,000.00; |
| 18.25.8 | 5 May 2016 | R 46,252,652.00. |

18.26 It is imperative to note that cancellation of the agreement took place during or about April 2014. Furthermore, and as has been set out above, the report issued by National Treasury was dated January 2013 and must clearly have been in the mind of *inter alia* the MEC for Finance, the MEC for DARD and the Premier of the Free State despite which all the further payments were made.

18.27 I again submit that allowing such substantial payments to be made, indicates a clear choice to be complicit on behalf of at least the MEC of DARD, the MEC for Finance and furthermore the Premier of the Free State.

18.28 In reply to a question to the Acting MEC for DARD, Mlamleli and as to whether or not disciplinary action was instituted against the senior officials as recommended in the National Treasury report and on 30 April 2015 the Acting MEC for DARD, Mlamleli stated that she was not aware of any investigation into the appointment of Estina. I attach hereto as annexure "RJ16" a copy of the said reply.

18.29 This is contrary to what was reported in the reply dated 28 April 2015 when she





was questioned whether or not the DARD had ceased payment to Estina and what the reason for this was. She recorded that this was due to the National Treasury report. I refer the above honourable Chairman to page 4 of the abovementioned document.

- 18.30 On 3 June 2015 the Public Protector issued a progress report, a copy of which is attached hereto as annexure "RJ17". The progress report records that:

"On 24 June 2014 the Acting Accounting General informed that the provisional report was submitted to the Premier of the Free State for comment."

- 18.31 I submit that the then Premier of the Free State, Mr Ace Magashule, had to have been pertinently aware of the issues surrounding the Estina projects already in June 2014 and despite this, deliberately allowed further payments in excess of several hundred million Rand to be continued to be paid towards the project. I respectfully submit that this indicates that at least the then Premier, Mr Ace Magashule and members of his executive committee deliberately ignored the National Treasury report in its content and its recommendations as well as the progress report of the Public Protector.

- 18.32 I am furthermore in possession of a Free State Executive Council memorandum dated early 2014, a copy of which is attached hereto as annexure "RJ18" in terms of which the then MEC for the DARD, Qabathe recommended that the Free State Development Corporation be allocated the 49% shares previously owned by Estina and that the contract with Estina be terminated without penalty. When a request was made to Premier Ntombela for a copy of the signed version of this document, I was informed that the original document was amongst others, seized by the Hawks and that this signed document was no longer in possession of the Office of the Premier and/or the Executive Committee.
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18.33 I attach the reply hereto as annexure "RJ19".

18.34 I again respectfully submit that the approval of the memorandum again demonstrates that the Executive Committee and the Premier were at least complicit in an effort to allow the perpetrators involved in this matter to escape any liability for their actions.

18.35 During the 2014 debate on the budget and with the Office of the Premier I, in a session, made the following statement:

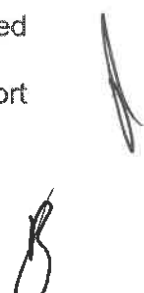
"The Vrede Dairy project is another project that has only benefitted a company called Estina and their friends in the Provincial Government. By cancelling the contract, Estina appears to have milked the taxpayers and is now allowed to walk away without penalties. The inflation of prices of goods and services provided to the project as well as possible irregularities with the appointment of Estina are common knowledge."



18.36 I attach hereto a copy of my speech as annexure "RJ20".



18.37 In reply to this the Premier devoted all of his time during the reply in the debate in a fierce personal attack on me and my family that filled no less than twelve pages of the HANSARD. I attach a copy of the extract of the HANSARD hereto as annexure "RJ21".

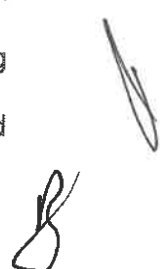
18.38 Again, this demonstrates complete unwillingness on behalf of the Premier and the Executive Council to take responsibility for what took place in Estina.

18.39 During a sitting of the Portfolio Committee on Agriculture and Rural Development which took place on 25 February 2015 I asked the MEC for the DARD several questions regarding the Vrede Dairy Project. In particular, my questions related to the roll of the Department in the project at the time and what financial support they continued to render to the project.



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- 18.40 The then MEC for DARD, Qabathe, at first tried to dismiss the questions claiming that they pre-empted the State of the Province address debate scheduled for the forthcoming Friday. She then indicated that it was not on the agenda for the Committee. The chairperson of the Committee, Mr Thabo Meeko, conceded her requests and disallowed my questions.
- 18.41 During a further sitting on 17 June 2015 and after Qabathe had become Speaker of the Legislature and Zwane was reinstated as MEC for the DARD, I posed certain questions to him during the sitting relating to the Vrede Dairy Project.
- 18.42 Zwane refused to answer my questions and the Speaker Qabathe protected him by ruling in his favour. I wrote to the speaker on 1 July 2015 contesting her ruling and requesting her to instruct Zwane to reply to my questions but received no response.
- 18.43 I attach hereto my letter to the Speaker dated 1 July 2015 as annexure "RJ22".
- 18.44 On the 31st of July 2018, the Auditor General issued a report a copy of which is attached hereto as annexure "RJ23".
- 18.45 The upshot of the report was to find inter alia that:
- 18.45.1 That the Vrede Dairy Project had effectively not been handed over to the beneficiaries, and as such it was not established for this purpose as it ought to have been; and
- 18.45.2 It confirms that payments were indeed made in regards the project even after the DARD had withdrawn from and terminated the project.
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- 18.46 Subsequently the Hawks investigation resulted in the arrest and charging of Mr Thabethe, Ms Dlamini and Dr Masiteng amongst several other role-players on or about 15 February 2018.
- 18.47 What was visible from the investigation of the Hawks was that none of the members of the Executive Council who were pertinently involved in the project were arrested or charged.
- 18.48 Subsequently and on 28 November 2018 the National Prosecuting Authority withdrew the charges against all suspects provisionally for reasons which I am not yet aware of.
- 18.49 If one considers the content of the National Treasury report as well as the context of the information I have set out above, I respectfully submit that it clearly indicates that the then Premier, Mr Ace Magashule, then MEC Zwane, MEC Qabathe, MEC Mlaleli and MEC Rockman were pertinently aware of the issues and problems with Estina and allowed substantial payments to continue being made towards this project while being pertinently aware of the issues thereof.
- 18.50 I submit that this together with the failure to implement the disciplinary recommendations of the National Treasury Report against the former Heads of Department makes them complicit in the greater Estina scheme and that they ought to also account along with Mr Thabethe, Ms Dlamini and Dr Masiteng.
- 18.51 In summary and to substantiate what I state in this paragraph, the reasons for this are as follows:
- 18.51.1 They were supplied with proof of serious malfeasance by National Treasury in the appointment of Estina and deliberately ignored this;
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- 18.51.2 They were aware of the skewed share allocation to Estina and the fact that Estina never contributed any of its own funds as required in the agreement with the DARD;
- 18.51.3 The contract was drafted in the Office of the Premier and indicates that the Premier should have been aware of this project and even the misrepresentations relating thereto;
- 18.51.4 The approval of the project by the Executive Committee in spite of the misrepresentations made by Estina and the DARD that they had an agreement in place with the Indian company Paras Dairy;
- 18.51.5 The continued appropriation of funds to the project in spite of knowledge that the DAFF had withdrawn funding due to the National Treasury report indicating serious malfeasance;
- 18.51.6 The implementation of the project with the knowledge that there were initially no beneficiaries and that lists of beneficiaries were only produced after enquires, made by National Treasury, which beneficiaries were side lined and ignored in the project;
- 18.51.7 The fact that no agricultural project of this magnitude could possibly have a reason to exist, without beneficiaries as listed above;
- 18.51.8 The cancellation of the agreement by the Executive Committee under Premier Ace Magashule without penalties and with the knowledge that Estina did not meet its commitments further makes them complicit in aiding and abetting Estina and their partners to escape the consequences of the irregular and illegal activities.
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- 18.52 Finally, and regarding the report issued by the Public Protector on 8 February 2018, a copy of which is attached hereto as annexure "RJ24", I submit that this also substantiates much of what I have stated above.
- 18.53 What is of interest regarding the Public Protector's report is that an interim report was issued, a copy of which is attached hereto as annexure "RJ25" which I submit attributes substantial blame to the politicians involved in the matter.
- 18.54 This is the subject of an administrative review through the Public Protector's report. This matter is, however, the subject of an administrative review application which has been argued and in which judgment is being awaited. This application was brought by the Democratic Alliance in the High Court of South Africa, Gauteng Division, Pretoria.
- 18.55 Should the judgment in the abovementioned matter become available I will ensure that a copy thereof is presented to the Commission.
- 18.56 This is all I wish to record at this stage.

A handwritten signature, possibly 'B', is located in the bottom right corner of the page, with a long, thin, upward-pointing mark above it.

Ranckielsohn
DEPONENT

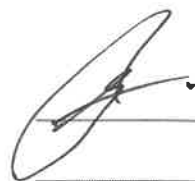
Signed and sworn before me at Bethlehem this 29th day of April 2019 after the deponent declared that the deponent is familiar with the contents of this statement and regards the prescribed oath as binding on the deponent's conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS:

FULL NAMES:

CAPACITY:

ADDRESS:



GERT JACOBUS VAN NIEKERK

Commissioner of Oaths (ROA)

Professional Accountant (SA)

P/a **VAN NIEKERK ACCOUNTANTS**

28 Pico-Bethlehem / P.O. Box 1619
Bethlehem, 9700

Annexure “RJ1”

STATE OF THE PROVINCE ADDRESS

HON. E.S. MAGASHULE
PREMIER OF THE FREE STATE PROVINCE
16 FEBRUARY 2012



FREE STATE PROVINCE

Urede Dairy P12

**PREMIER OF THE FREE STATE PROVINCE ON
16 FEBRUARY 2012**

Honourable Speaker & Deputy Speaker of the Free State Legislature
Honourable Judge President and esteemed members of the Judiciary
Leaders of the African National Congress and the Alliance
Honourable Members of the Executive Council and Legislature
Honourable Members of the National Assembly and the NCOP
The National Chairperson of SALGA, the Provincial Chairperson of SALGA and all local government leadership
The Chairperson of the Provincial House of Traditional Leaders
Leaders of the business, sports, traditional and religious sectors
Members of the diplomatic corps, including the Consul General of the United States of America, Mr Earl Miller and the Indonesian Embassy Consul for Economic Affairs, Mr Berlian Helmy
Veterans and stalwarts of our struggle
Comrades, compatriots and friends

It is an honour to address the Legislature, our guests, viewers and listeners at this occasion of our mid-term State of the Province Address. Our sincere appreciation goes to everybody who has taken the time to honour this occasion as we report on our mid-term achievements and challenges, including our vision for the years ahead.

Today, we reaffirm our commitment to serve the people of South Africa, and in particular, the people of the Free State, in pursuit of a non-racial, non-sexist, democratic and prosperous province, where every citizen – African, Coloured, Indian and White - can pursue their full measure of human development and happiness.

Centenary of the African National Congress

On 8 January 2012, the African National Congress returned to its place of birth as we commenced the year-long centenary celebrations of our liberation movement in Mangaung. The founding fathers gathered in the small Wesleyan church in Waaihoek to map out a path towards freedom based on the profound values that are the heart and soul of the African National Congress.

I wish to acknowledge the presence amongst us of the Maphikela and Moroka families: as well as the presence of many of our military veterans of *Umkhonto We Sizwe*. The plight of all military veterans will continue to remain our priority area and we will work

closely with the South African National Military Veterans Association to further address these matters.

Allow me, honourable Speaker, to also acknowledge the contribution of former Premiers of the Free State not only to the struggle to attain our political freedom but also in building a post-apartheid democratic state.

As I travelled through the province before and after the celebrations, it became clear that our domestic and international visitors were overwhelmed by the hospitality of the people of the Free State. Let me immediately acknowledge and appreciate the efforts of our communities, black and white, which extended this warm welcome to our visitors.

Selemo sa 1912 e bile mathomo a leeto la dilemo tse 82 le lebisang tokolohong. Nakong ena, ba tlileng pele ho rona ba lefile ka bophelo ba bona e le hore rona re tle re phele monateng wa tokoloho mehleng ya rona. Dilemong tseo tsohle, African National Congress e ile ya hlahisa baetapele ba ikgethang ba kang Albert Luthuli, Oliver Tambo, Walter Sisulu le Albertina Sisulu, Nelson Mandela, Chris Hani Charlotte Maxeke, Lillian Ngoyi, le ba bang ba bangata. Banna bana le basadi bana ba ile ba re behela mohlala wa boetapele bo hlokang boikgopolo, mme ba bopa metheo ya boitshwaro e kgemang mmoho le boitelo, boikokobetso, boitshwaro bo botle le tlhompho. Mehlaleng ya bona re fumana ho kgothala le mafolofolo a ho lwantshana le diphephetso tseo re tobananeng le tsona kajeno.

Honourable Speaker, last year I stated that the Centenary celebrations will never be reduced to a mere project of the African National Congress. It is a celebration of our political emancipation from racism and oppression and the return of fundamental rights to the disenfranchised. It definitely includes the liberation of women from all kinds of oppression and discrimination.

The centenary celebration and the celebration of political freedom achieved since the first democratic election, indeed, belong to all South Africans. It also presents us with an opportunity to pay our respect and tribute to the icons of struggle produced by the Free State province.

The Free State has reclaimed the historical greatness of its people. The founding venue of the African National Congress, the Wesleyan Church in Waaihoek, the Maphikela House in Bloemfontein and the Winnie Mandela house in Brandfort have been declared as national heritage sites. Additional memorial sites that will be prioritized by the national and provincial government will include the 1913 revolt of African women in the Free State, the Moroka house in Thaba Nchu, Bram Fischer's house in Westdene

and the Mahabane House in Kroonstad as well as various cemeteries and grave sites of our freedom fighters.

Dit is deel van die kulturele erfenis van die Vrystaat en Suid Afrika. Dit is nie net die erfenis van een spesifieke politieke party nie.

Our efforts to commemorate and give recognition to these historical sites continue to redress the distorted cultural landscape of the Free State. The former residents of Waaihoek, who are now primarily located in Batho, will benefit from the national land restitution programme this year.

Provincial Economy

Honourable Speaker, statistics show that there is a gradual **decline in the population growth** of our province. In 2001, the Free State housed 6 % of the country's population, but this declined to 5.4 % in 2011. This adversely affects the provincial fiscal envelope and makes it increasingly difficult to achieve the service delivery standards that we have set for ourselves.

We have **engaged with National Treasury** to submit a compelling case that the funding formula of provinces cannot be primarily based on population statistics but must take into account major factors such as geographical size and the historical economic, social and physical infrastructure backlogs of provinces.

Our provincial economy registered negative growth of 1.8 % during the 2009 global crisis. Recovery has been slow as illustrated by the 2.1 % growth achieved in 2010. Although the growth figures for 2011 have not been officially published by Statistics South Africa, the **provincially economy is expected to grow by around 2.8 % in 2011**. Undoubtedly we require a comprehensive industrial development strategy for the Free State.

*Bekw
36% Na
average*

It will require the scale of determination and courage that brought about the realization of the **Containerized Manganese project** in Bloemfontein. This partnership between the Free State Development Corporation and Transnet unlocks the benefits of the central locality of the Free State by linking the mines of the Northern Cape, containerizing the manganese cargo in Bloemfontein and transporting it by rail to the Durban port from where it is exported.

The centrality of our Province, our resolve as a Free State government, including our potential as a major player in the movement of goods and the logistics sector have been realized through the inclusion of the **Harrismith Logistics Hub project in the Durban -**

Free State - Gauteng logistics and industrial corridor as announced by President Zuma in the State of the Nation Address.

Mid Term Review

Honourable Speaker, we have initiated a formal mid-term review of our progress in the national and provincial priority outcome areas. This process is expected to be finalized by July this year. However, we are already able to reflect on some of the progress we have made to date;

- Our **matric pass rate** has improved from 69.4 % in 2009 to 70.7 % in 2010 and 75.7 % in 2011.
- By January 2012, the **availability of drugs** at our health facilities has improved to 96 % across all districts against the 68 % when we took office in 2009.
- The 2010 **provincial crime statistics** showed a reduction in only one category of crime whereas the 2011 crime statistics for the Free State showed a decrease in 17 types of crime.
*Rape, Down Violence
Depend on pol action - Involvement
drugs et*
- We have rebuilt 1 thousand 339 **dilapidated houses** in the towns of Van Stadensrus, Jagersfontein, Kroonstad, Brandfort, Ficksburg, Senekal, Paul Roux and Phuthaditjhaba, handed over deeds of transfer to 4 thousand 338 beneficiaries and constructed in excess of 14 000 houses through various **housing programmes**.
- We have strengthened the **capacity of government** immeasurably. This is illustrated by the permanent appointment of 1069 teachers in 2009, the filling of 1898 school- based posts in 2010 and a further 945 school based posts in 2011.
- During 2010, we appointed 250 Emergency Medical Service personnel and filled an additional 828 posts in Health. To date, a further 4435 vacancies in Health were filled during the current financial year, including 677 security officers at 19 health facilities. 297 Masupatsela Youth Pioneers were permanently appointed in April last year.
- Our investment in the future of our youth is strongly illustrated by the implementation of the **Provincial Bursary Programme** that has resulted in the maintenance and allocation of bursaries to approximately 6000 students in the period 2009 to 2012.

- We improved our job creation opportunities through the **Expanded Public Works Programme** from 18,115 in 2009/2010 to 32,108 during 2010/2011. The target for the current financial year is to create 26, 979 opportunities and to-date 33 thousand 954 work opportunities have been created out of a total of 1, 237 projects.

Amongst the infrastructure projects we have completed since 2009 are;

- The construction of 13 state of the art **schools and the upgrade of hostel accommodation** at various rural schools throughout the Province.
- Infrastructure projects at five **hospitals**, the new Multi-Resistant Drug Unit at Kopano Hospital in Welkom and the Forensic Mortuary as well as the Naledi Transport Centre at Wepener and the Philip Sanders Resort in Bloemfontein.
- Various new **libraries**, the **High Performance Training Centre for Boxing** at the Free State Sport Science Institute in Bloemfontein and **multipurpose sport courts** at Vredefort, Heilbron, Petrus Steyn, Luckhoff, Diyatalawa, Mokgolokoeng and Qibing/Wepener, a **community gym** in VanStadensrus as well as local talent development centres in Sasolburg (Metsimaholo), QwaQwa (Maluti-a-Phofung) and Thabong/Welkom (Matjhabeng).
- The **Thitapole Dam** in Motheo, **irrigation** developments in the Xhariep and Lejweleputswa districts, a poultry hub and water reticulation in Fezile Dabi as well as schools, halls, crèches, solar energy, clinics, houses and sport facilities in the Thabo Mofutsanyane district have been completed as well as the construction of 14 animal handling facilities in four districts.

Honourable Speaker, the provincial government has strengthened its relationship with **ESKOM** as one of the key stakeholders in our service delivery environment. During the past year, ESKOM achieved 6 559 electrification connections with a target of an additional 1 454 connections this year. During the past year, an additional 6 Compact Fluorescent Light roll-out projects (total of 13 000 residential) and 11 energy efficiency projects were implemented at a cost of R128 million. This is in addition to the 2.1 million CFL's, 14 684 solar water heating geysers and 24 897 ripple control units that have been delivered since 2007. ESKOM is also constructing a technical training centre in Welkom.

Rebate:

Creativity & Innovation - Cornerstones of an Interventionist Developmental State

Our initiatives to confront the challenges that face us have been frustrated by a plethora of limitations. These limitations range from the global financial crisis to issues closer to home such as unnecessary bureaucratic red tape and, at times, a frustratingly rigid civil service. Overcoming these limitations requires innovation; it requires us to try new things, what academics often refer to as an "alternative development".

Corrupts We introduced **Operation Hlasela** in 2009 and stated that; "We are launching an all-out offensive to free our people from the burden of poverty and underdevelopment." In the 2010 State of the Province Address we emphasized that; "In simple terms, Operation Hlasela is a strategy, based on the ANC Elections Manifesto, which focuses on mass mobilisation, intervention, collaboration and partnership to fulfil the notion of "working together we can do more."

Again, in 2011, we addressed the Operation Hlasela approach as follows; "Operation Hlasela is not a stand-alone project that requires additional and separate funding by the provincial government. Operation Hlasela brings together the resources of all spheres of government - national, provincial and local – in a focused manner in order to bring about real and concrete change in the lives and localities of our people."

The **township revitalization programme** implemented by the Department of Public Works symbolizes our commitment to bring about real change in the lives of our people through the Operation Hlasela approach. It is a joint urban regeneration project between the Provincial and Local spheres of government and is part of government's Integrated Sustainable Rural Development and Urban Renewal Programme. It involves the revitalization of strategic urban localities through refurbishing of infrastructure.

We have implemented the township revitalization programme in towns throughout the Free State. We have reached the towns of Cornelia, Frankfort and Tweeling in the Mafube Local Municipality. In the Ngwathe Local Municipality, the communities of Parys, Koppies, Heilbron, Edenville and Vredefort have experienced the benefits of this approach. We have done extensive work in Kroonstad in the Moqhaka Local Municipality as well as in the towns of Henneman, Virginia, Odendalsrus and Welkom in the Matjhabeng Local Municipality. The Masilonyana Local Municipality implemented the programme in Winburg, Theunissen, Verkeerdevelei and Soutpan.

Small towns such as Vanstadensrus, Ladybrand and Hobhouse and major urban areas such as Batho, Botshabelo and Thaba Nchu have benefited from the programme. Our continued focus area in Thaba Nchu will include the establishment of regional offices of

growth over an extended period of time in order to significantly increase labour absorption. The finalization of our customized Growth and Development Strategy will concretize a shared vision and plan for our province in line with Vision 2030 being developed by the National Planning Commission.

Major projects

Major projects announced during previous years have begun to materialize. This includes the launching of the **Kraft Paper Manufacturing** Facility during April 2011 and construction is expected to commence in the new financial year.

The Harrismith Logistics Hub (now part of the Durban – Free State – Gauteng corridor) and the **N8 corridor development** remain some of the major projects that will unlock and stimulate the economic growth of the Free State.

The Passenger Rail Association of South Africa (PRASA) has finalized the feasibility study of the **Kimberley – Bloemfontein – Maseru Rail** link and this project has been identified as one of the prime rail investment projects in South Africa. Our work on this project in partnership with the national Department of Transport, PRASA and other stakeholders will continue.

A Technical Cooperation Project to support **Small Medium and Macro Enterprises** has been established in partnership with the International Labour Organisation and the Government of Flanders. This partnership aims to train and mentor approximately 2000 Small Medium and Macro Enterprises and is expected to contribute significantly to job creation.

In recognition of the potential of the **tourism sector** to contribute significantly to economic growth, the provincial government will continue to support tourism initiatives such as the Bethlehem Air Show, the Cherry Festival in Ficksburg, the Phakisa Power Boat Festival, the Tour de Free State and the Free State 500 NASCAR. These initiatives do not only offer economic benefits but also support the provincial government's social cohesion programme.

We have undertaken the restructuring of our provincial public entities, specifically the Free State Development Corporation and the Free State Tourism Authority. Further consideration must now be given to improve and strengthen the **governance structures** and arrangements of these provincial public entities and the extensive recommendations of the Auditor-General will be implemented.

A comprehensive **recovery and turn-around plan** for the **Free State Development Corporation** must be finalized in order to position it as a new vehicle to drive economic development. Until this process has been finalized, specific measures will have to be implemented to ensure that small businesses in distress do not become victim to the inherent challenges of the Corporation. These measures must include the placing of a **moratorium** on the foreclosure of businesses in distress. We have initiated a process that will ensure that such measures will comply with the required legislative frameworks.

*Re tla potlakisa ho thehwa le ho hodiwa ha **dikoporasi**, haholoholo indastering ya theksthaele. Ana e tla ba a mang a mawa a tla re thusa ho tsosa botjha dibaka tse kang Qwaqwa le Botshabelo. Ho lebelletswe hore phumantsho ya diyunifomo tsa bahlanka ba sephethephethe, dineke, dikolo, bahlanka ba tshireletso le ditlhoko tse ding tse amanang le mmuso di tla tsamaiswa ke di co-operatives. Phepho ya bana dukolong e lokelwa ho etswa ke di co-operatives. Ha re Hlaseleng unemployment! Ha re Hlaseleng bofuma! Ha re Hlaseleng botswa!*

We have made significant progress with the **in-sourcing of identified services** at our public service institutions, specifically with regard to the permanent employment of cleaners and security officers. As existing contracts to render these services reach their termination date, the further in-sourcing of identified services will continue. I wish to acknowledge and appreciate the support that we have received from organized labour, specifically NEHAWU, with this initiative.

Hon. Speaker, one of the objectives we had set ourselves was to correct some of the **injustices** to which **our workers** were subjected to during the past. When QwaQwa ceased to exist as a so-called homeland, a number of female workers were transferred from their place of residence to take up employment as cleaners for the provincial government in Bloemfontein. During our interaction last year with cleaners of the provincial government, it was agonizing to realize that these mothers had spent more than a decade away from their families in some of the lowest-earning income categories in the public service.

Today, 18 years later, we are finally able to announce that Me Malitaba Tshabalala, Me Makolo Mahlomaholo, Me Puseletso Moeketsi, Me Linah Motsoeneng, Me Mantoa Motsima, Me Manthathi Motsoeneng and Me Dimakatso Mphuti have been transferred back to their place of residence, QwaQwa, with immediate effect.

Campaign with employers and labour

Honourable Speaker, throughout recent years we have been speaking about the state of the provincial economy and the imperative for job creation. As we elevated job creation as one of the major priorities of government, we understood that it is our role to create a conducive environment within which job creation can take place. We also understood the critical roles and responsibilities of the private sector and organized labour in this regard.

The reality is that the state of the provincial economy will not improve and job creation will not be achieved if we do not take concrete and decisive action. During the forthcoming year, I will initiate an intensive **campaign together with employers and organized labour** with the intent to ensure that all stakeholders cooperate in planning and implementing programmes that will deliver the real and concrete jobs that the Free State people and economy requires to bring about meaningful change. *infrastructure*

Power Generation

A self-sustainability model is essential for the Free State to achieve its economic growth strategy. The Province needs to become a net exporter of goods and services to other Provinces and countries. This can be achieved by maximising on its strengths, addressing its weaknesses and developing mitigation strategies for current and potential risks.

The development and value adding of mineral resources within the province is one of the strengths that can be capitalised on. However, this cannot be realised if the country cannot supply adequate cheap electricity in order to enable the development. There is a need for the Free State to generate its own electricity in order for it to have greater control of its destiny. Power generation becomes a value adding activity in the value chain for the exploitation of the Free State coal reserves.

According to the Department of Energy, the Free State consumed about 9,740 Gigawatt-hours of electrical energy in 2009. About 63% of the power consumed in the Free State is provided by Eskom, with the Free State municipalities distributing the balance of about 37%. Eskom supplies mostly the mining, industrial and commercial customer whilst municipalities supply predominantly domestic customers. The Free State customer base is anticipated to grow once infrastructure projects such as the development of the province's coal reserves have commenced. Lesotho also offers the potential of an alternative power market.

The Free State provincial government will be engaging with national government and State Owned Enterprises to realize the objective of establishing a power generating plant in the Free State.

Deployment of Broadband Infrastructure

In 2007, the South African Government approved the building of an information Society. Information and Communication Technology (ICT) Infrastructure is the foundation to the development of an information Society.

The development of a Broadband Policy is in line with world trends. It is critical for the Free State to achieve the goal of digital inclusion, enabling universal, sustainable and affordable access to ICTs by all, and to provide sustainable connectivity and access to remote and marginalized areas at both Provincial and Municipal levels.

In line with the mentioned strategic objectives, we shall strive to increase the penetration of Broadband in the Province to ensure the realization of the goal of an all-inclusive information society that can enjoy the economic benefits associated with Broadband in both urban and rural areas.

A SKILLED AND CAPABLE WORKFORCE TO SUPPORT AN INCLUSIVE GROWTH PATH

Honourable Speaker, the provincial government has implemented a comprehensive programme to ensure that we contribute to the creation of a skilled and capable workforce.

The **Free State Training and Development Institute** was launched in 2003 by former Premier Winkie Direko. The purpose of the Institute is to facilitate in-house skills development of the highest standard, based on identified skills gaps, to officials employed by the Provincial Government, municipalities and other entities through an integrated training model comprising of skills programmes and in-service short courses.

The extent of government's investment in the training and development of its public service is evident from the fact that **3129 public servants attended training** at the Institute during the 2009/2010 financial year. A further **2014** attended training in **2010/2011** and to date in the current financial year, a total of **3366** public servants have already attended training and development courses.

I am pleased to report that since we assumed office in 2009, 2 thousand 823 young people benefitted from **learnerships** and skills programmes in various fields, implemented by the provincial government in conjunction with Sector Education and Training Authorities (SETAs). An additional 1 350 young people started training programmes during August 2011.

A clear **exit strategy** for beneficiaries of learnerships and skills programmes are required. **One of the aspects that we will further explore is the placement of these beneficiaries with service providers who benefit from government procurement.**

AN EFFICIENT, COMPETITIVE AND RESPONSIVE ECONOMIC INFRASTRUCTURE NETWORK

Honourable Speaker, as mentioned in the 2012 State of the Nation Address by President Jacob Zuma, over the coming year we will work tirelessly with other stakeholders to improve the movement of goods and economic integration through the **Durban-Free State-Gauteng logistics and industrial corridor**. An increased focus will also be placed on the design, building and maintenance of the transport system and roads in the province, especially within communities and important service roads to boost transportation of goods and services such as our agricultural produce to various domestic and international markets.

We will intensify the implementation of our plans in finalising the N8 Corridor Development programme in order to provide economic and social benefits to the communities of Bloemfontein, Botshabelo, Thaba Nchu, Tweespruit and Ladybrand. There will also be infrastructure improvements at the Soetdoring; Koppiesdam; Willem Pretorius and Maria Moroka resorts.

VIBRANT, EQUITABLE AND SUSTAINABLE RURAL COMMUNITIES WITH FOOD SECURITY FOR ALL

The provincial government introduced **Mohoma Mobung** as the provincial growth and development strategy for the agriculture and rural development sector. It is a multi-year mega Public and Private Partnership business concept that deals with income generation through farming in the rural area of the province, the creation of on- and off-farm agri-business, value chain enterprises and Black Economic Empowerment.

Ons het aansienlike vordering gemaak met die implimentering van inisiatiewe wat ons in die verlede aangekondig het. Dit sluit in:

- Implementation of Mahau, Boitumelo, Tshepiso, Aganang and Oppermans Irrigation schemes in the Xhariep district area to utilize 3000 ha of water rights.
- Twenty two mentorship contracts were signed to provide support to two hundred and ninety five (295) farmers.
- Agro-processing have been extended at Wilhelmina through provision of additional processing equipment for fruit, a dairy parlour and dairy animals and extending production. In partnership with Potato SA and the Department of Rural Development and Land Reform, agro-processing of potatoes at Makgolokoeng both through planting and the imminent construction of a processing plant where frozen potato chips will be processed.
- A dairy project will be established in Vrede that is expected to create an additional 150 jobs.
- We are in the process of implementing thirty-nine fish tanks at the Xhariep Fish Hatchery for the production of fingerlings in the three towns of Springfontein, Koffiefontein (Gotswametsing) and Bethulie. 13 Fish tanks will be established in each of these areas and the Xhariep district has been identified as a fish hub for the next three years.

Honourable Speaker, allow me also to recognize the immeasurable contribution of our **established farming sector** that contributed R188 million to the provincial economy through the export of animals and animal products to SADC and European Union countries. I would like to specifically mention:

- Mr Almur Smit from Parys who exports layers to Lesotho;
- Mr Edwin Claassen of Sasolburg who exports red meat to Lesotho, Namibia, Swaziland and Botswana.
- Supreme Poultry from Botshabelo that exports poultry meat to Lesotho and Namibia, and
- Mrs Terblanche who exports hides and skins to European countries.

It is important to emphasize that South Africa is a constitutional state and there will be no land-grabbing that takes place in the Province or the country. We call upon all Free State farmers, black and white, to work together to maximize agricultural output that will increase food security for us all.

NB

SUSTAINABLE HUMAN SETTLEMENTS AND IMPROVED QUALITY OF HOUSEHOLD LIFE

The integration of our communities must be the starting point that drives human settlements, because this will inevitably lead to sustainability in economic development and social inclusion. The government of the Free State is mindful of the legacy of apartheid spatial development that continues to haunt the democratic South Africa and the Free State Province.

Our human settlement approach is driven by our resolve to improve the quality of life for our citizens. Our intention over the years going forward is that our citizens, in particular the historical disadvantaged, must be provided with shelter. Clearly, the process of providing ownership of houses has ensured the creation of relative economic assets and security to many members of our society.

The Free State Development Corporation has entered into a tripartite partnership with the Free State Department of Human Settlements and the Mangaung Metropolitan Municipality to facilitate and implement a **Mixed Housing Development** of 3,000 housing units in **Mangaung**. The project is aimed at addressing the housing needs of persons in the R3,500 to R12,000 per month income bracket, who do not qualify for RDP houses and struggle to obtain home loans from commercial banks. A similar partnership was entered into with the **Moqhaka** Local Municipality for the construction of 2,000 Mixed Housing Development units in Viljoenskroon and Kroonstad.

Whilst we will continue to consolidate our housing delivery programme, we must be critically aware of the need to maintain the highest level of prudence in the management of service-delivery as well as the appropriate planning of municipal services. Over this year, we will focus on **improving municipal area development** that leads to social and economic development. This renewed focus will be preceded by comprehensive performance planning that delivers on needed improvements in targeted areas.

*Mohlomphehi Speaker, Selemong sena se tlang re tla tsepamisa maikutlo haholo phethelong ya **diprojeke tsa bodulo tse sa phethelwang**. Ke boetse ke laetse hore re lokela ho qoholla bodulo ba **maqheku**, haholoholo ba dilemong tsa bomashome a supileng, le ho feta, bao esale ba le lenaneng le emetseng matlo ho tloha ka 1994. Ruri re hloka ho shebana le ditlhoko tsa karolo ena ya baahi ba rona e hlokang tlhokomelo hanghang. Re tla etsa meralo ya tlhabollo e ditjeho di lekaneng hantle, ya dilemolemo, e sa shebanang le ditshebeletso tsa motheo feela, empa e tla isa ntshetsopeleng ya moruo le bophelo Botshabelo, Thaba Nchu le Qwaqwa.*

From the inception phase, the **development of these plans will be done in consultation with communities and all relevant stakeholders**. We will also involve the appropriate national government departments, national agencies such as the Development Bank of South Africa (DBSA), Industrial Development Corporation (IDC), ESKOM and TRANSNET. I will convene a Premier's Town Development Summit to discuss the implementation of the plan with potential investors and social partners.

We will embark on an extensive programme to **identify housing beneficiaries** during March this year together with our Community Development Workers, Ward Committees and local municipalities.

In addition, we will consolidate human settlement infrastructure development of **social and rental housing** in Masimong Harmony, G Hostel, Silver and Dark City and Brandwag. The Brandwag social housing project in Mangaung entails the conversion of municipal flats into social housing and aims to increase the social and economic integration of the area and targets low-income earners as beneficiaries. All tenants who are currently staying in the project area and who fall outside the target market must relocate.

RESPONSIVE, ACCOUNTABLE, EFFECTIVE AND EFFICIENT LOCAL GOVERNMENT SYSTEM

Honourable Speaker, despite various improvement in some of our municipalities in the Free State during the past two years, much still have to be done towards creating viable and sustainable municipal service delivery.

We believe that government should achieve this by ensuring that municipalities have sound financial and administration systems, by building a strong revenue base that not only encourages, but also hold the users of municipal services accountable for the payment. In conjunction with the political leadership within municipal councils and their management teams, we will work towards the delivery of quality and sustainable municipal services and improve participatory democracy where communities to facilitate community involvement in governance and development in their areas.

The **2009/2010 audit outcomes** of municipalities, showed an improvement in the audit outcomes of six municipalities, whilst 13 municipalities remained unchanged and one municipality regressed. The audit outcomes of municipal entities showed an improvement in two instances whilst three remained unchanged.

In the forthcoming year, we will be **deploying teams** of suitable qualified and experienced personnel, comprising of both the provincial and national sphere of government as well as the private sector, to the Mafube, Ngwathe, Tokologo, Nala, Phumelela, Masilonyana and all Xhariep municipalities to provide sustained support over a longer term period.

Many challenges remain in ensuring access to basic services for all our people and in the strengthening of municipalities. We, therefore, will make infrastructure repairs of sewerage and systems, water and electricity ^{roads} supplies with municipalities and the stakeholders within the water and electricity industries in Wesselsbron, Lusaka (QwaQwa), Parys, Odendaalsrus, Ficksburg, Botshabelo, and in Mangaung in the areas of Isithwalandwe, Khayelitsha and Phase 9.

In addition, honourable Speaker, the implementation of the extensive Cleaning and Greening campaign throughout the Free State will be intensified.

Honourable Speaker, I wish to call upon all **public servants** within the provincial and local government sphere to ensure that we place the interests of the communities that we serve as our foremost priority and that we make excellent service delivery standards the norm of our daily work. Equally, honourable Speaker, allow me to acknowledge and appreciate the role of all our public servants, including organized labour, in bringing about meaningful change in our service delivery environment.

COOPERATIVE GOVERNANCE

The Provincial Executive has through various interactions with the President and the Ministers of Finance and Transport requested national government assistance for the provincial Departments of Treasury and Police, Roads and Transport. Progress on the national assistance will be measured and monitored on a regular basis over the period of intervention.

DEALING WITH CORRUPTION AND FRAUD

Honourable Speaker, the Department of Public Service and Administration must initiate a **review of the regulatory framework** for the management of conflict of interests of public servants. The current framework provides for the compulsory disclosure of financial interests of public servants who form part of the senior management service. By September 2011, the Free State achieved a compliance rate of 95 % for the submission of financial disclosure forms by its senior management to the Public Service Commission.

There is, however, no such requirement regarding the disclosure of financial interests of public servants below the level of Director. Not surprisingly, the majority of the identified cases of conflict of interest involve public servants who fall outside the senior management service and therefore have no disclosure obligations to meet. I have requested the Minister of the Department of Public Service and Administration, the Public Protector, the Auditor-General and the Chairperson of the Standing Committee on Public Accounts (SCOPA) to provide us with further advice on this matter.

The Office of the Premier and the Provincial Treasury are coordinating a process where all instances of identified **conflict of interests**, as reported by the Auditor-General, are investigated by the relevant Provincial Department and appropriate action will be taken by the relevant department. A report on such action taken will be filed with the Provincial Treasury and the Office of the Premier and will be provided to the Auditor-General.

The Provincial Treasury is also coordinating a process to ensure that reported **irregular, fruitless and wasteful expenditure** reported by the Auditor-General are properly investigated by the relevant departments and, where possible, corrective action is taken. Such corrective action may include disciplinary action against officials responsible for causing irregular, fruitless and wasteful expenditure to be incurred and the possible recovery of monies from such public servants or service providers.

YOUTH DEVELOPMENT

Honourable Speaker, the Free State province produced **young lions** who would have been able to make an invaluable contribution to the achievement of our political and economic freedom. I wish to pay our respect to the late Manniki and Boiki Motlohi, Nathaniel Melthalfe Teboho, Freddy Basholo, Solly Mdingi, Sipho Mutsi, Teboho Sikisi, Thengwiwe Ndlovu, Scotch Moeketse and Master Nakedi.

These young lions embodied the spirit of youth leadership produced by the African National Congress. They were strong-willed, vocal and principled. They displayed a profound knowledge of the founding principles and values of the African National Congress, the struggle for a better life for all people of the Free State and they understood the dynamics of generational leadership. Indeed, their absence leaves us much poorer.

Youth unemployment is not only a statistical matter, but it is at the core of the quality of life, as it negatively affects the welfare, livelihood, development and progress of youth. There is obviously an imperative for us to act decisively to intervene and arrest the challenges of youth unemployment.

Private Member's Bill

Report to Legislature

What about criminal action?

Honourable Speaker, between September to December 2011, the Executive Council met unemployed graduates from all districts in order for us to understand the scale and dynamics of graduate unemployment in the Province. A **database of unemployed graduates** has been developed by the Office of the Premier. This will form the basis for targeted strategies and programmes to be developed together with our private sector partners to proactively address this challenge.

We are pleased to announce that **ESKOM** has confirmed that they will draw **150 candidates** from the unemployed graduate database for placement in internship programmes in the human resource, engineering, communications and finance fields.

Through the **provincial bursary programme**, we continue to generate requisite skills that are necessary to support the New Growth Path and the development priorities of the Free State Province. The Office of the Premier, the Central University of Technology, the local government and private sector will be cooperating in the development of a programme that will result in the placement of students who require experiential training to complete their qualifications.

For the 2012 academic year, we have allocated an additional **1500 new bursaries** to deserving students to study at various Universities and Colleges throughout the country. Last year we also announced the **“One Laptop – One Bursary Holder”-programme.** I am pleased to acknowledge the contribution of the private sector such as Standard Bank, Vodacom, Morar Incorporated and PriceWaterhouseCoopers. The Members of the Executive Council, executive mayors and mayors and other local government leaders as well as senior public servants have all pledged to make personal contributions to this programme.

During **2009** a total number of **336 bursary holders completed** their studies. The graduates, who did not find employment, were all taken up in internship programmes in various government departments.

During **2010**, a total number of **242 students completed** their studies. **22 of these students were employed in the private sector and 181 were employed in government.**

The preliminary statistics for 2011 suggest that a minimum of 200 students would have completed their studies. As in the past, those graduates of the bursary programme who do not find other employment, will be accommodated in learnerships in the respective provincial departments and provincial public entities.

An overview of the progress we have made in the youth development sector include the following;

- The National Rural Youth Service Corps (NARYSEC), the *Re Jala Peo* programme, household profiling to inform the Comprehensive Rural Development Program (CRDP) and War on Poverty (WoP) and the establishment of youth development cooperatives focusing on primary production, marketing, manufacturing and processing.
- The Tourism Ambassador Programme, the Hospitality Youth Initiative and the Training of Chefs programmes focusing on facilitating youth empowerment in the tourism and hospitality sector.
- The National Youth Service and the implementation of apprenticeship, learnership and contractor development programmes.

Hon Speaker, these examples illustrate the significant extent to which the provincial government has translated its youth empowerment and development policies into practice. Some of our priorities in this regard will include;

- The possible expansion of the **National Youth Service** and existing youth development initiatives
- Facilitating the introduction and/or improvement of appropriate **career guidance** at secondary school level in consultation with Student Representative Councils, institutions of higher learning and other stakeholders
- Creating an environment conducive to promote **youth entrepreneurship** linked with business development support and.
- The establishment and development of **youth cooperatives**

We acknowledge, honourable Speaker, that we could further strengthen the coordination of initiatives between the National Youth Development Agency as well as the provincial and local spheres of government. The participation of the NYDA in the **provincial cluster system** will facilitate the prioritization of youth development issues.

I will also be convening a **Free State Youth Indaba** within the next three months where we will create an opportunity to interact with all youth on matters relating to empowerment and development.

SOCIAL COHESION

Honourable Speaker, allow me to report that refurbishment projects are in progress at **17 special schools** and we have appointed 19 social workers at special schools. We have also established services for the visually impaired at 15 libraries at a rate of 3 per district.

Our efforts to ensure the inclusion and mainstreaming of our most vulnerable sectors, specifically the disabled, women and children, in the programmes and initiatives of government will continue. Specific focus will be placed on ensuring that substantial progress is made in ensuring that we meet our **targets in the employment and empowerment of women and the disabled**. The provision of assistive devices and our focus on inclusive education will be maintained.

We will continue our **support and involvement with identified sports codes** such as **Free State Rugby** and our rugby team, the **Cheetahs**. The Free State provincial government will actively support the initiatives to ensure that the Cheetahs retain its status in super rugby. Our soccer teams, **Bloemfontein Celtic and Free State Stars**, are ensured of our unwavering loyalty and support.

Implementation of our programme aimed at the upgrading of school and public sports facilities will continue. The first phase of design of the upgrade of the **Seisa Ramabodu Stadium** has been completed and construction has commenced. The roll-out of **community gyms** will be included as one of our priorities to promote and achieve a healthier lifestyle for all of our people.

The expansion of various sport, arts and culture programmes to all sectors throughout the Free State will be promoted. During this term of government, we will also ensure the establishment of the **Keizer Sebothelo and Lister Skosana Museums** as these will further extend the scope of preservation and promotion of the Free State's cultural heritage.

Honourable Speaker, the significance of our initiatives to encourage and promote **reconciliation** towards achieving social cohesion should not be under-estimated. I want to urge all people of the Free State to participate in these initiatives, including Mandela Day and the annual Reconciliation Walk that we initiated last year.

The **Summer Olympic Games** will be hosted in London this year. I am sure we are all unanimous in expressing our support and well wishes to the South African sportsmen and women who will make our country proud during these Games.

Allow me to use this opportunity and join the rest of South Africa to extend heartiest congratulations and good wishes to the wife of the late former ANC Treasurer General, and SACP general secretary, Moses Kotane, who turned 100 years old on Sunday the 12th of February.

CONCLUSION

Honourable Speaker, I would like to invite the members of this House, the media and the general public to accompany us on a public visit to verify the progress we have made against the objectives we have outlined for ourselves. The details of these verification visits will be announced over the next few days.

Honourable Speaker, there is no more appropriate way to conclude than by emphasizing President Zuma's referral to the wisdom of ANC Women's League founding president Charlotte Maxeke who said in her Presidential address to the National Council of African Women;

"This work is not for yourselves — kill that spirit of self, and do not live above your people, but live with them. If you can rise, bring someone with you".

Let us Hlasela!

Laat ons Hlasela!

Ha re Hlaseleng!

Thank you.

Baie Dankie

Ke a leboha.

205 students who studied hosp &
to visit hotels - 1 year. in london
other places

Annexure “RJ2”

Mail & Guardian

AFRICA'S BEST READ

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The Guptas' land of milk and money

Up to half a billion taxpayer rands are being poured into this dairy farm in the Free State, which more and more evidence suggests is a project of the influential Indian family Page 2 & 3

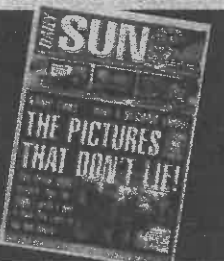
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Pistorius and the media frenzy

When Oscar Pistorius appeared in court this week, fingers were pointed at the media for their coverage of the story that has gripped the country. Join our M&G Hangout as we discuss the trial and the media frenzy that's accompanied it.

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Nice work — if you can get it

Dina Pule works tirelessly to ensure a decent wage for all. Her (ahem) partner, Phosane Mngqibisa, lives the same philosophy — from Pule's office. Watch the latest episode of Pimples.

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Lessons from Mugabe

Zimbabwe's Robert Mugabe might have taken flak for his policies, but South Africans could learn from him about being masters of their destinies.

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2 Mail & Guardian June 7 to 13 2013

Resources

'Gupta' dairy project milks

Links to the notorious family include the shared history of a VIP wedding guest and a farm co-ordinator

amaBhungane team

Up to half a billion rands are being poured into the Free State dairy farm whose links to the controversial Gupta family appear to be increasingly clear.

Provincial budget figures show a huge redirection of resources towards this single "public-private partnership" near the town of Vrede, reducing budgets available for other development needs.

But there are serious doubts about the project's viability. Many locals have questioned it, and the Indian dairy giant, Paras, whose name was invoked to lend technical credibility maintains it knows nothing about it.

An amaBhungane investigation this week threw up more links to the controversial Gupta family, including:

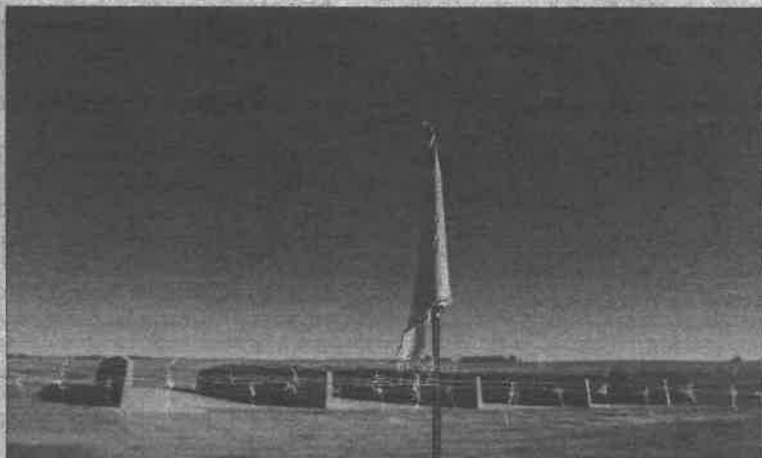
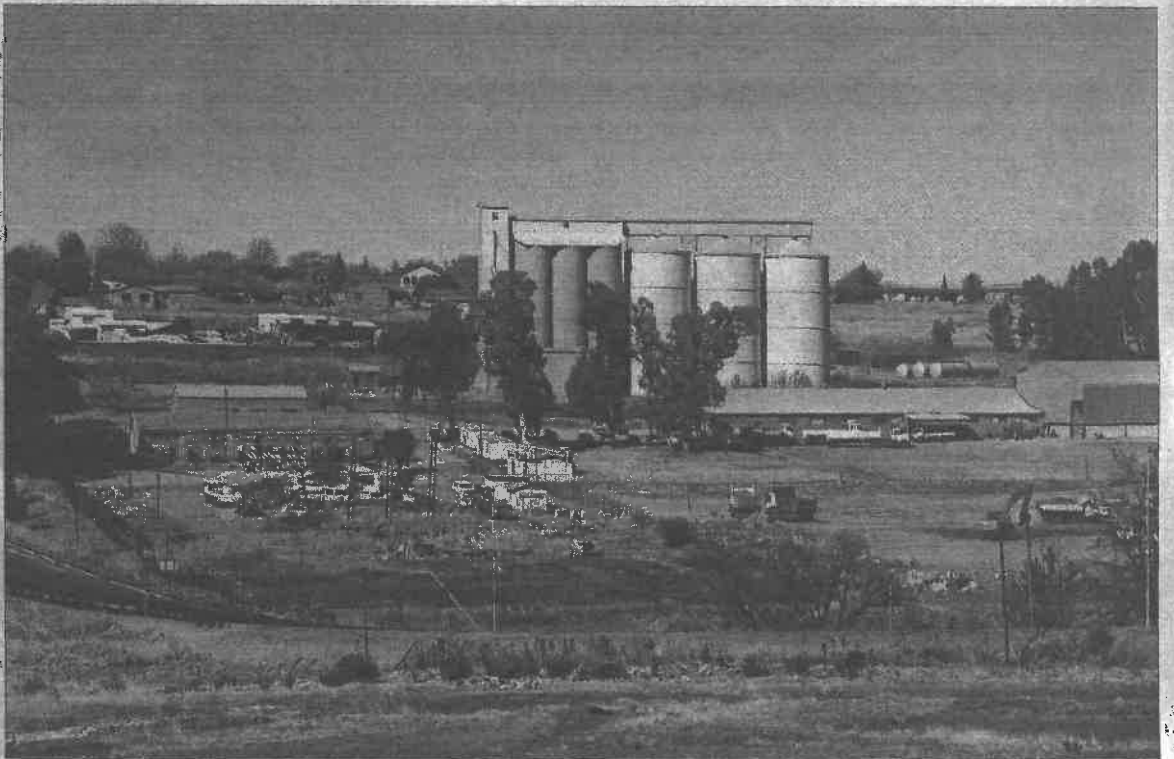
- Atul Gupta was involved in negotiations to buy a home in Vrede for the use of the dairy project's co-ordinator;

- The co-ordinator was previously special secretary to the chief minister of Uttar Pradesh, the Guptas' home state. This and a corruption scandal link him directly to the Uttar Pradesh minister whose attendance at the Gupta wedding in Sun City last month was invoked to justify the wedding guests landing at the Waterkloof Air Base.

The dairy project is led by Estina (Pty) Ltd, a South African-registered company, which last week denied any links to the Guptas other than giving a subcontract to a company owned by the controversial family.

The denial seemed thin given Estina's only director being an IT sales manager apparently close to the Guptas and Estina's registered address being in the same Sandton building as several Gupta businesses, as the Mail & Guardian reported last week.

The new information strongly suggests that the Guptas, who are close to Free State premier Ace Magashule and employ his son, have played an



Atul Gupta is said to have been involved with the buying of a guest house. Photo: Gallo Images

active behind-the-scenes role in the dairy project.

The project

Seemingly conceptualised during the first half of last year, the project started taking off when the Phumelela local municipality, which includes Vrede, ceded the Krynaauwslust farm outside the town to the province last December. The provincial agriculture department, which will fund the project, immediately handed it to Estina under a 99-year rent-free lease.

The plan is for Krynaauwslust's 4400ha to house a large herd of cows and a huge processing plant for milk from the farm and beyond.

Talk of the town: There are few secrets in the closely knit village of Vrede (above), except seemingly about the dairy farm (left) being linked to the Guptas.

Photos: Madelene Cronjé

While benefit is promised to small farmers — half the 1000 cows are to be donated to community members, who will sell the milk back — an Estina proposal obtained by amaBhungane also talks of 51% of the project being transferred to "at least three selected grant recipients", an apparent reference to large black economic employment (BEE) beneficiaries whose identities are unknown.

A second proposal document hails the technical prowess of Paras. It calls Estina "the local representative company which has been appointed by Paras" to engage with the provincial agriculture department on the dairy project. Both documents carry Estina and Paras logos.

But this week a Paras spokesperson in India, Bharti Singh, repeated the company's denial that it knows of Estina or the Vrede project. Singh said she had circulated amaBhungane's query to all Paras directors. "We have no businesses in South Africa. We don't know Estina. There

Scandal links dairy project manager and Gupta wedding VIP

Dairy farm project manager Chandana Prasad was accused of involvement in a corrupt police recruitment scam while he was secretary to the chief minister of the north Indian state of Uttar Pradesh in 2006.

The allegations were the subject of an investigation ordered when the Mayawati administration took over the government in 2007 after ousting the Samajwadi Party.

Prasad was the special secretary to the chief minister of the previous government, Mulayam Singh Yadav.

About 18 000 police constables were recruited in a process that became the subject of corruption allegations and a series of investigations and court cases.

A report prepared by the Uttar Pradesh chief secretary concluded:

"Prima facie it is clear that the then Honorable Chief Minister Mulayam Singh Yadav personally engineered the entire recruitment in a planned systematic manner."

Speaking to amaBhungane, Prasad confirmed his identity as the former secretary to Mulayam Singh but denied any involvement in the recruitment scandal.

However, the chief secretary's report found otherwise.

It noted: "It is prima facie proved that direct and indirect co-operation in these activities were given by the then director general of police... and the then special secretary to chief minister, Chandana Prasad."

It added: "The clear involvement of Shivpal Singh Yadav, the then minister of public works department, in illegal gratification of

money with the co-operation of some other persons and corruption has come to light."

Shivpal Singh was the chief minister's younger brother.

He returned to his post as public works minister when the Samajwadi Party returned to power at the beginning of 2012.

He is also one of three VIPs from the Uttar Pradesh political establishment the Indian high commission cited in justifying the use of Waterkloof Air Force Base for landing the Gupta wedding party.

The preliminary findings against Shivpal Singh and Prasad were given judicial notice in a 2009 judgment of the Allahabad High Court, which found that the findings had not been placed in question.

The allegations were referred to the Indian federal Central Bureau of Investigation for further action, but the CBI argued that it did not have the capacity to accept the case and the Indian Supreme Court struck down a lower-court order for the CBI to probe the alleged scam. The Mayawati government lodged an appeal petition, which was pending when the Samajwadi Party regained power at the beginning of 2012.

One of the new Cabinet's first decisions was to withdraw the appeal against this judgment.

Media reports said new Chief Minister Akhilesh Yadav, Shivpal Singh's nephew, had decided to withdraw the inquiries and drop the charges on the grounds that they were "politically motivated".

— amaBhungane reporters

Free State coffers

The Guptas and the R500-m Vrede dairy project

Five ways the Gupta business empire is linked to Estina, the company given the project

1 THE SUBCONTRACT

Linkway, a Gupta company, did R138 000 in consulting work for the dairy project

2 144 KATHERINE STREET, SANDTON

Estina's registered business address is the same Sandton office park building in which a cluster of Gupta companies operate

3 SIYABUSELELA

Estina's sole director, Kamal Vasram, replaced a Gupta employee as a director of Siyabuselela Trading last year. The Gupta employee was also involved in Linkway. Vasram denies a link to Siyabuselela (the nature of Siyabuselela's business is unknown)

4 UTTAR PRADESH, INDIA

Estina's project manager, Chandrama Prasad, is implicated together with Uttar Pradesh state public works minister Shivpal Singh in the same corruption scandal in India

The Free State agriculture department invited Singh to visit the province "to explore areas of mutual cooperation" while he was in South Africa for the Gupta wedding

The presence of Uttar Pradesh state ministers aboard the Gupta jet was cited by the High Commission of India as the reason for requesting clearance to land at Waterkloof airport

5 HOUSE IN VREDE

Atul Gupta was involved in negotiations to buy a house in Vrede for use by Estina's project manager, Chandrama Prasad

Graphic: JOHN MCCANN
Research: AMABHUNGANE

is nothing that connects Paras dairy to South Africa," she said.

The house, the manager and Atul Gupta

Also late last year, Estina bought a former guest house, De Oude Pastorie, in Vrede to accommodate Estina staff. A person close to the sale said this week that the ultimate decision-maker was "someone in Johannesburg".

A second well-placed source said Atul Gupta was intimately involved in the negotiations. AmaBhungane saw a business card for Estina's project co-ordinator with names including "Atul" and "AW Jaffer" written on the back. Abdul Jaffer is a director of many Gupta companies.

The Estina project co-ordinator who lives in De Oude Pastorie is Chandrama Prasad, a former top

Indian civil servant. He served as special secretary to Mulayam Singh Yadav, Uttar Pradesh chief minister until 2007.

In that position, Prasad was known to Shivpal Singh Yadav as well. Shivpal is Mulayam's brother and the public works minister in his Cabinet — a position he now holds again.

Reinforcing their proximity, and questions about the dairy project, is that Prasad and the two Singh Yadav brothers were jointly implicated in a corruption scandal that shook their government (See "Scandal links dairy project manager and Gupta wedding VIP").

The wedding guest

Shivpal Singh Yadav was among the Gupta wedding guests at Sun City early last month. His attendance at the wedding, and the fact that he

combined his trip with an official visit to the Free State at the invitation of the agriculture department to discuss "irrigation and public works", was controversially used by the Indian high commission to justify the landing of the wedding plane at Waterkloof.

The high commission said the Uttar Pradesh minister and the Free State government signed a memorandum of intent during his visit covering the "economic development, irrigation and agriculture sectors".

Yet, despite his past association with Shivpal Singh Yadav and the fact that the Free State agriculture department both funded Estina and invited the Uttar Pradesh minister, Prasad this week denied the minister's visit was connected to the dairy project at all.

Budget

The dairy project falls under a Free State agriculture department farm empowerment programme called "Mohoma Mobung", launched last year.

In its 2012 budget, the department said it would spend between R20-million and R40-million every year for four years on Mohoma Mobung.

But the dairy project appears to have engulfed these modest intentions. One of the Estina proposals, obtained by amaBhungane, announced that the department, "in line with the vision of the Mohoma Mobung initiative", had identified the Vrede dairy as its "flagship project".

The proposal said the department had commissioned a study "validating" the dairy and had sent a "high-level team" to India where it supposedly met Paras, "the largest private milk producer in India [which] agreed in principle to work with them on this prestigious project".

Estina provided costing for the project, totalling R500-million. It then requested "the government to commit to an annual grant of R100-million per year for five years" for the dairy.

Figures in the agriculture department's recent budgets suggest it may be meeting this request.

To Page 4



amaBhungane, the Investigative Journalism Centre, produced this story. All views are ours.
amabhungane.co.za

Land of milk and money? Residents have their doubts

Vrede — "peace" in Afrikaans — was the name bestowed on a small Free State agricultural settlement in 1879 after a dispute over the site of the town was finally resolved.

The town, about 200km south-east of Johannesburg and close to KwaZulu-Natal, was founded on the Krynauwslust farm.

More than 100 years later, Krynauwslust — about 4400 hectares of land that now belong to the municipality and more or less encircle the town — is once again a bone of contention.

Vrede has gone from rural obscurity to something of a national talking point following claims that a planned multimillion-rand dairy project on the town's outskirts might have links to the well-connected Gupta family.

The project is being punted by the Free State department of agriculture, which has sold it to taxpayers as a public-private partnership between the government, an Indian dairy company, Paras, and a South African company, Estina.

A friendly place, with the obligatory stone church in the centre, people are quick to talk but unwilling to give their names because of the "politics". In such a tight-knit community secrets usually do not stay secret for very long. But it seems that senior municipal officials have kept details of the dairy project tightly under wraps.

One Vrede local said this week that there has been "a lot of talk around town about this dairy project but no one knows what is going on. It's a big secret".

At least the location of the farm is known: it lies about 8km from the town. Apart from a few tractors and borehole markers, the only sign that something is happening there is a partly constructed cement structure, which appears to be the beginning of a maize silo.

The lack of transparency about how it is to be managed has led most of the people interviewed to question whether the project is viable or sustainable.

Although the Free State government has presented the initiative as a way to create jobs and benefit emerging small farmers, some of the locals fear it could become a white elephant.

Democratic Alliance town council member Doctor Radebe,

who has been a vocal critic of the scheme, said this week that, since the project was first mentioned at a June 2012 council meeting, there had been a suspicion that "something wasn't right".

He said that, from presentations made to the council by both the provincial agriculture department and Estina and Paras, it became clear that there was "a political mind behind the project and not an agriculture mind".

A livestock farmer himself, Radebe said detailed plans about how exactly the project would be implemented had never been made available.

"I asked who did the feasibility study; I never got an answer. Instead, the mayor is the one answering questions, not the administrative staff. What has become clear is that the instructions for this project came from the provincial department."

The Free State government, to which the municipality has ceded the land, claimed at council meetings last year that the project would "lure dairy farmers back to Vrede and its surrounding areas".

Beef, sheep and maize crops dominate local agriculture.

At a meeting with local farmers called by the council late last year, provincial agriculture officials tried to get dairy farmers to buy into the project. Residents were told emerging farmers would benefit because the provincial agriculture department would buy hundreds of cows and distribute them to farmers in the local township of Thembalibhe. Residents would each get a few cows and the milk would go to the dairy.

But a local entrepreneur said this week: "There are no criteria for who would get the cows."

A farmer said similar large-scale projects had failed to take off because there was a lack of electricity in the area.

Although residents have their doubts, some say they would welcome the investment if the project took off and benefited local business. Until then the town's economy will continue to rely on the hope of good maize crops and high beef prices.

Neither the Free State agriculture department nor Estina responded to questions. — Tabela Timse & Sally Evans

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Annexure “RJ3”



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10 July 2013

Me S Magwandana
Chairperson
Portfolio Committee on Agriculture and Rural Development
Private Bag X 20561
Bloemfontein
9300

Honourable Chairperson

REPORT ON THE VREDE INTEGRATED DAIRY PROJECT

In relation to your inquiry about the matter referred to above, I would like to respond as follows:

Vrede Integrated Dairy Project: Proposed integration of Dairy and other elements of production and processing with the emphasis on value-addition and beneficiation, such as a range of processed dairy products aligned with the Agri-BEE business norms stipulated by Government.

1. Executive Summary

The Department of Agriculture and Rural Development is setting up of an Integrated Dairy Project at Vrede in the Eastern Free State under the Mohoma Mobung initiative as outlined in the concept document as its flagship Project.

The Department representative and a representative of Estina visited India, the largest milk producers in the world, and met with several established Dairy Producers and Milk Processing Plants, many of whom expressed keen interest in working with the Department on this prestigious Project.

The Department thereafter signed an agreement with **ESTINA PTY LTD** on the understanding that Estina had strong relationships with several well established Dairy producers in India, to deploy this flagship Dairy Project in Vrede. The Agreement covers setting up of Dairy Plants to produce milk and related Dairy products in South Africa.

A phased investment by partners in the project is based on a total projected investment of R570m (five hundred and seventy million rand). The first phase implementation of the project is based on an initial Grant of by the Department whereby a total of R114 million is required per year. This will add up to a total committed grant of R342m (three hundred and forty two million rand) over a period of three years. The second Phase implementation is the Processing Plant by Estina for the Amount of R228m (two hundred and twenty eight million) in the second year of implementation. At the moment we are implementing the first phase of the project.

342
228
114

DAIRY INFRASTRUCTURE (PHASE ONE)

- ✿ Location – Vrede, Phumelela Municipality
- ✿ Cattle – 500 Cows in-Dairy and 500 Cows to be donated
- ✿ Infrastructure – Dairy Parlour/Feed Storage/Feed-Lots/Land cultivation for Feed

PROCESSING PLANT (PHASE TWO)

- ✿ State of the Art Certified Facility to be setup
- ✿ Initial Processing capacity of 100,000 litres per day
- ✿ Initial targeted milk intake of 40,000 litres per day.
- ✿ Products to include Liquid Milk, UHT Milk, Cheese and other products

PRODUCT MARKETING & SALES

- ✿ Products will be branded "**Mohoma Mobung**"
- ✿ Aggressive marketing campaigns using celebrities and Sports icons as brand ambassadors
- ✿ Supply of Bulk Milk to Hospitals and UHT Milk to Schools

The department is in the process of facilitating the identification of **100 members** of the Community who will be participating in the project

2. The flagship project

The objectives with the project are to:

- Utilise the existing natural and other resources to create a viable large-scale integrated agro-industrial enterprise;
- Broaden the agro-industrial production base of the district;
- Improve the food security situation for a number of rural communities;
- Create a number of small enterprises; and
- Alleviate the poverty of the surrounding communities.

In the table below a short summary is provided of the salient figures which apply to the planned project.

Overarching Benefits for the Province and the Nation

- In line with the Agri-BEE business norms stipulated by Government, it has been agreed that a new Special Purpose vehicle (SPV) be created in which ESTINA will hold a 49% share while the remaining 51% shares will be distributed to selected Grant recipients.
- Estina will provide the required capital injection as outlined in the proposal, as well as the technical know-how.
- It is envisaged that this integrated agri-business project will become a centre of excellence for the entire Free State and even the neighbouring Provinces.
- Eventually this Project will provide On-site, in-service practical agricultural training for aspirant farmers to equip them for the profitable operation and management of their own DARD projects, albeit:
 - Primary production of livestock and agricultural produce, or
 - Value-adding and beneficiation to livestock and agricultural produce

- Basic business, financial and management skills training and in-service application
- Cooperative processing, value-adding and beneficiation of livestock and agricultural produce for all DARD projects in the Free State
- Cooperative marketing facilities into the major consumer markets of South and Southern Africa for all milk projects in the Free State thus creating the necessary critical mass and economies of scale which will unlock additional financial benefit for project participants

3. Phases for Project Deployment

The Department has brought to the fore the problem of lack of funding for this project which has been a major stumbling block in the execution of this type of project in the past. This issue was also raised as a serious concern by the Indian Partners. However, with a view to crystalizing the vision of the Department, Estina has, of their own accord, enabled a phased approach to the project, whereby the Department will release available funds and Estina will ensure the implementation of the project in a modular form with technical know-how inputs from Estina and, when required, financial participation as well.

4. The need for the chosen Dairy Project

It can be concluded that there is an urgent need for this project based on the following facts:

- The sale of milk provides extra income on a regular basis to rural people who often have just enough to get by. Milk sales also improve the nutritional status of rural populations, though not necessarily the urban needy. Milk is also one of the few agricultural products which can be supplied and marketed regularly by non-landowners. A dairy plant creates jobs in rural areas, and thus helps check urban migration.

- Milk and milk products are thought of as staple foods in most developing countries. Favourable production conditions mean that everyone can consume large amounts of milk and dairy products. For many of the world's peoples, however, even though milk plays no role in the diet, if balanced food is available in sufficient quantities, neither health nor welfare should be affected by the lack of milk. Milk protein can enhance plant protein and in a diet combining several foods, a compensatory balance is established among the various sources of proteins. Animal proteins supply essential amino acids, plant proteins can then economically top up the total supply.
- Many Third World countries find it hard to right the balance of payments: imported dairy products are one foreign exchange savings which can be effected by a dairy development policy. Moreover, international prices may go up in the medium or long run, placing a country which is not in a position to partially substitute imports by local production at a disadvantage

I trust that this report will suffice. Should you require any further information, please do not hesitate to contact this office.

Yours faithfully



Mr. MG Qabathe (MPL)

MEC: for Agriculture and Rural Development

Free State Province

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Annexure “RJ4”

1 FILE: Interview Dlamini – CFO

2 Present: Suad Jacobs – ENS, Trevor Barnard – ENS, [Dipatle] Dlamini – Department of Agriculture
3 and Rural Development.

4
5 JACOBS: CFO, thank you very much for meeting with us this morning. As we discussed
6 yesterday, we would like to chat to you about the Vrede Dairy Project. Overnight you
7 prepared some documentation for us and we started with the pack that you indicated
8 addresses, bullet point 1, 2, 6, 7 and 8 in the letter that we sent you last week requesting
9 documentation. We were just talking about the documents. You were taking us through the
10 documents so effectively this presentation that I'm having a look at now, titled "Proposal to the
11 Department of Agriculture and Rural Development from Integrated Dairy Project in Vrede, Free
12 State. You say this presentation was made by Estina on 24 May 2012 and this presentation was
13 made of the senior employees in the Department that visited India.

14 DLAMINI: Yes.

15 JACOBS: All right and you mentioned that the senior members of the Department that had
16 visited India was the HOD for the Department as well as the MEC.

17 DLAMINI: I'm not sure [inaudible 0:01:30.4] yet the memo from the Premier that [normally] the
18 Premier faxed. [Inaudible 0:01:36.0] I'm not 100% sure of the MEC but I'm 100% sure that should
19 he attended was part of the delegation that went there but the office will then before you
20 leave, would have given you the memo that was approved by the Premier for people to go to
21 India.

22 JACOBS: And when was the trip to India? Do you know more or less? We can see the exact
23 dates from the memos and the motivations that would be attached but

24 DLAMINI: I remember of relying the fact that I still remember what date was it.

25 JACOBS: But it was after, you say this presentation was after that visit.

26 DLAMINI: Ja this presentation was after that visit.

1 JACOBS: Ok so Estina came here and they did the presentation. You say senior management
2 was present.

3 DLAMINI: Yes.

4 JACOBS: Who is that?

5 DLAMINI: It was two Directors and I was also there. [HOD] was also there but unfortunately,
6 that's what I'm thinking, I'm still struggling to locate from the secretary, the person who was
7 taking the minutes has both resigned, so I'm not able to, I'm still trying to trace the attendance
8 register for that particular day and the attendance register and the minutes of that particular
9 day but few people, I'm not sure maybe you must also advise me because I can also get
10 people who can confirm that I was in that meeting. I can give you, I can make a list and say
11 people must confirm because if I can give you the list that you confirm to say that they were in
12 that meeting.

13 JACOBS: The HOD was in the meeting and you were in the meeting.

14 DLAMINI: Yes.

15 JACOBS: You're clear on that?

16 DLAMINI: Yes.

17 JACOBS: Mr Masikeng, was he there?

18 DLAMINI: I'm not sure whether Dr Masikeng.

19 JACOBS: But we'll check with him.

20 DLAMINI: Was there but you will check with him whether he was part of the meeting.

21 JACOBS: And the MEC was she there?

22 DLAMINI: MEC was not there. It was a he then, not she.

23 JACOBS: Oh.

24 DLAMINI: The she is no.

25 JACOBS: So the MEC wasn't present?

26 DLAMINI: No, the MEC wasn't present.

1 JACOBS: And who is the MEC at that stage?

2 DLAMINI: MEC Zwane.

3 JACOBS: And the new MEC is?

4 DLAMINI: MEC Qabathe.

5 JACOBS: How do you spell it?

6 DLAMINI: Qabathe.

7 JACOBS: And when was she appointed?

8 DLAMINI: Qabathe, March.

9 JACOBS: 2013?

10 DLAMINI: 2013.

11 JACOBS: So effectively Estina came to speak to you and to do a presentation on the project.

12 DLAMINI: Yeah.

13 JACOBS: Ok and what was the presentation about?

14 DLAMINI: If you look at that presentation that presentation was basically about setting up a

15 dairy project right? The location and everything, it was identified by us, by the Department.

16 Myself could only be when the delegation was India, this was some of the things that were

17 discussed and then they had to come up and then make a follow up to say where is the

18 location and all that so ja. Basically the presentation was about setting up and partnering with

19 us in terms of doing the dairy in different states.

20 JACOBS: Ok.

21 DLAMINI: And they also, I think at the heart of the whole thing is to [inaudible 0:05:41.0] they

22 want to come and invest in terms of putting up a profiting land and the Department must

23 [inaudible 0:05:54.4] about the farmers in terms of setting up the dairies which the dairy would

24 produce the milk and the processing plant will assist in terms of the beneficiation of the milk.

25 JACOBS: Ok. We are going to go through this with you but I can see some of the

26 documentation looks familiar already.

1 DLAMINI: Yeah we gave some of the documentation of it to, that was the memorandum of
2 argument which also regulate the country to country but it's the broad one is sent by the
3 Minister. Those are the minutes is the extras because that was another meeting with the DG,
4 who took place with the DG, the MEC, Treasury, the HOD Treasury, the [inaudible 0:06:45.9]. The
5 reason why I'm giving you the extras is because the meeting was called, the meeting show you
6 the results of the, if you look at the Exco resolution, that's the results of the Exco resolution right
7 but it was called in the Premier's office by the DG right but unfortunately I'm also not able to
8 locate the Minister of the meeting but the extras is from one of the advocates who is a State
9 Law advisor in the Premier's office because when I was trying to say to them "Can you give me
10 the minute and the tender [Inaudible 0:07:17.8] for that particular day nobody could give me. I
11 could not locate that but the advocate said "I can give you the extras that my own [Inaudible
12 0:07:27.9] that I was making for that particular day".

13 JACOBS: Ok. Fine. We're going to take you through all of the documentation. We have a
14 couple of questions we would like to ask you obviously but let's just have a look so these you
15 can go through again, have some idea and then the others?

16 DLAMINI: This are the payments I give you, I give National Treasury already copies of this
17 payments. The unfortunate part now is the time when I did them I did not know that my
18 [inaudible 0:08:03.2] in finance gave me the copies. My problem now is that we have just,
19 Finance has just moved from the from Town to here so some of their documents are still in boxes
20 and it's a lot of documents so we could only trace two of those documents but I believe that
21 majority of documents or all of the documents I may have given them to National Treasury
22 already but this ones there I did tell you because this ones without the sheet of the copy that
23 shows who approved what but this one has got all the information in it. So this relates to the
24 payments [inaudible 0:08:46.5] with that [inaudible 9:08:52.7] and then this pack here are
25 [inaudible 0:09:15.9] communication between us, Estina and the communication within our
26 [inaudible 0:09:21.0] and the consultation that we did with the farmer. This pack here addresses

1 the budget issues. We also asked about documents relating to the budget, this addresses the
2 budget issues. My only dilemma, I need to agree with you because this could [be business] are
3 the only copies that we are having but there is a lot of information in this. It's not only relating to
4 the Vrede deal it relates to all the grants right, the CASP grants but in it you'll find that Vrede is
5 here so I'm not sure whether you'll allow me to copy this cover page that shows this particular
6 document was approved and also make you a copy of the extras that shows that Vrede did
7 was budgeted and the grant was approved. The business plan for, this is what you call the
8 business plan for that [inaudible 0:10:45.9].

9 JACOBS: Not familiar with the document. Let's have a look. We have got copies or you
10 provided copies of the 2013/2014.

11 DLAMINI: This is 2013/2014 one. This is 2012.

12 JACOBS: 2012/2013

13 DLAMINI: Because the [Inaudible 0:11:06.2] has started last year mos.

14 JACOBS: If someone could copy this for us today that would be great. What I'll do is we'll have
15 a look through our file but I think we have a copy of the 2012 2013/2014. If that is the case then
16 I'm not going to take another copy.

17 DLAMINI: Ok.

18 JACOBS: Because then we'll just mark it that you've given us this copy and it's the same.

19 DLAMINI: All right. So in the meantime while, when we are finished while you'll be seeing HOD I
20 will then make a copy so that before you leave you get a copy or unless you want to take it to
21 HOD then I can make it overnight and then tomorrow night

22 JACOBS: Dr Masiteng drafts this, Dr Masiteng so we wanted to chat to Dr Masiteng about this
23 document.

24 DLAMINI: It's a CASP co-ordinate, one there.

25 JACOBS: Does he not have copies of.

26 DLAMINI: That's the one I [inaudible 0:11:58.7] from you.

1 JACOBS: Ok that's fine. We leave that for now.

2 DLAMINI: These are all the allocation letters from Treasury. The allocation letters is relative, that
3 comes and says this is what we are dealing for agriculture and this is housing and all those
4 things that is specific that indicates.

5 DLAMINI: Can I have signed versions of these documents please? These are not signed, none
6 of these so I need the original.

7 DLAMINI: I'll have to check with the office of the HOD if they have originals because normally
8 Provincial Treasury would have sent it via the emails. That one is signed. That one is not.

9 JACOBS: This is Mr Thabethe

10 DLAMINI: Those are final allocations. Let me see no then this one is [inaudible 0:12:52.6] tender
11 basically you can work from this. This one is [faulty]. This is a final, it's the same document
12 [inaudible 0:13:17.0] this one, you can take this two copies [inaudible 0:13:22.0]. I will then try
13 project the signed copies of 2014/20

14 JACOBS: This one is signed and one of the others are also signed.

15 DLAMINI: [inaudible 0:13:34.6] told me this project I can. This one is [inaudible]

16 JACOBS: Is this the same one?

17 DLAMINI: No this one is

18 JACOBS: Let's take the preliminary allocation its ok. Then I'll just mark it and you could have
19 that one because I think that one is also

20 DLAMINI: No this one and that one is the same. At the back of that one there's another one of
21 2013/2014, that one is not signed, that's the one I must get the signed copy for you.

22 JACOBS: No I think that one is signed.

23 DLAMINI: No this one is 12/13 to 14/15. It's the same as this one. Look at the one that is signed.
24 These two are the same.

25 JACOBS: No, they're addressed to different people.

26 DLAMINI: Oh they're those two different people because we had two different departments.

1 That's fine.

2 JACOBS: We've got these two and the preliminaries that are fine. Have we got every page of
3 it?

4 BARNARD: Ah.

5 JACOBS: Is it the same?

6 BARNARD: I've gone right through this it's the same. I'll check the front and middle of that so
7 that I can check every pack.

8 JACOBS: Have we got that from. I think the back one will be the right one, that one was the
9 one that we submitted. Is that the one we picked up in Pretoria?

10 BARNARD: Hm.

11 JACOBS: That's fine. So we've got the 2013/2014.

12 DLAMINI: Ok then I'll [inaudible 0:15:07.9] make copies for this you.

13 JACOBS: It's fine let's just check that it's the signed off ones so that we know we're dealing with
14 the [inaudible 0:15:13.3] ones. The signed off would be [inaudible 0:15:17.5]

15 BARNARD: Here.

16 BARNARD: [Inaudible 0:16:11.0] is at the back.

17 JACOBS: Ok. I want to check if it's all signed. [Mahala] want us to arrange this quick before
18 trial that evening. I think that's probably best [inaudible 0:16:27.1] so it may not be exactly the
19 same. Can we have a copy of both please?

20 DLAMINI: [inaudible 0:16:33.7]

21 JACOBS: There were many that were made afterwards. I was concerned that we may have a
22 [unrendered] version then. Maybe we may react and, we may be [expecting] him accurately.

23 DLAMINI: It's fine. I'll just copy it like this.

24 JACOBS: All right.

25 BARNARD: This is [inaudible 0:16:56.5]. There's a signed copy that's never [inaudible]

26 JACOBS: It is?

1 BARNARD: Yeah. Let me show you. This one is not signed ne?

2 JACOBS: Ja but let us for the sake of being safe let's just get the proper one.

3 BARNARD: [Inaudible 0:17:14.9] copy.

4 DLAMINI: Ok. This address is [inaudible 0:17:18.8 progresses]

5 JACOBS: Also page 50?

6 BARNARD: Ja there's two copies, one blank.

7 JACOBS: Two copies of the same page but I don't want to take the risk that we

8 BARNARD: It will be safer to make a copy.

9 JACOBS: Because there, you see there was submissions related to [Lima Letsema] that was
10 rejected and then they were finalised.

11 DLAMINI: Madima Mobeni

12 JACOBS: [Inaudible 0:17:41.6] progress report. Is there only one progress report?

13 DLAMINI: No there are many there.

14 JACOBS: Oh are these all of them?

15 DLAMINI: Ja it's all of them.

16 JACOBS: Ok these are all of the progress reports to date?

17 DLAMINI: It is all the progress reports to date.

18 JACOBS: That's perfect.

19 DLAMINI: This address is [Inaudible 0:18:05.0] which point 14 are saying Identity and contact
20 details of all the directors and shareholders or beneficiaries of the Agri BEE entity. What I'm
21 giving you is only the list of the beneficiaries. I still to get other information in terms of

22 JACOBS: So that I do the list, ok its 80 people

23 DLAMINI: Yes and I also still to confirm with the last time I checked the Agri BEE entity was still
24 work in progress but they're subsequently been informed that is the set up so I'll have just to get
25 that confirmation and then before you leave I will tell you whether the documents are there or
26 not and that would mean if the document is not there in terms of the Agri BEE entity, we give

1 you the beneficiary then we still to finalize the entity and the shareholders and all that but those
2 beneficiaries are the ones that have been [perform] trust and all that and then they become
3 the shareholder in the entity.

4 JACOBS: Ok.

5 DLAMINI: Yes.

6 JACOBS: All right.

7 DLAMINI: What I have not given you or the point that I have not addressed is the issue of the
8 feasibility. We [delft] the feasibility and that's the only feasibility party that we are having that
9 we provided to National Treasury and I'm sure you are in the possession of that feasibility
10 [inaudible 0:19:35.2]

11 JACOBS: [Ja we are]

12 DLAMINI: The trip relating to India, I'm still waiting for those documentation from the office of
13 the HOD. Maybe by the time you see him he will be having those documents. The office can
14 provide you with that. There was also payment information. The payment information in terms
15 of [Nuvendo] I also I don't know what happened. That's why I'm saying some of our documents
16 are still in the boxes that make the [having] a [inaudible 0:20:14.3] for this company that we are
17 still busy looking for that [inaudible 0:20:20.6]

18 JACOBS: And then you still need to give us payment documents.

19 DLAMINI: No, payment documents I gave you I must give only the vendor information.

20 JACOBS: No no but it's only the two.

21 DLAMINI: That's why I'm saying the payments documents there's a reason I gave you that
22 because that one has got the supporting documents but the supporting documents would
23 understand even if I gave you one payment they will be the same throughout.

24 JACOBS: But surely there are different work being completed for different payments. It can't
25 be the same work completed for different payments.

26 DLAMINI: It's because the payments were done as a transfer not as pay the invoice.

1 JACOBS: Ok we can chat about that you can

2 DLAMINI: We will talk about that

3 JACOBS: [Inaudible 0:21:01.7] you get there.

4 DLAMINI: Ok fine.

5 JACOBS: Ok payment documents. Then you mentioned, sorry, the CK documents for the legal
6 entity. Do you have the name and the registration number of the legal entity because we can
7 check up whether it's registered or [inaudible 0:21:21.9]

8 DLAMINI: The legal entity, that's why I want to understand. You mean Estina or you mean the
9 Agri BEE entity.

10 JACOBS: No, the Agri BEE.

11 DLAMINI: No the Agri BEE entity that's why I'm saying I'm waiting for the documentation that's
12 why I did not your point 13 also.

13 JACOBS: So there's no

14 DLAMINI: No currently the money is paid into Estina's account.

15 JACOBS: And the vendor information? The payment, the vendor payments, the bank account
16 details and all of that where's that?

17 DLAMINI: I thought you wanted from the [inaudible 0:21:51.9] maybe that is another off search
18 for myself. I will get you the banking details [inaudible 0:21:56.9].

19 JACOBS: We want all of the details that you have, the [statute].

20 DLAMINI: And the first [statute].

21 JACOBS: The first [statute] to get Estina ja.

22 DLAMINI: Ok no it's fine. I will get it for you.

23 JACOBS: So Estina financials ok.

24 DLAMINI: [Inaudible 0:22:32.6]

25 JACOBS: So all the internal documents relating to discussing or accepting the proposal, that's
26 the first batch of documents you gave us corresponds between the Department and Estina.

1 The feasibility study that gave rise to the need for the project. All documentation related to the
2 trip to India. All supply and chain management documents related to this project including the
3 bid specification. So there are no supply chain management documents.

4 DLAMINI: No there are not because there was a deviation. I give you the deviation admission.

5 JACOBS: Ok. All documents relied on by Mr Masiteng Ms Dlamini and Mr Thabethe in proving
6 that deviation, all documents relied on Mr Masiteng, Ms Dlamini approving and accepting the
7 proposal. Where are those documents?

8 DLAMINI: I'd give you that's why I said some of the documents they go through [inaudible
9 0:23:59.5]. If you look at the first one that's top of the deviation, it's two in one. It tops off
10 accepting the proposal and it's also saying it's a request for deviation also.

11 JACOBS: Ok.

12 DLAMINI: So that submission is in [inaudible 0:24:14:3]

13 JACOBS: All documents relating to budgeting for the project. All documents related to the
14 payments effected on the project. All project progress [inaudible 0:24:24.2] performance
15 report which you have given payment information for the legal entity. All documentation and
16 details related to the Agri BEE entity that was established to being [hurled] from this project and
17 the identity of the directors and shareholders. Ok so that's still outstanding. The feasibility study
18 you say there is none.

19 DLAMINI: [Inaudible 0:24:44.9]

20 JACOBS: You're still waiting for the HOD's office so that we can still get today. Planning
21 documentation we will discuss when we get to it. The CK for the legal entity for the Agri BEE
22 entity, do you think you will be able to get us that today? We'll be back next week anyway so if
23 you don't have it today then we can chat about it again next week.

24 DLAMINI: That's fine.

25 JACOBS: Estina financial documents for payments. All right we are gonna get that information
26 as well. Thanks very much for preparing all of the documentation. I know that considering that

1 according to the HOD, our [directive] was only received yesterday. It must have been quite a
2 mission to get all of the documentation as much as you did together.

3 DLAMINI: But [inaudible 0:25:43.3] do you remember the correct address because you still was
4 looking from me the electronic copy of this.

5 JACOBS: [Inaudible 0:25:52.8] It's the same address that I [inaudible 0:25:53.3]

6 DLAMINI: It's the same address, I wondered why you [inaudible 0:25:56.1]

7 JACOBS: I [kept] it to the PA, we faxed it, we emailed it to what 3 different addresses but from
8 now onwards I copy you on any [inaudible 0:26:04.7] this because. Did you receive my email
9 yesterday?

10 DLAMINI: Yes I did receive it.

11 JACOBS: Ja then I copy you on this.

12 DLAMINI: Yes please.

13 JACOBS: But then what I'll do is if I send correspondence I'll just sms you to say did you get it
14 then I know until I get a response from you you may not have received it.

15 DLAMINI: That will help. That will help [Inaudible 0:26:23.7]

16 JACOBS: I don't expect that there will be a huge amount of correspondence but should there
17 be I'll send it directly to you as well. I'll copy the CFO; I'll send it to both you and the HOD and
18 then send you both an SMS so you can just confirm that you received it. Sometimes I think your
19 server there may be a little bit of traffic on your server.

20 DLAMINI: It's a big problem.

21 JACOBS: Sometimes I think with more than one department we've picked up that the server
22 traffic can be.

23 DLAMINI: Don't talk to our IT [Inaudible 0:26:53.8] so our address is not the same as others so.

24 JACOBS: I went into your website as well and we struggled to get details for you guys off the
25 website because the one website says it's no longer the active website, there's gonna be a
26 new website and it says click the link and you click the link and you don't go anywhere and ja.

1 DLAMINI: The [Polesa] website?

2 JACOBS: No but even for the Departments, more for the Departments because [inaudible
3 0:27:19.1]

4 DLAMINI: That's why I am saying you must first get into the Free State Provincial and then click
5 Agriculture ja. No we are fine here, they will move to. You know what? Go and check with the
6 office of the HOD. If the office of the HOD's boardroom is not busy so that if they see HOD they
7 can see HOD in this boardroom and the rest of the people. I don't like this boardroom, it
8 doesn't have privacy. Yes. [Inaudible 0:27:57.7] HOD I'm saying or you must request HOD that
9 it's their turn to use this boardroom than to use this one because this one does not have
10 privacy. That door does not even close in this one.

11 JACOBS: Oh really.

12 DLAMINI: You can only pull it; it doesn't close like this one is closed.

13 JACOBS: Ok. How long have you been with the Free State Department?

14 DLAMINI: First date? I have been first date since 2007 December.

15 JACOBS: As?

16 DLAMINI: Chief Financial Officer, Department of Housing and Local Government then.

17 JACOBS: When did you move to Agriculture?

18 DLAMINI: 2010 December.

19 JACOBS: So you've moved to a CFO position here at the Department.

20 DLAMINI: Yes.

21 JACOBS: What is your role as CFO?

22 DLAMINI: Financial Management in general. I'm responsible for the financial accounting which
23 your [Inaudible 0:29:24.9] of creditors, your initial statements preparation, your revenue, your
24 [Inaudible 0:29:32.3]. I'm responsible for management accounting which is budget and
25 reporting on financials and also responsible for supply chain management and in supply chain
26 management I'm also the chairperson of the [Bid and] registration committee. Risk

1 management is also part of my responsibility. You must not come again. In the meantime
2 please ask Thato to get me the, find allocation letter for 2013/2014, current financial year find
3 allocation letter [Inaudible 0:30:41.4]

4 JACOBS: What are your qualifications?

5 DLAMINI: I have a B.Com.

6 JACOBS: CA (SA)?

7 DLAMINI: No.

8 JACOBS: Previous to be in the Free State you were employed by National Treasury.

9 DLAMINI: Not National Treasury, Provincial Treasury.

10 JACOBS: In?

11 DLAMINI: I started my career in the Provincial Treasury here in Free State and then I moved to
12 the Municipality for two years, then I moved to Provincial Treasury of Limpopo in 2001 up to 2007
13 I have been in the Provincial Treasury.

14 JACOBS: In what capacity?

15 DLAMINI: In the Limpopo from 2001 and 2007 I went there as a Deputy Director: Budget
16 Management and I then got promoted to [Inaudible 0:31:59.3] and I became the Director
17 within the same department [Inaudible 0:32:04.3] management and then I moved in the same
18 department Chief Director. I was general manager. They call it Project Director/General
19 Manager its one thing. Cash management and assets. No in fact the title is Assets and Liability
20 which is Asset Management, [Inaudible 0:32:41.3] and cash management together. From that
21 Provincial Treasury I moved to 2007 April I moved to the Provincial Treasury of Northern Cape.

22 TREVOR BARNARD: Northern Cape?

23 DLAMINI: Yes. As the Chief Financial Officer but I did not stay long there because the same
24 year I moved to Local Government and Housing as the Chief Financial [Inaudible 0:33:16.6]

25 JACOBS: What process was followed in authorizing this project? Talk to us about the earliest
26 recollection of when this project started and how it had come to your attention and how the

1 department identified Estina.

2 DLAMINI: How the process came to my attention for the first time is when the office of the HOD
3 made us aware that there will be a presentation that is coming from a company that is going
4 to deal with, but we did not know this obviously, was to dealing with the company that was
5 going to. That presentation is on the date [Inaudible 0:34:33.6]. So that process it's in the
6 normal course of the running of the department. When there is somebody either, that person
7 met with the MEC or the HOD or whoever one of us who's had – I have this idea or I have this
8 proposal that I want to share we normally say come and present at the Executive
9 Management meeting. If there is no Executive Management meeting [Inaudible 0:35:07.7] of
10 the HOD will write a date for that particular company or any person to come and make a
11 presentation on

12 JACOBS: Present to, sorry? The Executive Committee.

13 DLAMINI: Executive Management Committee yes.

14 JACOBS: Of the Department?

15 DLAMINI: Of the Department. So that is the process normally in the running so the same
16 [audience] started that we were the company chain Estina to make a presentation but
17 depending on the current of the presentation we then invite other people that we feel might
18 be of help in the department. The technical people now because the Executive Management
19 we may not necessarily [Inaudible 0:35:58.0] all the technical issues. So hence I mentioned to
20 say one of the, some of the people who attended when this company chain was [Inaudible
21 0:36:08.7] in the department and also ... people attended.

22 JACOBS: All right. So the HOD was the person who thanked you and said there is a
23 presentation, there's a service provider who wants to make a presentation on this.

24 DLAMINI: Not necessarily the HOD. Normally it will be the invite from the office of the HOD to
25 say

26 JACOBS: So was it an invitation or was it, what was it? Was it a email or was it the HOD that

1 came to say because you said the HOD said the company is coming to do a presentation.

2 DLAMINI: That I want to correct to say not necessarily because HOD can not talk to individuals.

3 Normally they will send an email to say on this particular date the presentation from a particular
4 company. You are requested to come and attend there.

5 JACOBS: So did the HOD send an email to that effect?

6 DLAMINI: It may have come to the office of the HOD. I may not say whether it was from his
7 email but normally the email will come from the desk of the office manager or the PA.

8 JACOBS: Ok. Do you have the email or did you receive the e-mail?

9 DLAMINI: Unfortunately my computer has since been stolen, I don't have. This one I'm using
10 [Inaudible 0:37:41.9] I had a housebreak during December so [Inaudible 0:37:44.7] documents
11 that were in the laptop is missing.

12 JACOBS: Are you clear that the HOD or the HOD office sent out an invitation or could it have
13 come from someone else?

14 DLAMINI: [Inaudible 0:38:37.3]

15 JACOBS: It would come from the HOD?

16 DLAMINI: Sorry?

17 JACOBS: It did come from the HOD's office?

18 DLAMINI: Yeah.

19 JACOBS: Ok. So the HOD invite you to this new thing, because of the nature of the meeting
20 you can remember that logistics was, sorry you said specialists, you invited specialists to attend
21 it, you invited the economist and the research division.

22 DLAMINI: The research division was [Inaudible 0:39:32.3]

23 JACOBS: And to listen to the presentation and this was the first that you heard of.

24 DLAMINI: That was the first.

25 JACOBS: Ok and what was so that was the first that you heard of the project and then you
26 were invited to the presentation and you attended the presentation?

1 DLAMINI: Yes.

2 JACOBS: At the presentation, what took place? Who came to present?

3 DLAMINI: I can't remember that guy's name that's why I was really looking for the attendance
4 register. It was the guy from Estina.

5 JACOBS: If I mention his name to you would you recollect?

6 DLAMINI: I don't think so.

7 JACOBS: If I showed you a picture would you remember?

8 DLAMINI: Most probably.

9 JACOBS: Have you ever dealt with him again?

10 DLAMINI: [Inaudible 0:40:48.2]

11 JACOBS: [Inaudible 0:40:48.5] you came through the presentation have you ever seen him
12 again? I mean this is the premier project for the Province?

13 DLAMINI: This guy I have dealt with but I can't remember whether, was he with two people or
14 one person which had to do the presentation?

15 JACOBS: So you say you not [Inaudible 0:41:17.1].

16 DLAMINI: I would not want to give conflicting statements because I may not make a
17 thoroughly now, that's why I'm saying if the attendance register was here I would generally
18 collect and remember exactly how many people came from the Estina side and whether that's
19 their side but it seems as if they [will] represented that day, Was [Inaudible 0:41:36.1] I don't
20 remember.

21 BARNARD: Was the presentation here at this office?

22 DLAMINI: The presentation was in the board room down there but that board room was [things].

23 BARNARD: I mean this building?

24 DLAMINI: Oh yes it was in this building.

25 JACOBS: So we've shown the picture of Kamal Vasram who is the Director of Estina, you say it
26 wasn't Kamal that presented. You seem someone that was taller.

1 DLAMINI: I remember someone who was a bit taller but I must say I stand to be corrected.

2 Maybe my, I'm not really recollecting properly.

3 JACOBS: Ok. So what happens at the presentation?

4 DLAMINI: Normally the person will come and present and that was.

5 JACOBS: Ms Dlamini, I'm not interested in what normally [Inaudible 0:42:29.8]

6 DLAMINI: Ok.

7 JACOBS: I'm interested in what would specifically happen, what specifically happened on this
8 day so if you can't remember then you could just say because we need to be clear. I don't
9 want to confuse and misquote you so please confine yourself to the facts of this particular
10 matter.

11 DLAMINI: Ok.

12 JACOBS: In the presentation on that day you remember that they presented. What was the
13 nature of the presentation? What did they come and say?

14 DLAMINI: The presentation was started with the contract of [Mohoma Mobung] right, which
15 was the company, I can only explain to say they the partner to Paras [Inaudible 0:43:22.1]
16 representing Paras and because of their [Mohoma Mobung] that was presented when the
17 delegation went to India. This is a follow up on that one. It was they do now, the after the
18 presentation of [Mohoma Mobung] the interests in partnering with us in doing some of the
19 brochures in [Mohoma Mobung] of which one project was the Vrede Dairy.

20 JACOBS: So they said they are the partner of Paras?

21 DLAMINI: Yes.

22 JACOBS: The Indian dairy.

23 DLAMINI: Yes. Let me. Not specifically the partners, pardon my English, not really the partners
24 but like presenting all the. They have a agreement while they put it in, they have agreement
25 with Paras that Paras will support them in terms of technology and all that but we. I can't
26 remember asking a lot of things in terms of really the relationship with Paras except that they

1 not in the relationship with Paras and they are here because of that collaboration between
2 themselves and Paras.

3 JACOBS: So the mention they have collaboration with Paras, they partnered, they have an
4 agreement with Paras that Paras will support them. You're not [Inaudible 0:45:20.7] by mention
5 that they have a partnership with Paras.

6 DLAMINI: No I don't remember them saying they have a partnership. I can't remember.
7 [Inaudible 0:45:32.2].

8 JACOBS: They mention they have a relationship with Paras and they have collaboration and
9 that's why they are here because they are interested in pursuing. The presentation that was
10 made on.

11 DLAMINI: Mobung.

12 JACOBS: Mobung to Paras in India?

13 DLAMINI: Yes.

14 JACOBS: Ok and what happened then?

15 DLAMINI: Then we took the [Inaudible: 0:46:11.0] to the presentation. After we have listened to
16 the presentation [again] and then they left. We discussed, let me say that the presentation was
17 in such a way that it's an interaction and we were asking different questions and all that
18 [Inaudible 0:46:29.0] questions and comments and then after that the meeting adjourned. They
19 left and then we left by [Inaudible 0:46:45.8] department now without Estina. Only the
20 employees of the department and we discussed which I thought the discussion of which I will
21 share with you through the minutes that unfortunately, like I said, I am unable to collect today.
22 The documents from the [krat] for that particular day which were dictated which was a kind of
23 the discussion.

24 JACOBS: Is this the employee that has resigned?

25 DLAMINI: Yes that employee has resigned.

26 JACOBS: Truly the minutes are kept in a central place and not with a specific person?

1 DLAMINI: You. That's right. Unfortunately I don't know what's happening in that unit that
2 [Inaudible 0:47:31.9].

3 JACOBS: And which unit is that?

4 DLAMINI: Communication.

5 JACOBS: And the employee?

6 DLAMINI: The employee was Thlagane.

7 JACOBS: And her supervisor is?

8 DLAMINI: Modiehi Thlobelo.

9 JACOBS: All right. And you've asked her supervisor for these minutes that she can't find it?

10 DLAMINI: I asked her, could not find it [Inaudible 0:49:07.1] a pack of the attendance register
11 and the minutes of this meeting. I checked, I did not find those.

12 JACOBS: Ok and the supervisor is Modiehi Thlobelo. All right. So you discussed the project and
13 what happened then? Then after the discussion of the project so you start discussing the
14 project and what happened thereafter?

15 DLAMINI: What happened thereafter was we tentively agreed one to say there should be a
16 task team and you'll see the letter that talks to that amongst the pack that I give to you on the
17 communications. There should be a task team constituted of the technical people and the
18 director also. The director Thabo Mofutsanyane should also be part of that task team and we.

19 JACOBS: The task team should constitute of a technical team.

20 DLAMINI: Yeah.

21 JACOBS: And the?

22 DLAMINI: The director Thabo Mofutsanyane [Inaudible 0:51:00.7]. I'm sure it's the acting
23 director.

24 JACOBS: And who's that?

25 DLAMINI: The acting director.

26 JACOBS: And who's that?

1 DLAMINI: Alta Meyer.

2 JACOBS: Ok.

3 DLAMINI: And further tentively we said yes we can accept the proposal but it must then go to
4 Exco because the projects must all go via Exco. We then make a memorandum to the
5 Executive Council.

6 JACOBS: When you mean the Exco you mean the Provincial Exco?

7 DLAMINI: Provincial Exco yes. Then we make a memorandum to the Provincial Exco to explain
8 received today a presentation on a company so and so Estina which wants to do a project
9 with us in terms of the dairy and then.

10 JACOBS: Where is that memo?

11 DLAMINI: I will request it [Inaudible 0:51:16.3] what I did then the decision of this [Inaudible
12 0:52:20.6] of that memo.

13 JACOBS: No I've seen that but that is not very helpful. I mean that basically says that Exco is.

14 DLAMINI: You wanted [Inaudible 0:52:27.7].

15 JACOBS: Ja because we'd like to see on what basis you approached the Provincial Exco.

16 DLAMINI: All right.

17 JACOBS: Because I mean the Provincial Exco doesn't [cramp] the PMFA. You know what I
18 mean?

19 DLAMINI: I'll give you that memo before you leave.

20 JACOBS: Ok. So this presentation takes place on 24 May here at the offices. You say there
21 needs to be a task team. What was the task team going to do?

22 DLAMINI: Basically the task team was suppose to represent us in terms of a meeting with this
23 people when they come, when the company comes and.

24 JACOBS: When Estina comes.

25 DLAMINI: When Estina comes and they go on site. There's task issues of land issues of [Inaudible
26 0:53:36.8] discuss issues of land but advising one another. Assisting with in terms of advising

1 because they are the technical people and also advising us as a department.

2 JACOBS: All right so the task team was suppose to represent the department when Estina
3 comes and they were gonna go to site. Was there a decision to proceed with this at this point
4 already? Because that's what it sounds like. Were you going to be engaging with Estina or.

5 DLAMINI: I felt there wasn't really a decision because the decision was only a final decision, let
6 me say there was tentively a decision to say we are buying in. Into the project.

7 JACOBS: Ok.

8 DLAMINI: There was. Let me say there was a buy in. Is that the correct English? There was a buy
9 in into the project.

10 JACOBS: It was conceptual. You liked the concept of the project.

11 DLAMINI: We liked the concept of the project. We want to pursue this project.

12 JACOBS: Ok and then?

13 DLAMINI: Then there was a follow up in terms of the memo that went to Exco and then after
14 the memo that went to.

15 JACOBS: When did the memo go to Exco?

16 DLAMINI: Can I have that document then I'll tell you exactly when it might have gone there.

17 JACOBS: Is it that pack? Because Exco signs off on the [Inaudible 0:55:49.9] on 13 June but
18 there's no indication of when the memo.

19 DLAMINI: The memo might have gone then in June, during that particular. Is it not underneath
20 there? I hope I attached it here. Isn't it [Inaudible 0:56:30.3].

21 JACOBS: Here, that's the Exco memo. Or that's the Exco approval but that's not the memo.

22 DLAMINI: The memo was sent probably the same date because you see its cabinet meeting
23 13/06/12 so it was sent on 13 June 2012.

24 JACOBS: Did you ask the HOD for that memo? What was the task team suppose to do
25 because basically you see them on 24 July. You say there wasn't a decision at that stage to
26 approve the project but there is a, can you pass me that file please? There is a document from

1 the HOD that directly contradicts what you say and effectively the HOD sent a letter to Estina
2 dated the 27th May, 4 days after the presentation, 3 days after the presentation stating that the
3 department accepted the proposal.

4 DLAMINI: That is why I was saying their acceptance was not necessarily a binding. I know what
5 you are talking about, it's fine. I gave you also in the pack. My understanding is the
6 acceptance was just to say that we have accepted the proposal but we were still to further it
7 and appoint the decision of Exco because most of the project needs to be approved by Exco.
8 We don't approve projects.

9 JACOBS: But that's not the indication that you've given the service provider in writing. I mean
10 effectively what it says is your project proposal for the Vrede Integrated Dairy [Inaudible
11 0:58:58.5] Business and related presentation to the department refers and the assistant is [Sanjay
12 Garkam]. The department hereby informs you that the proposal has been accepted subject to
13 the signing of a partnership with you which will clearly indicate the terms and conditions of the
14 relationship. The implementation date will be the date of our signature on the [Inaudible
15 0:59:18.1] says this is subject to anything. This is an undertaking that we've accepted your
16 proposal and that we are going to sign a partnership agreement and we'll [indicate] the terms
17 and conditions in the contract that we're going to sign.

18 DLAMINI: But the partnership was not going to or the contract was not going to be signed until
19 we received the Exco resolution.

20 JACOBS: Whether or not it was going to be received, that's an undertaking by the Head of
21 Department who's the accounting officer, not so?

22 DLAMINI: Now I see what you are talking about. Maybe it's one of those things that we [abide]
23 and.

24 JACOBS: That's binding because that's an undertaking by the [AUG] that we're gonna
25 contract. [Inaudible 1:00:11.4]

26 DLAMINI: I hear what you are saying. I hear what you are saying; I can't [dispute] that.

1 JACOBS: What procurement process was followed? Before Exco had been approached,
2 there's an undertaking that you're going to accept and on what basis is that undertaken? I
3 mean the [PFMA] applies.

4 DLAMINI: Ja the PMFA applies. I think the procurement was was going to be obviously it's only
5 one company which [chain] was their interest in what we're saying we want people to come
6 and help and it's in line also with some of our projects which we've been doing in the Province
7 where companies come. Especially [Inaudible 1:00:56.4] where companies come and say we
8 want to assist the Department in implementing a particular project and this is what we're going
9 to offer. Mainly they come in terms of offering their skills more than any other thing and from our
10 side we support the farmers. Such projects like if you go to where the project, we have a
11 project of the chickens. The company which is [VTHB], I'm sure you know VAB has put up in
12 [Abato] and we have partnered with them to say we're going to support the farmers. That
13 we'll supply the chickens to your farm, to the other [tow] so what the agreement is in such a
14 way that [VTHB], we're going to cast our money into [VTHB]. VTHB will assist in terms of putting
15 up the structure in terms of ensuring that there's chickens for those farmers and all that. The
16 main reason why we are doing that, especially with people who are saying, who are having
17 processing plants. The main reason is we are sure of the [hatchet] for that particular farmer.
18 Which is the biggest problem that we are facing with our farmers. To say that we have a lot of
19 farmers but their produce are not taking anywhere, but anybody who comes and say: I'm
20 putting a processing plant. I want someone who can supply me but these are the conditions for
21 that farmers to supply me. I need to be involved in terms of putting up the structures or in terms
22 of even getting animals that will supply. Or whatever produce we normally accept, we
23 normally accept such thing and I think it was in line with that [procedure]. [Inaudible 1:03:00.1]

24 JACOBS: Coming back to Estina.

25 DLAMINI: Ja.

26 JACOBS: Your explanation for why there was no procurement process is that Estina was the

1 only service provider who showed interest.

2 DLAMINI: They are the only ones who shown interest in the whole thing.

3 JACOBS: In providing?

4 DLAMINI: In providing the processing plant. To say they're gonna put up a processing plant.

5 That's the main thing. Otherwise if it wasn't of the fact that they want to put up the processing

6 plant, we would not have partnered with them. They say: we're going to invest and put up a

7 processing plant to put the milk, the cheese and all those dairy products. Then we say: Ok fine

8 if you coming up with your processing plant we will support farmers in terms of coming up with

9 the dairy that will supply the processing plant. Because the plant will not move without the

10 input which is the milk. Mainly that is where we are coming from.

11 JACOBS: So they say they will put up a plant to process the milk, cheese and?

12 DLAMINI: Cheese, yogurt, a number of products. Yogurt, cheese, that's an example but all

13 those.

14 JACOBS: How did you ascertain that there was no other service provider who was interested in

15 providing the service?

16 DLAMINI: It's because when we started the whole thing of, when we started the whole thing of

17 Mohoma Mobung we invited. Sorry?

18 JACOBS: When was Mohoma Mobung started?

19 DLAMINI: Mohoma Mobung was started around I think September/October 2011 but I stand to

20 be corrected. What then we did, after we have [carted] the documents and agreed to say

21 this was how we want to change. This is the strategy that we're going to use to try to [be

22 support] and yes the agricultural development the Free State. We called a lot of stakeholders;

23 we invited the Legislature to make a presentation to say: This is the Mohoma Mobung, this is the

24 concept, this is what the concept is trying to do. In the main the concept is trying or the

25 strategy is to complete the [dairy] chain in terms of our product and we invited all the. The

26 Legislature we invited, the universities we invited, the farmers we invited, the agricultural

1 organisations which are your milking producers, your, what are they called the milking
2 producers – I stand to be corrected – your BKB's, your [grainless inaudible 1:05:43.1]. We invited
3 all those stakeholders that are in agriculture. So and in the main normally what we do, we invite
4 the when we invite the stakeholders, the milk producers will come with all the companies. Or
5 the CEO of the companies that represent particular companies in that industry right. So we
6 took it that we did a thorough consultation in terms of that but nobody [loaned] an interest.

7 JACOBS: In September/October 2011.

8 DLAMINI: I think so, September/October 2011. That's why I'm saying I stand to be corrected in
9 terms of the date right but that process was done and that is where [Dichaby] also showed an
10 interest and say: Because we are bringing in the [Avato] bring in, you must bring in the farmers
11 that are going to supply. So that was the process and after that then I know there is a number
12 of times where HOD was also going to. We even went to the National Department of
13 Agriculture and presented the same concept because it would need a lot of money to do.
14 That it would need a lot of partners to.

15 JACOBS: To do what?

16 DLAMINI: To implement it, to implement the strategy. Mohoma Mobung right? So further then
17 the International [Treat] that there be taken its one of the things that. Because normally when
18 they go internationally they need to [see] the stuff. That's one of the strategy that has to be
19 presented so to say in Agriculture in the Free State, this is what we do and this is where the
20 whole thing comes from. And maybe I will also mention to say, as we get into these partners,
21 the reason why we are not all of them, not signing a [TripleP] partnership also is because we are
22 supporting farmers. We do not own those assets or we are not deriving any revenue from that.
23 It's only us saying: here's our farmers, work with them, they produce this, we support the
24 production and you take the produce. So basically what we do is we facilitate so that the
25 value chain is completed in the factor.

26 JACOBS: So basically Government invests in this project R324m and gets nothing out of it.

1 DLAMINI: Yes, the farmers are the ones that are going to benefit. [Inaudible 1:08:42.8] because
2 some beneficiaries that you put together and you form your co-op.

3 JACOBS: Ok.

4 DLAMINI: Yes.

5 JACOBS: So you don't sign a Triple P because Government is not going to benefit.

6 DLAMINI: Yes.

7 JACOBS: Out of this process. How does this make sense to the Department? I mean you
8 spend R324m of taxpayer's money to invest in a project with a foreign company who gets 49%
9 of the company. The Department gets nothing, making the bulk of the contribution. How does
10 this process makes sense?

11 DLAMINI: It was suppose to be the Government goes to the beneficiary. Our interest is the
12 beneficiary.

13 JACOBS: The beneficiaries were identified when?

14 DLAMINI: I think Dr Masiteng will be able to assist you in that.

15 JACOBS: My understanding is the beneficiaries were identified recently. Right after the
16 National Agriculture asked about the beneficiaries and it is then found that there are no
17 beneficiaries.

18 DLAMINI: If you read.

19 JACOBS: This is not signed and it's not, this document is not dated. It's signed but not dated.

20 DLAMINI: You will be able to verity that issue with.

21 JACOBS: Dr Masiteng.

22 DLAMINI: With Dr Masiteng but if you read, there's another letter that I give that I marked,
23 number, this that yellow sticker that I marked part of number 3.

24 JACOBS: So say.

25 DLAMINI: [Inaudible 1:10:33.9] number 3. See that something the Minister where we are saying,
26 did you look in that one? But there's somebody that looking at that I gave to you, where we

1 are preparing to say the Municipality where we are going to do this project were to assist in
2 terms of identification of the beneficiaries.

3 JACOBS: So this, am I to understand if I understand correctly are you saying that Estina was
4 appointed on the basis of being a sole provider?

5 DLAMINI: Yeah. No, not necessarily a sole provider because they are not the only one in the
6 country. That's only because they came and say: We want to invest. On the basis that they
7 are investing. Either they're investing R228m to put up a processing plant.

8 JACOBS: But if they're not the sole provider of the service and how do the Department know
9 that there wouldn't be other people who would be prepared to invest if they knew that the
10 Department wanted to engage.

11 DLAMINI: No that is why I explained to you to say we invited a lot of people to say: Here are the
12 commodities.

13 JACOBS: No, that was in 2010. That's part of your commodity program. We raising a, you
14 know "Saving the province from hunger project"

15 DLAMINI: No, that was 2011, when we come with Mohoma Mobung.

16 JACOBS: Ok. So what project are you talking about, when you went into the public and said
17 to service providers: We're interested in getting someone who's prepared to partner with us on
18 this process. Because on what basis do you identify Estina as the company that is only
19 interested. Because that's what I'm hearing. Unless I'm not hearing you correctly. Because I
20 agree with you. Estina is not the only service provider who's capable of delivering this. This is a
21 very generic type of project because in South Africa alone, never mind internationally. I mean I
22 could think of Clover who would be interested in South Africa. Dairy Belle another one. The IS
23 Dairy Board, another huge milk and butter producer internationally. Nieu Zeeland also very big
24 in the international butter and milk environment. On what basis did the Department decide
25 that Estina was the only company that was interested in partnering with the Department?

26 DLAMINI: On the basis that, like I've explained that. When we started to implement Mohoma

1 Mobung [org], say the concept or the strategy of Mohoma Mobung right? We invited
2 stakeholders in the agricultural field.

3 JACOBS: Was this in, this is according to you in September/October 2011.

4 DLAMINI: Yes but I don't want to dwell more on the September/October because I say it was in
5 2011. I may not necessarily be 100% sure.

6 JACOBS: Ok.

7 DLAMINI: In terms of the month exactly but Mohoma Mobung started, the startage was
8 finalised in 2011 let me put it that way.

9 JACOBS: Ok.

10 DLAMINI: Right, so we invited the stakeholders in the country right? Including the Milk Producer
11 Association to say we would want, we want to complete a value chain in everything that we
12 do. In the dairy, in the red meat, in the chicken industry. We want to complete the value
13 chain, where we are looking for investors to come and invest in terms of processing plant in the
14 main. Because from our side, we can only provide the produce. Our farmers we can only
15 support our farmers to provide the produce but the problem in the market where we are taking
16 the produce right? So as I'm saying is normally when we invite the stakeholders right? They will
17 then go back and inform their members, right? So that process was done and nobody showed
18 interest.

19 JACOBS: But how does Government normally procure? How does Government normally get
20 involved in Tripple P's and big projects? You advertise don't you?

21 DLAMINI: Yes we do advertise.

22 JACOBS: In the form of tenders,

23 DLAMINI: In the form of tenders but at the same time and again Government receive proposals
24 from.

25 JACOBS: Unsolicited goods that's what it's called yeah?

26 DLAMINI: We normally receive that.

1 JACOBS: Ok.

2 DLAMINI: Right.

3 JACOBS: And what's the process in dealing with unsolicited goods?

4 DLAMINI: That is what I'm saying in this case Ma'am. That's why we open to say whether we're
5 right or wrong its fine but all what we are saying is in this case we are having already a model
6 that has been run by this department for a long time in terms of assisting. You see if it was like if
7 an unsolicited [bid] was saying: Come and build this building for Government, it's something
8 but we are saying: Come and assist farmers. There was that what we could have done. We
9 could have transferred, do a cooperative right? Transfer the money into the cooperatives
10 which are the farmers and the farmer's then deal directly with the company that say: We want
11 to provide this skill. Like in the case in Bethlehem. The Bethlehem [Pass] we are doing with Agri.

12 JACOBS: No. Ms Dlamini I don't think it's going to be helpful if you mention all the other
13 projects. Let's confine ourselves to this project. Right, so there's this presentation where you
14 engage stakeholders. Everybody understands it, then Government procures. I mean that's well
15 legislated since the PMFA was you know promulgated in 1999. It's now a piece of legislation
16 that's been around for 13 years. We all understand that Government, Provincial and National
17 Government engages on it's strategies, it follows a procurement process. Now I mean, you
18 agree with me?

19 DLAMINI: Yes I do.

20 JACOBS: Because that's the legislated way of dealing with public funds not so? The PMFA,
21 being quite a significant piece of legislation also deals with unsolicited bids. You agree with
22 me? As the CFO you would know this.

23 DLAMINI: Yeah

24 JACOBS: So it deals with unsolicited bids. It deals with Tripple P's.

25 DLAMINI: Yes.

26 JACOBS: It deals with single source service providers. Right? We've agreed that Estina is not

1 a sole provider because the service is not a soul provider type of service. You agree?

2 DLAMINI: Ja.

3 JACOBS: You say you didn't want to go the route of a Tripple P because Government would
4 be investing money and getting nothing out of it. So it wasn't a ready revenue generating
5 project. Right? And then the only other thing I can think of that this is potentially, it's not a
6 single source; it's not a Tripple P. It's then a single, it's an unsolicited bid.

7 DLAMINI: That's why I'm saying for me it's neither all of the three because we are talking of
8 support of the farmer.

9 JACOBS: Ok.

10 DLAMINI: We are talking of the support of the farmer here. We are not talking of acquiring a
11 service for Government or acquiring goods for Government.

12 JACOBS: But when you spend Government money and you are procuring services on behalf
13 of the people then there's a process prescribed to spend that money, not so? Or are you
14 saying: Because we weren't as a department going to benefit from this project, we are not
15 required to behave in terms of the rules set out in the PMFA dealing with supply chain
16 management?

17 DLAMINI: Not necessarily not necessarily that. That is why I am saying we applied the model
18 that we've been applying in the Department.

19 JACOBS: Ok, which is what?

20 DLAMINI: Which is the same that I've explained to say when we have this. We have different
21 kinds of farmers. We have farmers who has the capacity to do themselves. We have
22 beneficiaries that we organise. For those beneficiaries that we organise, if we have a company
23 or an organisation which says: I can help this group or: I can help in this area, we transfer money
24 into that particular group like I have made an example of VKB which time and again we
25 transfer money into VKB to assist the farmers right? There's a list of farmers that they assist that
26 they that we agree. These are the farmers that they assist. The other [Inaudible 1:19:37.4]

1 we've, for instance the chicken abattoir, they assist them with the chicken houses and
2 everything that deals with that business of the chickens. They also assist in terms of the fertilizer
3 so those that in grain. So that's all that I'm saying is maybe the model is right, maybe the model
4 is not right but in.

5 JACOBS: But as the CFO I mean you're responsible for financial management. How do you
6 justify this expenditure in terms of the legislation? What in the PMFA and in the MFMA or what in
7 the PMFA in its regulations and in your internal policies authorizes you to behave in this manner?

8 DLAMINI: I think we describe it in terms of transfers.

9 JACOBS: Which is dealt with in which section of the PMFA?

10 DLAMINI: Transfers is part of, let me see [Inaudible 1:20:41.5] I'll be with you now now.

11 JACOBS: No, just take your time.

12 DLAMINI: I'm almost finished.

13 JACOBS: Sure.

14 DLAMINI: In Section 38.1(j)

15 JACOBS: All right and what does that Section say?

16 DLAMINI: In terms of the you remember the Section would be broad but in terms of the Treasury
17 Regulations which is Regulation 6.4 it talks to transfers and subsidies. [Inaudible 1:28:47.6]
18 division of revenue grant and other allocation transfers. It says an accounting officer must
19 maintain appropriate measure to ensure that transfers and subsidies to entities are applied to
20 the intended purposes. Such measures may include regular reporting internal and external
21 project requirements and [more] appropriate submission of audited statements. Regular
22 monitoring procedure, scheduled or unscheduled inspection [usage] or reviews of [definite] or
23 any other control measures [Inaudible 1:29:20.3].

24 JACOBS: And in your opinion this covers payments to private organisations?

25 DLAMINI: Yes it does because it talks of other entity.

26 JACOBS: All right, so according to you Government can give away any amount of money it

1 feels like without any process being followed as long as it pulls in under Section 38.1(j).

2 DLAMINI: No not necessarily as it wishes that's why I'm saying we applied what we know has
3 worked for us. Yes. Which we applied, which is the process that deal with with other
4 organisationorganisations [Inaudible 1:30:09.2].

5 JACOBS: So your payments to cooperatives. What is the legal relationship between the
6 Department and the cooperatives that it makes payments to?

7 DLAMINI: Which cooperatives?

8 JACOBS: Well you've mentioned that your cooperatives that you.

9 DLAMINI: [Inaudible 1:30:24.7] that's only grants, there's no legal relationship. It's an
10 organisation that is in agricultural sector.

11 JACOBS: Ok.

12 DLAMINI: It's a stakeholder.

13 JACOBS: It's a stakeholder.

14 DLAMINI: Ja.

15 JACOBS: And the Department just his private companies funds.

16 DLAMINI: We don't use private companies; we send a memorandum of agreement for them to
17 assist farmers.

18 JACOBS: All right.

19 DLAMINI: Or beneficiaries.

20 JACOBS: Yes.

21 DLAMINI: Yes.

22 JACOBS: So there's a program?

23 DLAMINI: There's a program.

24 JACOBS: And they are the organisation in control of that sector for example VKB is what?
25 What does it stand for?

26 DLAMINI: [Inaudible 1:31:07.7] something, I forgot. I don't know what it means.

1 JACOBS: And what do they do?

2 DLAMINI: They do a lot of things. It's a cooperative in agriculture right. They provide like, let me
3 start to say 1) They have a skill in terms in dealing with a whole range of agricultural activities.
4 Your grain, your planting, they are now in chickens. They have a know how in terms of the
5 agricultural activities. They are able to advise for us when to plant, when not to plant. If you
6 want to for instance you want a explain of the chickens. How to maintain your chickens and all
7 that, all those things. But in the [name].

8 JACOBS: That's a cooperative right? So it's established I assume in terms of the Cooperatives
9 Act, the Agricultural Cooperatives Act.

10 DLAMINI: VKB is now a company.

11 JACOBS: Is it a private company?

12 DLAMINI: Yes.

13 JACOBS: With private shareholders?

14 DLAMINI: It's a company owned by all the members but it's a company now. I don't know
15 what is shareholding structure but it is a company now.

16 JACOBS: And you say it's a private company?

17 DLAMINI: I'm not sure if it's a private company but I know it's a company.

18 JACOBS: Or is it a state owned company?

19 DLAMINI: No it's not state owned.

20 JACOBS: Ok it's a private company; it's not established in terms of the PMFA or the MFMA?

21 DLAMINI: Yes it's not.

22 JACOBS: And this is a company, this is an organisation that is effectively to manage, well it
23 effectively represents all of the farmers, what in the Free State? Relate that to what?

24 DLAMINI: Not necessarily. I may not say it represents the farmers in the Free State. All that I was
25 saying is it's a company that is there, It's a stakeholder in the agriculture, they have the know
26 how in terms of the agriculture. So many a times, they have a range of services that they

1 provide. Let me put this example: one of the things that they provide, they provide fertilizer
2 right and how we [chain] to maybe the relationship that I found when I ran this department is
3 because they give fertilizer our farmers – the farmers that we support – they will then take
4 fertilizers on credit from them right and they must, they take the fertilizer on credit whatever
5 green or whatever, what do you call this? Any other thing that relates to planting.

6 JACOBS: Ok.

7 DLAMINI: They take it on credit. They go and plant right? They are expected to pay back. So
8 the problem arised, they could not, they were not able to pay back right because the produce
9 are not good and all that. There's losses and all that. So we then say: let's have agreement
10 with VKB. All this farmers that we support, instead of giving them money directly, or instead of us
11 buying this fertilizers for them right because we are also limited. We don't have a number of
12 officials that can assist [Inaudible 1:34:45.9] in terms of capacity. Let's have an agreement and
13 we give money to VKB. VKB ensures that they plant their harvest right? That's where the
14 relationship came from. So they provide in the main, the skills that they are having.

15 JACOBS: Ok so they support the farmers because they are I suppose recognised experts in this
16 area.

17 DLAMINI: Yes.

18 JACOBS: In the Free State.

19 DLAMINI: Yes. Not in the Free State. VKB is everywhere.

20 JACOBS: Ok so it's actually a what? A national organisation that has agricultural expertise.

21 DLAMINI: I don't know that's national or what but it's everywhere.

22 JACOBS: Everywhere. Where everywhere?

23 DLAMINI: In Gauteng there's a VKB, in Western Cape there's a VKB.

24 JACOBS: Ok so it appears to be almost a national or [entitled] organisation.

25 DLAMINI: Yes.

26 JACOBS: And it's a cooperative that consists of farmers?

1 DLAMINI: Yes.

2 JACOBS: Ok so it's an Association in the farming industry?

3 DLAMINI: Yes.

4 JACOBS: And it's owned by its members?

5 DLAMINI: Yes.

6 JACOBS: Now you say that is regulated by a memorandum of understanding?

7 DLAMINI: I don't know what regulates them.

8 JACOBS: So what regulates the legal relationship between the Department and VKB?

9 DLAMINI: Oh yes between the Department and VK, we sent a memorandum of understanding.

10 JACOBS: Ok. Do you have a copy of that memorandum of understanding?

11 DLAMINI: I can make it available.

12 JACOBS: Please, I'd like to understand the basis on which you engage with VKB. Now VKB is
13 fundamentally very different from Estina.

14 DLAMINI: But maybe let's take Estina coming from the background of, because I think our main
15 issue is not necessarily Estina here.

16 JACOBS: No our main issue is Estina because Estina is a [wholly] private owned company.

17 DLAMINI: No. Let me correct myself. I'm saying between the discussion yes Estina is a big
18 company but what we are saying is what made us – from our side – what made us to say; let's
19 get into this agreement with Estina. It's because of the Paras which are experts in the milk
20 industry.

21 JACOBS: Ok. So Paras indicated that they were interested in gaining or in becoming involved in
22 the project?

23 DLAMINI: Not becoming involved but becoming an invest a processing plant.

24 JACOBS: Ok. So what is the legal relationship between Paras and Estina?

25 DLAMINI: They have an agreement that Paras will support.

26 JACOBS: Where is that agreement?

1 DLAMINI: I can get it I don't have it here.

2 JACOBS: Have you seen the agreement?

3 DLAMINI: No, I would be lying. I have not seen it but they told us that they have the agreement
4 with Paras.

5 JACOBS: Who is they?

6 DLAMINI: Estina.

7 JACOBS: What did the Department do to verify that there was a relationship between Estina
8 and Paras?

9 DLAMINI: Sure. I think we maybe it's all I say that we took for granted because there was, you
10 can see they have been using the logo of Paras in their.

11 JACOBS: I can take the logo of Paras off their website and put it on a document.

12 DLAMINI: Ok.

13 JACOBS: As clearly you have done too.

14 DLAMINI: No we have not. I'm not sure maybe HOD can verify if or Dr Masiteng because
15 they're technical people. Maybe they have verified that. I have not verified all myself.

16 JACOBS: Ok. So the HOD and yourself discussed this and have decided that no procurement
17 process were necessary.

18 DLAMINI: Not necessarily that procurement processes were not necessarily but like I'm saying is
19 how best can we deal with this issue and then we said because we [are] supporting from us
20 let's deal with it with the model that we are using of transferring monies and have this people
21 providing the skill in terms of setting up the dairy and all that. Let me put a worst case scenario
22 ne? If these people tomorrow they say, they say we are moving out ne or we are no longer
23 investing right? The dairy is the farmer's dairy. It's not their property. The dairy does not belong
24 to that man it belongs to those beneficiaries that I gave you there.

25 JACOBS: There's no legal entity.

26 DLAMINI: [Inaudible 1:39:25.1] it may not be here now but that [Inaudible 1:39:27.1] is going to

1 be there.

2 JACOBS: Ms Dlamini you're a CFO, now with all due respect, there's no legal entity that exists
3 currently that owns the 51%. Am I correct?

4 DLAMINI: I have not seen it.

5 JACOBS: Ok. At the time that you signed the agreement with Estina there were no
6 beneficiaries that had been identified is that correct?

7 DLAMINI: Yes.

8 JACOBS: You pay these monies into Estina's bank account. Is that correct?

9 DLAMINI: [Inaudible 1:40:04.0]

10 JACOBS: Do you have access to that bank account?

11 DLAMINI: No.

12 JACOBS: Do you know how they're spending the Government's money?

13 DLAMINI: That's up to [that] to be report.

14 JACOBS: They can put anything on a piece of paper. What kind of oversight do you have
15 over the way that Estina spends Government's money?

16 DLAMINI: Apparently [Inaudible 1:40:21.7]

17 JACOBS: Nothing. Not so?

18 DLAMINI: That's something I accepted they'd report.

19 JACOBS: But you agree with me that Estina could put anything on paper and you wouldn't be
20 any the wiser. Correct?

21 DLAMINI: I think so.

22 JACOBS: What process did the Department follow in ensuring that Government receive value
23 for money? I can understand that Government is not going to receive any benefit of the
24 project but how did you as a department go about ensuring that this was the best possible deal
25 that the farmers could get? Because you can't say to me that you spent the money because
26 someone's prepared to invest in the farmers. What did you do to make sure? I can come here

1 and invest. I could charge you as these people have, R550m to provide a cooperative for milk
2 producers and a processing plant. What did the Department do to make sure that that was
3 value for money? What feasibility did you do locally, internationally? What public process did
4 you engage in or departmental process did you engage in to make sure that this was a
5 worthwhile project to undertake?

6 DLAMINI: What happened, we departmentally have explained to that their proposal and the
7 discussion was received via majority. Not majority because they're partner distribute by
8 management inclusive of the technical people which is your research you know, economics
9 and all that and in terms of the consultation; the consultation was also [bid] with the farmers in
10 Vrede right and the municipality in Vrede. Which the farmers, some of the things that they were
11 saying, they were saying they are the [biggest] problem. I'm not talking about commercial
12 farmers now which we met in Vrede, which were saying their biggest problem is the slowly
13 closing down because of in Free State we don't have the processing plant. We don't have
14 where our farmers actually.

15 JACOBS: Ms Dlamini that doesn't answer the question. How did you determine that this was
16 value for money? It's not a concept that you're not familiar with. Now how did you determine
17 that this was value for money?

18 DLAMINI: I was answering. You said what consultation? I was answering on the part of the
19 consultation.

20 JACOBS: I'm not interested in the consultation, my question to you was: How did you go about
21 ascertaining what public or private inquiries, feasibility studies did you engage in that said that
22 this deal from Estina is a good deal?

23 DLAMINI: Remember we gave you the feasibility study. One of the things when we agreed
24 with them was to say you will do the feasibility study because of the limitation in terms of the
25 capacity that we need and the feasibility.

26 JACOBS: The feasibility study was finished in October 2012. You signed the agreement in July.

1 The feasibility study came afterwards. My question to you was: before you agreed with Estina
2 on this project what process did you undertake to make sure that there was value for money to
3 the state?

4 DLAMINI: Maybe the, remember when we agreed it was still estimates to say we estimate that
5 this is going to cost this much. Ok go and do the feasibility study that will show this and I still
6 believe that this is still estimating costs. As they implement they must still give us invoice and we
7 have, we can request it anytime the original documents in terms of their suppliers and all that.

8 JACOBS: Tell me when VKB invests in farmers and they give farmers grain and they give them
9 expertise do they take a stake in the farmer's farm? No?

10 DLAMINI: They don't.

11 JACOBS: No. So why does Estina get 49% of this Agri BEE entity?

12 DLAMINI: Maybe let's understand it this way. To say actually the farmers are the ones – that's
13 my understanding, that is my personal understanding of this one.

14 JACOBS: The farmers are?

15 DLAMINI: That their stake is basically on the business of processing which is the business of Estina
16 but the dairy like I said, the dairy belongs to the farmer.

17 JACOBS: Now what part of the dairy belongs to the farmers?

18 DLAMINI: The dairy self, the [cows] itself and the [cattles]. That's my understanding to say the
19 animals and the [Inaudible 1:45:37.7] itself. The structure where you milking and all that will
20 belong to the beneficiaries. That's why I'm saying even if tomorrow this stakeholder they move
21 out right they say we are no longer coming and invest right? The cattles remain then the
22 farmers, the structure that is there on site, remains with the farmer; but as they run the business
23 of processing they make money in that business that's why we are saying our farmers because
24 they are providing, they must also [Inaudible 1:46:12.9].

25 JACOBS: So this is a very different situation from VKB because VKB comes and upskills people,
26 enables them to become competitive right? This is not what Estina's doing. Estina is using

1 government's money to establish a plant, putting cows on land that is given by government
2 rent free. Now they get to make a fortune off the infrastructure.

3 DLAMINI: Let me make it this way; they are going to put up a plant with their R228m.

4 JACOBS: Which they own.

5 DLAMINI: Which they own.

6 JACOBS: On state land.

7 DLAMINI: On the state land.

8 JACOBS: Which they don't pay for.

9 DLAMINI: That is another thing.

10 JACOBS: No that is part of this whole thing.

11 DLAMINI: Ok.

12 JACOBS: Then the cattle belongs to the farmers.

13 DLAMINI: Yes.

14 JACOBS: Which Estina will then milk and sell the produce.

15 DLAMINI: Ye.

16 JACOBS: What do the farmers get out of this?

17 DLAMINI: 51% of the processing.

8 JACOBS: 51% of the processing of everything.

19 DLAMINI: Look.

20 JACOBS: Estina gets 49% of everything.

21 DLAMINI: Maybe what was supposed to have happened is to say let's together with the
22 company maybe we're supposed to be saying we should have come together with us and we
23 present the model. Because my understanding of the model is you have the dairy which
24 produces the milk right? After you produced the milk somebody must buy this milk right and the
25 people who are going to buy this milk is Estina right and they will process it. But we are saying
26 we are pushing that. If we, this farmers provided the milk well they not necessary, our farmers

1 are not necessarily making a lot of money out of their produce. The only way for them to make
2 money is they produce and they get money for their produce right and then.

3 JACOBS: [Till] somebody buys it.

4 DLAMINI: And then they supply this other company all right? When they supply we're forcing
5 now, that's where we are moving to and we started with Estina. We thought that if they supply
6 you they must also own a stake in that part. If we had money as government we would also
7 put up a processing plant for these people that they would own 100%.

8 JACOBS: So Estina is bound to take the milk from this.

9 DLAMINI: Is bound yes.

10 JACOBS: And or is the Agri BEE entity going to be bound?

11 DLAMINI: No, Estina is bound to take this.

12 JACOBS: Where is this, where is that? Because where is the offtake agreement in respect of
13 the sale of the milk. What is Estina going to do with the milk once they get the milk?

14 DLAMINI: They're going to process it because they're going to put up a processing plant.

15 JACOBS: Ok and then? Once they process the milk then what? They sell it. To whom?

16 DLAMINI: They will sell it to the market.

17 JACOBS: Where's the offtake agreement?

18 DLAMINI: From who?

19 JACOBS: From Estina. What compels Estina to sell this produce? I'm not seeing that anywhere
20 here.

21 DLAMINI: What I'm explaining Ma'am is [that] Estina is putting up a processing plant.

22 JACOBS: No that I get. That process the milk I can see that in the agreement.

23 DLAMINI: And when they process the milk.

24 JACOBS: Ja.

25 DLAMINI: Then [Inaudible 1:49:31.7] to the milk to.

26 JACOBS: [Inaudible 1:49:33.3]

1 DLAMINI: And all that yes.

2 JACOBS: Is Estina going to do this?

3 DLAMINI: Yes.

4 JACOBS: Where does it say that?

5 DLAMINI: Maybe it's one of those things that when you raise it that [lacks] in the agreement.

6 JACOBS: Yes because this project hasn't, it doesn't appear this project's been thought all the
7 way through because an offtake agreement to sell produce, you need a market. Does Estina
8 have the market to sell this produce?

9 DLAMINI: They may not necessarily having the market but one of the things that we know from
10 our province is all our produce that comes from our own farmers; obviously the milk will be
11 coming from our own farmers and it will go into Estina to produce. One of the commitment
12 from our government in the Free State that this produce would be taken.

13 JACOBS: From whom? So government is going to buy that milk?

14 DLAMINI: Not necessarily the milk. Ok the milk because they'll purchase the milk also and you
15 guy can whatever whatever. Part of it, yes we are going to have some agreements with the
16 hospitals and all that to buy from that thing. So government has [Inaudible 1:50:40.7] that 100%.
17 They will still have their market in terms of, starting to get markets into Pick and Pay, Checkers
18 and all the supermarkets.

19 JACOBS: Where's that set out because that's not set out in the agreement.

20 DLAMINI: That's why I'm saying maybe that's one of the things that lacks. That agreement was
21 still gonna come. Yes I agree with you it's not there.

22 JACOBS: What is Estina's track record in the production of, in the dairy food industry?

23 DLAMINI: What is that?

24 JACOBS: What is their track record? I mean Estina was, I can understand that Estina comes to
25 you and they indicate they're interested in engaging in this project with the department which
26 is fine. What is their track record? I mean these are people who just walked in off the street.

1 What is the, the company was incorporated in 2008; their background appears to be in IT.

2 DLAMINI: That is why I said our main interest was the [real] relationship with Paras. [With] Paras
3 have got [Inaudible 1:51:56.0].

4 JACOBS: Ja. What did you do to ascertain that Estina would have the capability to deliver on
5 this project? Where is that feasibility and due diligence report?

6 DLAMINI: That was done by ourselves.

7 JACOBS: By the department?

8 DLAMINI: No we have not done that.

9 JACOBS: You not done that?

10 DLAMINI: No.

11 JACOBS: So the department did no due diligence into Estina? So for all you know Estina is a
12 shell company with absolutely no income other than this project.

13 DLAMINI: What I have said is the main relationship is not more on the Estina but it's more on the
14 skill and the knowledge that Paras brings.

15 JACOBS: And Ms Dlamini as we.

16 DLAMINI: Because unless somewhere things would change. What it [will be this then]. The
17 branding also was going to be the branding in terms of Paras.

8 JACOBS: Ok.

19 DLAMINI: Of the produce.

20 JACOBS: And as you said the department did nothing to ascertain what the relationship was
21 between Paras and Estina.

22 DLAMINI: Well maybe I'm not aware of that's why I'm saying Dr Masiteng would confirm, HOD
23 would confirm also. I may not be aware of the [ascertainment].

24 JACOBS: Ok. Did you consider any other possible partner for this project?

25 DLAMINI: No.

26 JACOBS: This matter was not publicly advertised to attend the process. Is that correct?

1 DLAMINI: No it was not.

2 JACOBS: Did you, you didn't compile any due diligence on Estina. Did you compile any due
3 diligence on Paras as a department? I mean I've heard all the nice things on Paras; that's it's a
4 big Indian company and that they supply that they're one of the largest milk suppliers in the
5 world. Was any of that verified?

6 DLAMINI: Verified. I may say we relied on the fact that HOD went to India and to Paras [and]
7 was there.

8 JACOBS: So who from Estina did you interact with?

9 DLAMINI: The person who came to the presentation?

10 JACOBS: And anyone else. I showed you the picture of Mr Kamal Vasram, you say you just
11 seen.

12 DLAMINI: From where I'm sitting we don't always interact at that meeting their project
13 manager.

14 JACOBS: So would it have been HOD who would have interacted?

15 DLAMINI: The [Inaudible 1:55:36.4] is it would have been HOD because I once met when we
16 went to National Treasury the guy that you showed me it's not that I.

17 JACOBS: National Treasury?

18 DLAMINI: Ja, we went there to the National Treasury on site.

19 JACOBS: Oh it's at the site that this was done at the farm during the course of I think it was last
20 year, end of last year?

21 DLAMINI: This year.

22 JACOBS: Was it this year? Ok.

23 DLAMINI: We met with that guy that you.

24 JACOBS: Oh yes he was at the farm.

25 DLAMINI: He was at the farm.

26 JACOBS: And the person from National Treasury that was present was Chris Adam.

1 DLAMINI: Yes and normally we interact with the project manager.

2 JACOBS: Is he the project manager?

3 DLAMINI: No there's a project manager.

4 JACOBS: And what is his name?

5 DLAMINI: I don't know the name.

6 JACOBS: Ok,

7 DLAMINI: Their names are very difficult I can't remember them.

8 JACOBS: All right. Who guaranteed Estina's performance I mean one of the biggest risks in
9 government and I mean it's something that's come quite a while. Now particularly BEE entities
10 and smaller companies, risk of non performance is a big risk. Would you like.

11 DLAMINI: Non performance?

12 JACOBS: Non performance.

13 DLAMINI: Yes in some companies yes. It's a big risk.

14 JACOBS: Now Estina, you didn't to do any due diligence right? Who guaranteed Estina's
15 performance? Or is this similar to you're not quite sure whether Paras guaranteed Estina's
16 performance.

17 DLAMINI: That is why I'm saying we relied mainly on the fact that we had a relationship or an
18 agreement with Paras [then] Paras being a big company we want the partners there
19 themselves.

20 JACOBS: Did you see in the newspaper articles Paras is denying any involvement in this
21 project?

22 DLAMINI: No, which newspaper?

23 JACOBS: Mail and Guardian.

24 DLAMINI: Oh I did not see it.

25 JACOBS: Have you seen the Mail and Guardian articles related to this project?

26 DLAMINI: I did not because I remember I was not here when they said it's in the Mail and

1 Guardian but I don't think whether our communication has got that. I do not [merit] it.

2 Honestly.

3 JACOBS: And you haven't. This is the first you're hearing that.

4 DLAMINI: No I hear that this project has been in the media for a long time.

5 JACOBS: As the CFO of the project, I mean the CFO of the department that's implementing
6 the project didn't you think it's relevant to have a look at the articles? I mean this certainly has
7 brought a lot of scrutiny down on the department not so?

8 DLAMINI: I don't know maybe it's because many a times government is in the news, in the
9 media so.

10 JACOBS: How many times has been the department been in the news in the last year other
11 than for this issue? Negatively?

12 DLAMINI: [Inaudible 1:58:31.8]

13 JACOBS: And you haven't looked as the CFO I mean you know supply chain management
14 procurement irregularities and that's valid into your portfolio not so?

15 DLAMINI: No the thing is if I was told that this thing is in the newspaper and these are the issues
16 right? Then like the processes is a process that we are telling you I'm telling you that we
17 followed which I'm being open with this which is subject to scrutiny it's fine.

18 JACOBS: And did you see I mean my question to you is: Paras is the backer for this project.
19 They are the expertise not so? They're denying involvement in the project. Do you have a
20 comment on that?

21 DLAMINI: No I don't have a comment on that.

22 JACOBS: Ok. Just to summarise on this issue.

23 DLAMINI: Yes.

24 JACOBS: The department decided not to go ahead with any kind of procurement process
25 related to this project because the HOD and yourself believe that this is not necessary because
26 this is not a Tripple P, it's not a sole provider and it's not an unsolicited bid. It's a situation where

1 money is being given to a service provider.

2 DLAMINI: [I know much about].

3 JACOBS: To facilitate, let me just finish, to facilitate building infrastructure for dairy farmers to
4 sell their products or to process their products.

5 DLAMINI: I would not agree with this statement that says we did not see it not being not
6 necessary. We looked at all options then we say how this can be implemented as [one] and
7 say let's implement this model and with the implementation also we consulted [working] you'll
8 see that thing that was written there, that extras from that advocate. This matter was even
9 discussed with the Premier's office and the DG was present, the HOD treasury was present, the
10 state law advisors were present in that meeting. We discussed this issue and we looked at this
11 and he asked us what model would we want to apply. We explained.

12 JACOBS: Where is this model documented?

13 DLAMINI: There is not a model per se it's a practice, let me put it that way?

14 JACOBS: Ok and as CFO did you advise the HOD that this was an expenditure of public funds
15 in the procurement of a service provider to build infrastructure that the PFMA actually was
16 relevant and that supply chain management in particular was relevant in this matter.

17 DLAMINI: No, like I'm saying it's not the infrastructure that belongs to government, it belongs to
18 the beneficiary.

19 JACOBS: So in your opinion the PMFA and supply chain management had no relevance here.

20 DLAMINI: No not right the PMFA has a relevance here because we transfer money and [we'll
21 need] in terms of the.

22 JACOBS: I'll be more specific. The supply chain management has no relevance here.

23 DLAMINI: That's not true [Inaudible 2:01:57]

24 JACOBS: So supply chain management wasn't relevant.

25 DLAMINI: That's why I say I don't know. I would not know how can we [take] this not relevant
26 because we looked at everything and we say.

1 JACOBS: And decided to follow no supply chain management process. So you decided that
2 supply chain management was not relevant. It's not a hard question Ms Dlamini it's quite a
3 simple question. Yes or No? Did you, was supply chain management relevant? You didn't go
4 any recognised supply chain management route so you as the CFO might have believed that
5 supply chain management wasn't relevant.

6 DLAMINI: This was not relevant in the sense that we treated this thing as a transfer. In transfers
7 supply chain management we don't necessarily.

8 JACOBS: And in your opinion.

9 DLAMINI: But what we do in the company that uses the money right? We need to make sure
10 that they use the money for the intended because one of the things is to practice with [supply
11 chain] with financial management.

12 JACOBS: And we've already established that there's been no financial management
13 oversight here because you're making payments directly into a private company.

14 DLAMINI: Which they report. Which would then.

15 JACOBS: That's not financial oversight.

16 DLAMINI: Ok.

17 JACOBS: Would you agree with me? I mean you've got no insight into how they run. You
18 have no insight into how you spend the state's money. I see in one of the progress reports that
19 they indicated that they deposited, that they made a loan to the Department of R8m. Did you
20 see that?

21 DLAMINI: Maybe let me explain with the loan part of it. This project is in two phases. The first
22 phase it to put the dairy itself which is what we call the cow [hotel]. That is the correct
23 language. The reason why they put it as like a loan is because the department in [Inaudible
24 2:04:02.9] the beneficiary is responsible to put up that dairy. They may not use their own money
25 to put up the dairy but they will lose their money – their investment – in putting up the
26 processing plant and the money that they say it's a loan it's [Inaudible 2:04:10.2] to the

1 activities relating to putting up the dairy itself. That is why they classify it as a loan because
2 that's the part that we must do but because we have not as yet [have] money there then let's
3 continue with the project.

4 JACOBS: But in truth you had no idea whether they actually invested the R8m do you?

5 DLAMINI: I would say I would rely on their reports.

6 JACOBS: You have to rely on their good faith because the truth is that if they were taking your
7 money and using it and then rolling those funds in the same back it was your funds, you would
8 have no idea. I mean the department effectively have no oversight right? Correct?

9 DLAMINI: I will not agree entirely to say that there is no oversight. The fact that we don't have a
10 structured ways maybe the better word is because maybe we don't have a structured way of
11 monitoring because if [we know we did] and we go and look at progress.

12 JACOBS: Have you seen the bank accounts and the financial management of Estina?

13 DLAMINI: I have not seen the bank account.

14 JACOBS: But you know how the funds are being spent? Other than their report because as
15 we have already established Ms Dlamini people can put anything on a piece of paper. Isn't
16 that the point?

17 DLAMINI: [No] other than the report. For myself have not established anything.

18 JACOBS: What was the motivation, I can see in this document that somebody thought it was
19 necessary to get an authorisation to deviate from the prescribed procurement process. So
20 there is an actual recognition that there is a prescribed procurement process which needs to
21 be deviated from. What was the reason from deviating from the prescribed procurement
22 process?

23 DLAMINI: I don't know. The main issue there was to get or to make, to have a document that
24 says, that shows a procurement process was not followed and the only way the procurement
25 process was not followed is when you use a deviation.

26 JACOBS: But you know when you say that the procurement process wasn't followed at pre

1 [supposal] that the procurement process was required. Not so I mean that's logical. You don't
2 say.

3 DLAMINI: It could have been. For me it could have been used but the nature of the
4 transaction is in such a way that if you transfer and it doesn't require that.

5 JACOBS: What was the urgency in approving this project?

6 DLAMINI: I don't think so there wasn't an urgency.

7 JACOBS: So why did you go ahead with the project where you don't have a budget? Isn't
8 sound government financial management is that especially with a project where the project is
9 almost taking a third of your equitable share that you plan for it properly financially?

10 DLAMINI: But the project is budgeted for.

11 JACOBS: No. The project was not budgeted for in the 2012/2013 year when it was signed.

12 DLAMINI: [Suppose] it was budgeted for [checking] the.

13 JACOBS: No no I'm telling you Ms Dlamini we have spoken to national treasury. We've also
14 spoken to DAFF. This project wasn't budgeted for.

15 DLAMINI: Which year Ma'am?

16 JACOBS: 2012/2013 as I've said 2013/2014 is a different situation.

17 DLAMINI: Let me show you.

18 JACOBS: There was a R12m budget.

19 DLAMINI: 2012/2013 yes for the previous year.

20 JACOBS: And Estina says, you said to us you will give us R114m and that's why we need to give
21 you the loan because you have not come up with the R114m.

22 DLAMINI: Because if you look at the Exco memo it was saying the department needs to work
23 with treasury, work with FDC and other state entities to.

24 JACOBS: To get the money which means you didn't have the money which means it wasn't
25 budgeted for.

26 DLAMINI: But that very same year, I'm going to show you something. The very same year there

1 was an allocation. This one was for rural development. Let me have the [Inaudible 2:09:24.7]
2 the thing.

3 JACOBS: I don't think you have those but please go ahead and have a look.

4 DLAMINI: That money for Mohoma Mobung for 2013 R85m.

5 JACOBS: That comes from where?

6 DLAMINI: That come from the Provincial Treasury.

7 JACOBS: That they allocated to the project?

8 DLAMINI: Was allocated for Mohoma Mobung and this project is part of Mohoma Mobung.

9 JACOBS: Yes but what was the amount allocated to this project? Because this is only one of
10 many projects that exists under Mohoma Mobung.

11 DLAMINI: The entire amount was allocated because this project has since been given a priority.
12 In any case let me put it this way; not necessarily it has since been given the priority it is the only
13 one of this magnitude.

14 JACOBS: My question then comes back to you. Why was this project agreed to with such
15 urgency when in the [end tech] budget in the CASP budget there was no allowance for this
16 project? As a department you have not budgeted for this project. You scramble to get money
17 together as is very clear from the Exco memo that the Free State Development Corporation
18 was called in to try and source finance for the project. This was not a budgeted project.

19 DLAMINI: The reason why Exco was saying that the Free State, the FDC must come and assist is
20 because we budgeted this project but we budgeted it small like you're saying there was a
21 R12m, there was 35 and the only reason was for us to get to the R100, to the three is because
22 Exco has instead of doing this project over many years it was, from where we are sitting we did
23 not have a problem to say this project we can start with this phase and this phase and if it can
24 take 5yrs 6yrs right? We're still gonna complete it with the little that we are having in the
25 department; but then Exco resolved to say let the project not take long so that the benefit is
26 seen in a short space of time and then the.

1 JACOBS: So you sign an agreement.

2 DLAMINI: And then the treasury was then requested to say it must assist in terms of finding the
3 funding.

4 JACOBS: What was the initial budget set aside by the department for this project?

5 DLAMINI: Initially it was R12m started.

6 JACOBS: R12m. How did it [grad].

7 DLAMINI: And it was the R12m from the grant and the R35m from Mohoma Mobung, we were
8 to take money from there also. So we took, actually we funded it with R30m in that particular
9 year.

10 JACOBS: So it wasn't the whole of Mohoma Mobung that was taken.

11 DLAMINI: No the other R5m was not taken.

12 JACOBS: Where is the presentation that was done to all of the stakeholders on Mohoma
13 Mobung and the strategy behind the Mohoma Mobung last year?

14 DLAMINI: I think the HOD got the presentation work [Inaudible 2:12:32.7] sense.

15 JACOBS: Which bring me back to my question? You sign an agreement with a service
16 provider that a R114m will be made available during this financial 2012/2013 financial year.
17 R12m is budgeted for the project. Why the urgency in signing this agreement? Firstly why the
18 massive hike in the budget for the project? [Inaudible 2:13:11.3] from R12m to R114m to a
19 R342m overall contribution is a massive increase.

20 DLAMINI: Basically when we looked at this it was not only R12m. It was R12m plus the R35 of
21 Mohoma Mobung because Mohoma Mobung is not a grant we need not necessarily been
22 specific.

23 JACOBS: So the department decided that the entire Mohoma Mobung contribution would go
24 to this project? No other projects would benefit in this province because this project was such a
25 priority?

26 DLAMINI: But we did not use the entire of the 35 because some of the money then was

1 transferred to VKB for the chicken [broyers].

2 JACOBS: It then begs the question. Why was this project so important? Why the urgency and
3 the importance for this project?

4 DLAMINI: I don't think there was an urgency, maybe the importance is only the importance to
5 say if you look at it the economics [pin] of it that [necessity] that the beneficiary will get, the
6 benefit that the area itself itself. The activities that will be there, the jobs that will be created in
7 their.

8 JACOBS: A hundred jobs. A 100 jobs, I mean a 100 farmers are gonna benefit, the maximum.

9 DLAMINI: No but there will be people who's gonna work on the project working and all those
10 things.

11 JACOBS: How many people?

12 DLAMINI: What was the figure? Is it not 500? Or 150? I can't remember.

13 JACOBS: A 150 for R342m worth of capital injection. Government gets out no equity stake, 100
14 jobs and 80 farmers who are going to have a place to sell in bulk and receive some cows. Do
15 you think that's value for money to the state?

16 DLAMINI: Remember the state money that is invested here is the property of those
17 beneficiaries. They are not only getting the [Inaudible 2:15:24.0] they also own, they're also
18 going to won that [starta] that's why I'm saying even if Estina can wake up and say we are
19 moving out we will then have to assist them because there is big dairy there. We assisted them
20 to get a market for their milk somewhere.

21 JACOBS: That makes sense. What they don't own is the processing facility and they've got no
22 place to sell their milk.

23 DLAMINI: Yes.

24 JACOBS: So effectively they've got a place, well they've got a cow shed effectively for R342m
25 they have a stake as you put it in a [cow hotel]. No access because effectively the processing
26 plant belongs to Estina, you create 100 jobs for people who are working on the farm and 80

1 farmers have a place to process their milk and that seemed like a good idea for R342m worth
2 of investment.

3 DLAMINI: Let me put it this way. The 80 will own right the dairy itself, the cow hotel and the
4 cattles right. Meaning we're creating farmers right.

5 JACOBS: Well, existing farmers. You're benefiting existing farmers.

6 DLAMINI: No this existing farmers like your commercial farmers those are going to benefit
7 indirectly in terms of instead of transporting their milk to Gauteng they will then transport their
8 milk to which is nearby and they'll save on the [contract]. That will benefit around the farmers.
9 The commercial farmers and other farmers that are around that area when that processing
10 plant is up and running.

11 JACOBS: All right.

12 DLAMINI: Right but of this 80 that will own the investment that government is making there.

13 JACOBS: Are they farmers or not?

14 DLAMINI: Some of them are some let me not [Inaudible 2:17:21.2] Dr Masiteng is the one who
15 can say because I've not seen the beneficiary. I may not, I'm not a technical person. That list
16 that I gave to you.

17 JACOBS: So the beneficiaries are not farmers necessarily?

18 DLAMINI: No that list that I give to you, that's why I'm saying to you I'm not sure whether all of
19 them are farmers but remember in agriculture.

20 JACOBS: Then on what basis are they beneficiaries?

21 DLAMINI: No Ma'am wait. I'm saying I am not sure. Dr Masiteng will confirm whether all of
22 them are farmers or not or 100% they are farmers but I also want to explain to you to say a
23 project is not necessarily an agricultural project can be started with farmers only. No, we
24 sometimes group people together and say we are giving you this land go and plant.

25 JACOBS: And they have no idea what they're doing.

26 DLAMINI: That's why we give them support.

1 JACOBS: Estina is the support that you're giving them.

2 DLAMINI: Estina is the support that is given to them.

3 JACOBS: So these people if they aren't farmers they must go and become farmers? Is that the
4 understanding and then Estina will give them a place to process their milk because Estina has
5 no – my understanding is not that they're going to act as a cooperative and go in there and
6 teach people how to farm and you know create milk.

7 DLAMINI: But remember they are going to assist them to [Inaudible 2:18:53.8] make sure that
8 the dairy producers [Inaudible 2:18:56,7] which the dairy belongs to this 80.

9 JACOBS: Ok so why these 80? Who are they that they get to benefit and nobody else in the
10 province gets to benefit? On which basis were these 80 people chosen?

11 DLAMINI: That's why I'm saying maybe they all the small farmers in that area,

12 JACOBS: Ok but you may not know why they were chosen or not ok.

13 DLAMINI: I'm not clear.

14 JACOBS: Ok all right. Can you say that there was no real urgency in signing?

15 DLAMINI: No.

16 JACOBS: I mean this was fast in terms of signing a letter of engagement with a service provider
17 don't you agree? I mean they submit their proposal on 12 May, they do a presentation on 24
18 May, the HOD three days later sent them a letter saying we accept your proposal. The MEC
19 signs off on this I mean the Exco signs off on this with the premier how many days later. Two
20 weeks later and then within two three weeks of that there's a letter of engagement signed with
21 the service provider and a deviation from the procurement process signed on the same day.

22 DLAMINI: But remember because there was already the budget it's not necessarily that there
23 was an urgency but we budgeted already and only in government if you don't run with your
24 processes and put money and spend money that you've budgeted you loose; but the urgency
25 was I don't think it was a matter of urgency no.

26 JACOBS: When was your financial year?

1 DLAMINI: Our financial year end March.

2 JACOBS: March 31 so when you received this, this was basically right at the beginning of the
3 financial year. In actual fact you received this proposal 12 days into the new financial year not
4 so? You received the first proposal on - no I lie it's 12 April – it was 6 weeks into the new financial
5 year.

6 DLAMINI: Yes.

7 JACOBS: When is Estina's contribution to be made?

8 DLAMINI: Estina's contribution was to be made immediately in the second year. It's actually
9 suppose to happen this year because this is the second year of the project.

10 JACOBS: Why was that not set out in the contract with Estina?

11 DLAMINI: It wasn't [Inaudible 2:21:43.8] that the project is in phases.

12 JACOBS: No it doesn't say that. It says that Estina will make a contribution if necessary. All
13 project plan in line with Estina's proposals will determine the dates for capital injection by Estina
14 but what the agreement does say is: Estina will make a capital injection if necessary which
15 makes this even more suspect because if the basis for this is the fact that Estina is going to be
16 putting money into the project the agreement doesn't speak to the money that Estina is gonna
17 put into the project.

18 DLAMINI: Not necessarily.

19 JACOBS: And neither does it speak to what Estina's role is going to be in this project.

20 [Inaudible 2:22:29.3].

21 DLAMINI: You have a copy of that?

22 JACOBS: Ja we have a copy of that. Obligations of Estina: Estina shall provide a capital
23 injection of [Inaudible 2:23:37.5].

24 DLAMINI: What page?

25 JACOBS: This is page 6, 6.2: Estina ensures that the beneficiaries own 51% of the Agri BEE entity.

26 Why should Estina make sure that the beneficiaries own 51% of the Agri BEE entity? What is

1 Estina's interest in this? They're a private company. How can you leave that as a department
2 can you leave that responsibility to Estina?

3 DLAMINI: Ok.

4 JACOBS: Ok? Do you agree with that? I mean [Inaudible 2:24:16.8] of advocating the
5 department's responsibility.

6 DLAMINI: I don't think so but we also were really advised. Remember this contract was done
7 by the state law advisors for us. So I think all that they want to say – that's just my loud thinking –
8 is to say in that processing plant thing or that entity that 51% should go to the beneficiaries.

9 JACOBS: Estina shall pay R228m towards the project payable as contemplated in clause 6.2
10 with Annexure A. Can you take that call please? So if the project gets into phase 2 which is
11 effectively the.

12 DLAMINI: I'm sure they've even started.

13 JACOBS: Sorry?

14 DLAMINI: I say I'm sure phase 3 has even started.

15 JACOBS: And do you know. Just phone him back quickly because he called twice so it must
16 be important. So Estina was going to make its contribution. How do you determine, how would
17 you know when Estina started to make its financial contribution and what the extent of that
18 contribution would be?

19 DLAMINI: How do we?

20 JACOBS: How would you know once Estina started to make its contribution and what the
21 extent of its contribution would be? I mean financial oversight over the contract and over the
22 relationship surely that must have been thought of. I mean when you engaged in the
23 agreement.

24 DLAMINI: You mean how are we going to make sure that that they have invested is R228m.

25 JACOBS: R228m.

26 DLAMINI: Yes. It's a bit of a grey area but I think from our side what we're looking at is to pay

1 the processing plant should be there and the value of the processing plant maybe is another
2 thing but it was estimated at that point in time at R228. 7.4 say: The department shall consider
3 and approve [Inaudible 2:27:49.2] for phase 2 and phase 3. That's why I was saying the project
4 is gonna be implemented in phases.

5 JACOBS: At the point that the contract was signed there's actually no indication of what the
6 phases of the project will be is that correct?

7 DLAMINI: It's in the contract.

8 JACOBS: No it's.

9 DLAMINI: 7.4

10 JACOBS: 7.4 says that the project will be concluded in phases right? It shall consider and
11 approve amounts to be determined by Estina for phase 2 and phase 3 but it doesn't actually
12 include the actual phases. Annexure A when you look at it, it sets out on obligations for the first
13 phase is the land acquisition. The environmental impact assessment, feasibility study, water
14 [reticulation], electrical connections and then draw up a project plan in line with Estina
15 proposals but it must have milestones and timelines for phase two as approved by the
16 department. So at the point where this agreement is signed with the department, where,
17 there's no actual project plan that forms part, there's no timeline and there's no. You know
18 what concerns me Ms Dlamini and maybe [Inaudible 2:29:25.9]

19 DLAMINI: I hear your complaint.

20 JACOBS: The contract for a massive capital injection by the department because the
21 department is not going to receive any benefit. The contract is also fairly loosely drafted, you
22 understand what I mean?

23 DLAMINI: That's what I'm saying we thought this was the best contract because the contract is
24 drawn on our behalf.

25 JACOBS: By the state law advisors.

26 DLAMINI: By the state law advisors. We don't have the capacity in the department.

1 JACOBS: And who was the state law advisor who drafted the contract?

2 DLAMINI: [Inaudible 2:30:06.8] a Mr Venter in the Premier's office.

3 JACOBS: Ok and Mr Venter's contact details?

4 DLAMINI: I don't have it, will you please ask HOD for it.

5 JACOBS: Why were the beneficiaries in the project not identified before the project was
6 [implemented],

7 DLAMINI: Honestly let me say it was one of those lost and challenges in the system.

8 JACOBS: Meaning what?

9 DLAMINI: Under normal circumstances the beneficiaries were suppose to have been there
10 before that so I [won't] say.

11 JACOBS: This again adds to my concern that there seems to been a great deal of urgency in
12 getting this agreement signed when the department wasn't even clear that there were going
13 to be beneficiaries because now there appears to only be 80 beneficiaries.

14 DLAMINI: The beneficiaries were gonna be there, if you read under definition it says there
15 beneficiaries are persons from Vrede are, which means that the requirements of the Agri BEE
16 Charter on Black Economic Empowerment issued by the Minister of Tourism Industry [Inaudible
17 2:31:51.6] but also if you look at the minute that I gave to you of the consultation with the
18 municipality. One of the responsibilities of the municipality was to identify the beneficiaries in
19 their area.

20 JACOBS: So the beneficiaries weren't even consulted on whether or not they wanted this
21 facility. The agreement was entered into and then they were appointed or then they were
22 identified.

23 DLAMINI: This project is one of those initiated where you say when we get into this area and
24 you say you want to uplift the lives of the people in that area, you then group people like I said
25 it can be women in a group it can be. That normally it's not necessarily a process where you
26 can say: I advertise people who are interested must come. It's a process where mainly the

1 municipality will assist and say this is the poorest of the poor or this. I'm just making an example
2 I'm not saying this is the examples that we used. I'm not aware, I'm not aware from where I'm
3 sitting of the criteria. That's why I'm saying this now becomes a technical issue that probably Dr
4 Masiteng can help or HOD can help.

5 JACOBS: Are you aware, you may not be aware, how Vrede was identified as the area for this
6 project and why the Vrede community was picked out as the community that would benefit
7 because it seems that they've been benefited ahead of the rest of the province. My question
8 is why?

9 DLAMINI: I'm not, I may not be aware but I'm told that the, it's one of the good sport if I may
10 mind my English. It's one of the good sport in terms of the Mofutsanyani area because when
11 you look at Vrede because when you look at Vrede it's nearer to those of Mpumalanga. That
12 part of Mpumalanga which that area I'm told in terms of the statistics if good for milk or mild
13 farming. Technically that's what I hear amongst the discussions to say that area is good for it's
14 one of that areas that is good for farming. Actually it's Mofutsanyani in the Free State. Majority
15 of the milk farmers are from Thabo Mofutsanyani.

16 JACOBS: What is the total amount that is being paid to Estina on this contract?

17 DLAMINI: To date? R114.

18 JACOBS: R114m?

19 DLAMINI: Yes.

20 JACOBS: Are you sure?

21 DLAMINI: Yes I'm sure.

22 JACOBS: We have BASS information that indicates that R198m has been paid. Can you
23 explain the difference?

24 DLAMINI: 198?

25 JACOBS: Ja.

26 DLAMINI: No it can't be.

1 JACOBS: These are extracts from the BASS system.

2 DLAMINI: From who? From me?

3 JACOBS: These are the payments that have gone through the BASS system and it shows there
4 that a total of R198m has been paid.

5 DLAMINI: No, I know what happened. This was not 8. The 84 that you see it was subsequently
6 route to the cash flow problem but it was subsequently paid as 34, 30 and then [Inaudible
7 2:35:48.6] and we can prove that. The 84 was never paid. The BASS document that, let me put
8 it. Until we started [20 for] 2013 and let me [show you] and say we committed that 114, we did
9 not pay the 114 in 2023/2013 financial year. We paid only R2m and at the beginning the
10 company Estina came and say we have already placed orders, here's our cash flow we're
11 short of 84. Right we [Inaudible 2:36:24.8] the 84 available as soon as the new financial year
12 starts. The new financial year, the project is 100% budgeted R114m but if you look at the past
13 financial year, admit there was a shortfall of R84m but. So those are the 84 that you're saying
14 because of the 84 was not paid it was a shortfall. But it was never paid. We wanted to pay it
15 but the Provincial Treasury then said let's pay it in this week and the following and the other
16 following week so that the cash flow can be properly managed. So it was never paid, that I am
17 100% sure.

18 JACOBS: The authorisation dates in these.

19 DLAMINI: It was subsequently reversed. How the system works right? You see the paper that
20 they brought to me is the paper that this lady was bringing to me is a paper that I must sign. It
21 must go to the Provincial Treasury. The Provincial Treasury, anything that is above R1m you sign
22 it, it goes to the Provincial Treasury, the Provincial Treasury must take it to the bank and say to
23 the bank release this money that after they have looked at the cash flow of the entire province.
24 Not your own cash flow as a department.

25 JACOBS: Who loads payments in the. Who would have access to the BASS system here so we
26 can confirm that?

1 DLAMINI: Me Freda Claasen.

2 JACOBS: Freda Claasen?

3 DLAMINI: Ja.

4 JACOBS: Is she here?

5 DLAMINI: Yes she's here. Do you want see. Must I call her?

6 JACOBS: Ja tell her we'll sit with her later on this afternoon and just get an extract on the
7 matter from her on what payments were made and when they were authorised. Why were the
8 payments made into Estina's bank account?

9 DLAMINI: Because they were the ones who manage the project.

10 JACOBS: Did the department not consider it a risk paying money directly into, the money for a
11 project, directly into the bank account of a private entity? An entity over which it has no
12 control?

13 DLAMINI: Not really because we have an agreement with this entity.

14 JACOBS: To do what?

15 DLAMINI: To manage this project.

16 JACOBS: And if the entity commits fraud against the department and steals all the
17 department's money, how are you going to know? Where's the corporate government's
18 structure regulating the relationship between the department and Estina? Because nowhere in
19 that agreement does it even say that we have access to your financial records that we can
20 come and inspect. There's no corporate governance in the agreement at all or in the
21 arrangements here because you're saying to me you're not mentioning anything related to
22 corporate governance of this project.

23 DLAMINI: But it's just a verbal understanding that they understand at any given point in time it
24 we'll say if we gone and say let's see your bank account they will be able to avail that.

25 JACOBS: And if they refuse?

26 DLAMINI: I just [Inaudible 2:39:53.0] concerning the money because they can not refuse.

1 JACOBS: And so what will happen to the R114m we've already transferred? If they stole the
2 government's money how would you take action against them?

3 DLAMINI: On the basis of the agreement.

4 JACOBS: But you have absolutely no access or anything.

5 DLAMINI: But the agreement says this are the things they must do with the money so on the
6 basis of the agreement we say we give you the money, we expected you to do this you did not
7 do so we can take them to court. That's my understanding,

8 JACOBS: Ok so the government or the department is going to litigate against Estina if they
9 default on the contract?

10 DLAMINI: Yes.

11 JACOBS: But the department has absolutely no insight in the way that the project is being run
12 until the wheels come off at some point in the future. So on a day to day basis the departments
13 is not interested in how this project is managed financially. It's only if they fail to deliver at some
14 point in the future that the department is then going to sue them. Is that my understanding? Is
15 my understanding correct?

16 DLAMINI: I think yes, your understanding is correct in the sense that we don't have somebody
17 who's like saying I have access into the bank account or I'm sitting there with them.

18 JACOBS: And there's no corporate governance structure here regulating the relationship
19 between Estina and the department effectively. The department, I mean Estina regulates itself
20 because the department gives them the money, they go and do what they think is good in the
21 project and because there's no specifics in this agreement. There's no specification for what
22 needs to be developed. There's no standard. They could put up a corrugated shack and have
23 manual people processing milk. There's no quality assurance, there's no financial oversight,
24 there's no guaranteed expertise. Nothing in the agreement actually regulates the relationship
25 between the state and Estina.

26 DLAMINI: But the information that that says what is it that's bought and all that.

1 JACOBS: It's not part of the contract.

2 DLAMINI: But one of the documents is containing that information.

3 JACOBS: The project proposal.

4 DLAMINI: Yes it's in the project co and I think they also, the contract refers to the proposal as
5 Annexure B it's not that it's not.

6 JACOBS: No but it's not attached.

7 DLAMINI: Is it not attached?

8 JACOBS: And the proposal in terms of the project plan is not being created according to that
9 document, it's going to be agreed upon. So before government even knows what it's going to
10 get it's already agreed that it's going to get R324m. Let's move on from that I think we've
11 covered that area. Why is the payments listed as sundry payments and not as contract
12 payments on the BASS system?

13 DLAMINI: It's a sundry payment because we're paying it, I don't think we're, there's no, there's
14 no payments that we term contract payments in the system. Sundry is just but what is written in
15 the, you see that document? Let me show you the payments, which document. The
16 document itself is a sundry. No not that one, from the payments document. It says this is a
17 sundry payment advice. The description comes from here.

18 JACOBS: And then you reference the service level agreement as the reason for the payment.

19 DLAMINI: [Inaudible 2:43:56.0]

20 JACOBS: These are payments for; you mentioned that there are two payments here. There are
21 two payments that are not here.

22 DLAMINI: Ja but the copies I gave to National Treasury and they all make 114 if you add them
23 together.

24 JACOBS: Ok. I will have a look but you say that the supporting documentation is exactly the
25 same because it's not linked to certain deliverables.

26 DLAMINI: No it's not.

1 JACOBS: On what basis is payment then made?

2 DLAMINI: As a transfer.

3 JACOBS: So when are the agreed upon transfers?

4 DLAMINI: That is what I'm saying; they submit their cash flow right and based on their cash flow
5 we then submit. That's [Inaudible 2:44:36:3] if you look at this things, the same one that make,
6 that necessitate the 84 which the [Inaudible 2:44:47.8] was paid in 30 29 and then 19 whatever
7 that was the 34, 29 and [whatever]. There's a cash flow that shows there was a deficit already
8 whereby they say they already placed orders and all that. So there was a deficit.

9 JACOBS: So there's no project milestones that are required before you make certain
10 payments?

11 DLAMINI: Not necessarily.

12 JACOBS: No it's either not or it is.

13 DLAMINI: No.

14 JACOBS: No. So there's no milestones that basically submit their, as they say they need cash
15 you transfer funds.

16 DLAMINI: Yes.

17 JACOBS: If they were rolling funds, do you understand the concept of rolling?

18 DLAMINI: No.

19 JACOBS: Should they use your money and then they indicate that they're using it, they're
20 using their own money because it's happened in projects where service providers and that is
21 why Tripple P's are monitored to carefully; because you know if you make deposits into
22 company's bank accounts and there's a joint contribution and what happens is they use your
23 money and indicate it as an injection into the project. How did you ensure that they would not
24 be the rolling of funds? Because this R8m loan could technically be part of the R30m that you'd
25 given them. How would you know?

26 DLAMINI: I think this was some of the control that we need to put.

1 JACOBS: Ok am I correct in understanding that for the R342m financial contribution that would
2 be made by the department, the department would actually not receive any return for that
3 R342m. Is that correct? Because the department would have no ownership.

4 DLAMINI: Yes.

5 JACOBS: If this is not a loan that's been made to the farmers of R342m and as the you know
6 the Agri BEE entity makes a profit it will repay the department. It's just a straight beneficiation
7 made. This is R342m that you're just giving away.

8 DLAMINI: Yes to the farmer.

9 JACOBS: Well technically not to the farmers, to Estina because Estina has in fact been
10 receiving.

11 DLAMINI: No to the beneficiaries.

12 JACOBS: Well they're not receiving the money. Estina is receiving the money. Estina is going to.

13 DLAMINI: But Estina is going to put up an asset that is the asset of the beneficiary.

14 JACOBS: In the newspaper it mentioned that a Gupta wedding official visited the Free State,
15 I'm sure as you may hear the HOD mention yesterday - you know he's responsible for landing
16 the plane at Waterkloof - and he you know he said [a ton aren't cheap]. That being said there
17 is mention in the article that part of the reason why that plane was allowed to land because
18 there was an official that was coming to visit as part of this visit to South Africa to attend the
19 wedding. There was a Mr [Shivpal Singh Yadav] that, I may not be saying his name correctly,
20 was coming to visit Free State to come and discuss irrigation and public works. Did that take
21 place?

22 DLAMINI: I am not sure [Inaudible 2:48:14.9]

23 JACOBS: Do you have a copy of the motivation to Land Affairs to give you the land on which
24 this project is situated?

25 DLAMINI: Do I have the?

26 JACOBS: Do you have the motivation or the agreement or any of the documentation relating.

1 My understanding is that the Department of Land Affairs has given, or the Municipality has
2 given Free State Agriculture the land on which to develop this project right? Where's that
3 documentation because my understanding further is that Estina has been given the land on a
4 99yr lease free of charge.

5 DLAMINI: [I'll check].

6 JACOBS: Yes.

7 DLAMINI: I can get you the documentation relating to the loan.

8 JACOBS: Ok. Is that correct? Has Estina been given this land on a 99yr rent free lease?

9 DLAMINI: I'm not sure whether it's 99 but, let me give you the thing. Let me give you the
10 agreement.

11 JACOBS: Ok. On what basis was the land given to Estina?

12 DLAMINI: Is the land given to Estina?

13 JACOBS: Was the land given to Estina?

14 DLAMINI: For me the land is used for the project, it is not given to Estina.

15 JACOBS: But was it transferred into anybody's name? Who's the owner of the land?

16 DLAMINI: No I don't know Ma'am.

17 JACOBS: Were they given a 99yr lease? You're not sure?

18 DLAMINI: Not sure.

19 JACOBS: What was the role of the provincial Exco in approving the project?

20 DLAMINI: All the projects that we do in the province they go via Exco.

21 JACOBS: And what is Exco's role in approving the project? You mean effectively Exco can't
22 rectify an irregularity in terms of procurement process so and here was already a clear
23 deviation of procurement process so what was Exco's actual role when you say they approved.
24 What were they going effectively? I mean Exco.

25 DLAMINI: I think what they approved, they approved that the project were implemented in the
26 province.

1 JACOBS: It was a conceptual approval of what? The.

2 DLAMINI: That needs to be approved is to say they agree this project and be implemented.

3 We agree this budget can be spent but in terms of the actual implementation in terms of the
4 processes they are not.

5 JACOBS: They are not part of.

6 DLAMINI: That is not part of the program. Their approval.

7 JACOBS: So effectively Exco's approval is a conceptual approval. They approved the
8 concept.

9 DLAMINI: Yes. And the budget.

10 JACOBS: And in this case there was no budget. Now because clearly they say please go and
11 get the money for the project from you know the state development. They go to treasury
12 committee etc. So Exco's approval is conceptual. Approval and budget.

13 DLAMINI: But clearly I may mention that [Inaudible 2:51:34.4] the money was made available.
14 That is why we have R114 this year and R114 next year.

15 JACOBS: Ok and the approval by Exco really is a "in principal" approval of the project. It's not
16 a authorisation I mean the department is going then saying do you think this is a good project
17 for us to engage in and Exco says yes we think this is something that is worthwhile for the
18 province. Please go ahead and engage; but they don't regulate how the department
19 engages.

20 DLAMINI: No they don't.

21 JACOBS: That was an internal decision of the department.

22 DLAMINI: Well consulted.

23 JACOBS: Well ultimately it's your decision. The HOD's decision, you're the accounting officer.

24 DLAMINI: Yes after consulting and thinking.

25 JACOBS: No that's fine because at the end of the day Ms Dlamini as you agree with me.

26 DLAMINI: It's fine yes.

1 JACOBS: It doesn't matter who you consult, ultimately it's the accounting officer, its your
2 decision. That's ok. HOD is the accounting officer?

3 DLAMINI: Yebo.

4 JACOBS: And it's he's responsibility in terms of the PFMA to make sure that supply chain
5 management is dealt with appropriately in his department.

6 DLAMINI: Yeah.

7 JACOBS: Who took the role of provincial query in this procurement process because we see
8 mention of the provincial treasury as well. What was their role?

9 DLAMINI: I don't know. I think I may say necessarily – how do I put it – the role they came after
10 as you can see after we have met with the [horticulture]. After we have met with that
11 resolution of Exco and then Exco said you must implement. Then this teams must meet right?
12 We have [FTC] and whatever so we came together as a collective. The DG called the meeting
13 and then we went there and then we explained the project and all that and yes I must indicate
14 that indeed the provincial treasury did ask about why not Tripple P and that's the only part that
15 he asked about in terms of procurement. He also say why not Tripple P and we explained to
16 say from where we are sitting, this is the best way we thought we can implement it and then we
17 explained the way I had explained to you in terms of the VKB arrangement and all that. So ja
18 otherwise.

19 JACOBS: So treasury they had concerns about the Tripple P?

20 DLAMINI: Yes.

21 JACOBS: They weren't happy with your process?

22 DLAMINI: No not necessarily that they were not happy but the project, they asked to say why
23 are you not following that.

24 JACOBS: Can you get the letter of 14 November [Inaudible 2:55:34.0]. I put it to you Ms
25 Dlamini that the treasury actually went further. They indicated their concern with this project
26 and they certainly did with the national treasury. When national treasury asked these questions

1 and in a letter from the CEO of provincial treasury directed to the DG of national treasury dated
2 14 November 2012, Mr Mobongwe states that provincial treasury then advised, let me just read
3 the whole so I don't put it out of context. Your letter dated 25 October relating to the
4 abovementioned matter has reference. Now this is obviously in reference to the DG's previous
5 letter. We asked certain questions of provincial treasury that related to this project. It's
6 imperative to mention that this project forms part of the bigger Mohoma Mobung program of
7 the Department of Agriculture. This program basically entails the establishment of various
8 industries in the province which would contribute towards Agri processing and value adding to
9 agriculture produce in the province. The program also has the potential to become a major
10 contributor towards job creation in the province and more specifically in the Thabo
11 Mofutsanyani district. Even though the Vrede project was initially planned in the smaller project
12 which was to be funded through a combination of earmarked provincial funding CASP and
13 Lima/Letsema Commissioner grants. However, according to the Department of Agriculture an
14 opportunity presented itself on a private sector company by the name of Estina expressed
15 interest to partner with the department in providing additional funding, expertise and
16 management skills to the project. Subsequently the Provincial Executive Council resolved to
17 elevate the project to a mega project. Provincial treasury again advised the Executive Council
18 as well as the Treasury Committee on shortcomings related to the project, including but limited
19 to legal implications of the then contract, adherence to the budget process and principles.
20 Budgets and implications are the provincial fiscus and this associated the agreement. Arising
21 from this advice the Treasury Committee, a sub structure of the Executive Council made the
22 following key recommendations. That a technical committee under the leadership of the DGB
23 be established in order to into issues of funding, planning and the revision of the original
24 contract which was entered into by the Department of Agriculture and Estina. A
25 comprehensive review of the contract be done with the assistance of the state law advisors in
26 the Free State Development Corporation be involved in the project in order to assist the

1 Department of Agriculture to secure alternative funding. Over and above the R30m that the
2 Department pre prioritise in order to make an initial payment. No funding has been available
3 as yet for the shortfall of R84m.

4 So Provincial Treasury raises concerns at the Executive Council here related to shortcomings
5 [Inaudible 2:58:43.0] the project including the legal implications of the contract which I assume
6 relates to the fact that there's no supply chain management process here. Adherence to the
7 budget processes which I asked you about and which you said there was complete
8 compliance with the budget process which was clearly from treasury side, they didn't think
9 there was; and then this [Inaudible 2:59:04.5] with the agreement which we assume has
10 become extremely clear as a result of this consultation. When treasury raised these concerns,
11 how was these concerns addressed by the department?

12 DLAMINI: I think clearly if you read the letter. The letter says they raised their concerns to the
13 treasury committee, which I am not a member of the treasury committee.

14 JACOBS: No, they raised it with Exco. They advised the Executive Council.

15 DLAMINI: Fine if they advised Executive Council right and I think there's also a mention of the
16 Treasury Committee if I heard properly, which we are not member.

17 JACOBS: So you're not members of the Executive Council?

18 DLAMINI: No, we are not. I'm not sure whether HOD, sometimes HOD gets to be invited to Exco
19 so I'm not sure.

20 JACOBS: So when this project was discussed you weren't there.

21 DLAMINI: No I was not there at Exco. I was not there.

22 JACOBS: So you're not sure what the DG's role was then in this procurement process and what
23 they [asked].

24 DLAMINI: All what I know is I know they said the Treasury Committee then said a technical
25 committee must be, there's a Technical Committee right? A Technical Committee must be
26 established. That's there to the meeting that I'm saying. That led to the meeting that I said we

1 had a meeting. The CEO, us in treasury, the FDC, we all came together and that lead to this
2 contract that was drafted by the state law advisor; but in terms of the advisor – probably what
3 was because this process was they then was suppose to – which maybe you must ask HOD right
4 – whether he did receive a letter from Treasury because normally when you deal with Treasury
5 will say we are not happy, write to the accounting office to say that you are not complying with
6 1, 2, 3, 4 for keeping records so. Maybe you should ask HOD if subsequent to the advice,
7 maybe HOD did receive the letter. Maybe I am not aware of the letter that came from
8 Treasury that say we are not happy. Because from where we are sitting we thought that after
9 the technical team have met; because at that time when the technical meet, the technical
10 team was meeting there was no payment made yet. So we thought probably after the
11 technical team had met, this issues as they say they've raised, have been looked into and the
12 risk in terms of the contract, the state attorney has drafted the contract. We thought
13 everything is fine. Have treasury then went and made money available because the R114 that
14 is available for the project. R50m comes from Treasury and comes with a letter that is
15 earmarked for that particular project and the R54m is the one that is our own prerequisite
16 because it's in terms of the conditional grant. So we're of the view that we have still work on
17 this project together with them and everything is cleared. So that's why I'm saying I may not be
18 able to say whether they did advise the accounting officer as the way they advised Exco.

19 JACOBS: On what basis was the.

20 DLAMINI: That was maybe I was wrong when I was saying to you my understanding was the
21 process was made a 3 year project so it has to be finished in a small space of time because if it
22 prolong it may even take more money right? So the fact that [Inaudible 3:02:51.2] or Treasury
23 saying Exco took the decision to say it must be a merger project, I was not in that meeting I may
24 not be able to elaborate on the decision of that meeting.

25 JACOBS: On what basis was Estina contracted to upgrade head office?

26 DLAMINI: To upgrade?

1 JACOBS: Head office.

2 DLAMINI: Which head office?

3 JACOBS: This head office. The Glen.

4 DLAMINI: They are not upgrading Glen.

5 JACOBS: We've seen documentation that indicates that they've been made a payment of
6 R5m or approximately R5m [randulated] to the upgrading of the Glen.

7 DLAMINI: Glen. No.

8 JACOBS: If you look at the table, second payment there. This document from National
9 Treasury also indicates that the total amount spent on the project at that stage was well in
10 access of R114m that you indicated as been the only payments that have been made.

11 DLAMINI: Then again I can think but I am still getting it on record. The only money that this
12 department has paid to Estina is R114. The only thing that might have happened here is with
13 the budget allocated in the system, I [shall check] in the system. You'll find that probably at the
14 time when we were paying, the budget was not properly allocated to that particular item line.
15 Then it was used under the infrastructure or the capital line item which was wrong. It may also
16 be an error, a human error but we are subsequently rectified these figures so surely that item
17 put my head on the block. The only money paid to Estina is R114. So who will be able to?

18 JACOBS: So National Treasury goes into the BASS system and you say it's corrected. National
19 Treasury should be able to see that.

20 DLAMINI: No who would be able to give you even the journals that has rectified this entry,
21 looking at those item, even write it as a report to say that this journal rectified this and this is the
22 reason why we rectified it at.

23 JACOBS: All right. Can I ask? Ms Dlamini that's effectively all we have for you at this stage.

24 DLAMINI: Yes.

25 JACOBS: Thanks very much. I think those are also our, oh that's your copy and there, the
26 documentation underneath?

1 DLAMINI: That's my copies. This one is the letter you gave to me. This one is the 2011/2012
2 budget.

3 JACOBS: Could I have a copy of that?

4 DLAMINI: Of what?

5 JACOBS: The budget.

6 DLAMINI: You know our budget is a thick document because of the provincial budget. Do you
7 want that thick book?

8 JACOBS: No.

9 DLAMINI: This is the extract from the, let me write it here: Extract.

10 JACOBS: Thank you.

11 DLAMINI: This is the extract from the lists, so 2011/2012.

12 JACOBS: Sure. We've taken much more of your time than we initially planned.

13 DLAMINI: No it's all right.

14 JACOBS: Thank you so much. I'm going to go up to the HOD and start with the HOD. Trevor
15 would you join me when you're ready. Do you have any questions Trevor [sorry?]

16 BARNARD: Not at this stage.

17 JACOBS: End of interview.
18

Annexure “RJ5”

"R33"
R33
06/07/12

AGREEMENT

entered into and between

THE DEPARTMENT OF AGRICULTURE

(the "Department")

and

ESTINA (PTY) LTD

("Estina")

SG.
RS
SSA

1. PARTIES

The Parties to this Agreement are -

- 1.1 **THE FREE STATE DEPARTMENT OF AGRICULTURE** a provincial Department as contemplated in section 7(2) of the Public Service Act, 1994 (Proclamation No.103 of 1994) read with Schedule 2 thereof (as amended), herein represented by the Head of the Department, being duly authorised thereto (the "Department") for the benefit of beneficiaries to be identified by the Department; and
- 1.2 **ESTINA**, a company with registration number 2008/015033/07, duly registered in accordance with the company laws of the Republic of South Africa, with its registered address at Block A, 1st Floor, Grayston Ridge, 144 Katherine Street Sandton, herein represented by Mr Sanjeev Gautam, Managing Director being duly authorised thereto ("Estina"),

who warrant that they are duly authorised hereto.

2. RECORDAL

It is recorded that -

- 2.1 The Department has in line with the vision of **Mohoma Mobung Initiative** identified the need to establish a Dairy Project in Vrede.
- 2.2 The Governments of the Republic of South Africa and India entered into a Memorandum of Understanding on agricultural cooperation which include promotion of agricultural trade and investment.
- 2.3 The Department has met with **Paras Dairy** the largest private milk producer in India who have the technical know-how and has the rights to the internationally brand names and has agreed to work with the Department.
- 2.4 **Estina** is the counterpart of **Paras Dairy** in South Africa and is therefore sole provider who can execute the Project.

[Handwritten signature] *[Handwritten initials]*
[Handwritten initials] *[Handwritten initials]*

- 2.5 **Estina** is willing and able to execute the project (as defined in clause 3.1 hereunder), and has the necessary experience and expertise in connection therewith.
- 2.6 This Project shall also in effect to black economic empowerment in accordance with the AGRIBEE Charter on Black Economic Empowerment issued by the Minister of Trade and Industry on 20 March 2008.
- 2.7 The Parties agree as set out herein.

3. DEFINITIONS AND INTERPRETATION

3.1 Definitions

In this Agreement, unless the context otherwise requires, the following capitalised terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings:

"Agreement" means this Agreement including Annexures and Addendum;




"AGRIBEE entity" means entity in line with AGRIBEE Charter on Black Economic Empowerment issued by the Minister of Trade and Industry on 20 March 2008;

"beneficiaries" are persons from the Vrede area which meets the requirements of the AGRIBEE Charter on Black Economic Empowerment issued by the Minister of Trade and Industry on 20 March 2008

"Duration of Agreement" three (3) years from date signature of the party signing last

"Estina Proposal" means Proposal in respect of the Project attached hereto as Annexure B;

"Failure" means any failure by Estina to perform its obligation in terms of this Agreement;

"Good Industry Practice" applying, in relation to the manner in which the obligations are rendered, the standards, practices, methods and procedures conforming to applicable Law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances;

"Law" means all applicable laws, ordinances, regulations, judgments and orders of any competent court, governmental agency or authority in any relevant jurisdiction within the Republic of South Africa;

"Obligations" means obligations as set out in clause 6;

"Parties" means the Department and Estina, and any reference to "a Party" shall refer to one of the relevant Parties as required by the context;

"Project" means the Diary Project at Vrede;

"the/this Agreement" means this Agreement between the Parties together with the Annexures thereto.

3.2 Interpretation

This Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:

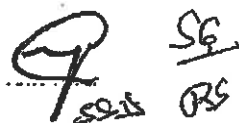
3.2.1 References to the provisions of any Law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Agreement.

3.2.2 References to **"Parties"** shall include the Parties' respective successors-in-title and, if permitted in this Agreement, their respective cessionaries and assignees.

3.2.3 References to a **"person"** shall include an individual, firm, company, corporation, juristic person, responsible authority, and any trust, organisation, association or partnership, whether or not having separate legal personality.

SSD RS

- 3.2.4 References to "clauses", "sub-clauses" and "Annexures" are references to the clauses, sub-clauses and Annexures of this Agreement.
- 3.2.5 References to any other contract or document shall include (subject to all approvals required to be given pursuant to this Agreement for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time.
- 3.2.6 Words in parentheses and italics appearing after a clause reference or a reference to a schedule are inserted for ease of reference only. If there is any discrepancy between the clause reference and the words in parentheses and italics, the latter shall prevail.
- 3.2.7 The headings of clauses, sub-clauses and Annexures are included for convenience only and shall not affect the interpretation of this Agreement.
- 3.2.8 The Annexures to this Agreement are an integral part of this Agreement and references to this Agreement shall include the Annexures.
- 3.2.9 The Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Agreement or any part of it.
- 3.2.10 Words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter.
- 3.2.11 References to "this Agreement" shall include this Agreement as amended, varied, novated or substituted in writing from time to time.
- 3.2.12 The number of days indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day and including the last day.

Handwritten signature and initials, possibly "SG" and "PS", in the bottom right corner.

3.2.13 If any definition in clause 3.1 (*Definitions*) contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of this Agreement.

3.2.14 In the event of an inconsistency between the provisions of this Agreement and the Annexures hereto, the provisions of this Agreement shall prevail,

4. APPOINTMENT

The Department agrees that Estina will implement and manage the Project in accordance with the terms and conditions of this Agreement for the duration of the Agreement.

5. CO-OPERATION

Each Party shall co-operate with the other in the exercise and performance of their respective rights and obligations under this Agreement.

6. OBLIGATIONS OF ESTINA

- 6.1 Estina shall in phase 1 perform the obligations mentioned in Annexure A by 31 December 2012.
- 6.2 Estina shall provide a capital injection of R228 000 000 (South African currency).
- 6.3 Estina ensure that the beneficiaries own 51% of the AGRIBEE entity the remaining shares belongs to Estina: Provided that should Estina decide to sell its shares, the Department will have the right of first refusal.
- 6.4 No dividends shall be payable before the AGRIBEE entity is self-sustainable.
- 6.5 Estina shall in Phase 2 (setting up and management of dairy) and 3 (setting up and management of processing plant) perform its obligations in line with their Proposal as mentioned in Annexure B and in line the agreed milestone as envisaged in Annexure A and these must be included to the agreement as an addendum.

F *SG*
SSA *RS*

- 6.6 **Estina** shall in execution of the Project, avoid undue hindrance, interruption or interference with the operations of the **Department** or otherwise hinder the activities of the **Department** and its employees, save to the extent entitled to do so in terms of this Agreement or as may be reasonably necessary for the performance of its obligations under this Agreement.
- 6.7 **Estina** shall devote the necessary time and attention to their obligations and not engage in any business or activity that will prevent **Estina** from performing its obligations effectively.
- 6.8 **Estina** shall not be relieved of any obligation, responsibility or liability under this Agreement by the appointment of any sub-contractor to carry out any part of its obligations. As between **Estina** and the **Department**, **Estina** shall be responsible for the payment, performance, acts, defaults, omissions, breaches and negligence of all sub-contractors. All references in this Agreement to any performance, payment, act, default, omission, breach or negligence of **Estina** shall be deemed to include any of the same by a sub-contractor.
- 6.9 The **Department** shall at all reasonable times and with prior written notice have access to the property, all records and documentation (including the right to reproduce) required of **Estina** to be kept in relation to the Project for purposes of auditing, quality control and monitoring of the Project by the **Department**.
- 6.10 **Estina** and the **Department** shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the **Department's** data and to prevent any corruption or loss of the **Department's** data.
- 6.11 In the event that the **Department's** data is corrupted or lost as a result of any default by **Estina** the **Department** shall have the option, in addition to any other remedies that may be available to it either under this Agreement or otherwise, to elect either of the following remedies:
- 6.11.1 The **Department** may require **Estina** at its own expense to restore or procure the restoration of the **Department's** data;

7
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6.11.2 The Department may itself restore or procure restoration of the Department's data and shall be repaid by Estina.

6.12 Estina shall:

6.12.1 carry out its obligations (each as a separate and distinct obligation);

6.12.2 at its own cost, risk and expense and in accordance with Good Industry Practice;

6.12.3 in a manner which gives priority to health and safety in the performance of the obligations in order to protect life, health, property and the environment;

6.12.4 in compliance with the reasonable policies, procedures, protocols and directives of the Department (as may be amended from time to time) as indicated;

6.12.5 employ persons in connection with the performance of the obligations who have the necessary skills and experience as required by their respective professions, trades and callings and taking into account their roles and responsibilities in relation to the Project;

6.12.6 ensure that all aspects of the Project are supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of its obligations; and

6.12.7 shall upon receipt of a request by the Department within 5 (FIVE) days supply to the Department evidence substantiating its compliance with this clause.

7. GENERAL RIGHTS AND OBLIGATIONS OF THE DEPARTMENT

The Department –

7.1 shall assist Estina with adequate access to information and documentation available to the Department that will be required by Estina to implement the Project;

7.2 shall make payments in terms of clause 13 (Payment);

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7.3 shall identify beneficiaries for the AGRIBEE entity;

7.4 shall consider and approve the milestones determined by Estina for Phase 2 and 3;

7.5 shall inform Estina of its policies, procedures, protocols and directives as may be applicable to the Project and shall timeously inform Estina of any amendments thereto.

8. WARRANTIES

8.1 Estina warranties

Estina warrants that -

8.1.1 It is the counterpart of PARAS and the sole provider for the services in the Project;

8.1.2 the obligations of Estina under this Agreement are legal, valid and binding and enforceable against it in accordance with the terms of the Agreement;


8.1.3 it has satisfied itself as to the nature and extent of the obligations to be provided in terms of the Agreement; and

8.1.4 it has the necessary resources, skills, expertise and experience required to carry out the obligations in terms of this Agreement and will use reasonable care and skill in the execution of the same under this Agreement.

9. PERFORMANCE MONITORING

9.1 Estina shall monitor its performance in the delivery of the Project, and shall implement appropriate monitoring and management procedures in respect of the Project, including any reasonable monitoring procedures as the Parties may from time-to-time agree.

9.2 On the notification of any Failure or complaint regarding the quality of its performance, Estina shall attend to such notification with the urgency appropriate to the nature of the Failure or complaint.

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9.3 **Estina** shall on a monthly basis prepare and submit financial reports to the **Department** and a quarterly performance report in respect of its performance, including any Failures and such other information as the **Department** may reasonably require from time to time.

9.4 The **Department** shall monitor the performance of **Estina** and may at any time in addition to the report in clause 9.3 request any other information.

10. CONFIDENTIALITY

10.1 **Estina** shall not, during the term of this Agreement and thereafter, without the prior written consent of the **Department**, disclose any confidential information relating to the **Department** and the Project to anyone other than those persons who are connected to the **Department** and/or **Estina** and who are required or authorised to have access to such information.

10.2 The obligation to maintain the confidentiality of information shall survive the termination of this Agreement, but will not apply to confidential information which was in the public domain prior to being disclosed by **Estina** and has come into the public domain other than as a result of being divulged by **Estina** or is required to be disclosed by a court of law.

11. OWNERSHIP OF INTELLECTUAL PROPERTY

11.1 Information provided by the **Department** to **Estina** and any studies, reports and documentation produced by **Estina** in the performance, but excluding any materials that contain any of **Estina's** pre-existing intellectual property rights, methodologies or know-how, shall belong to and remain the property of the **Department**, and will not be used by **Estina** for any purpose other than in accordance with this Agreement, unless by written permission of the **Department**.

11.2 Upon termination of this Agreement for any reason whatsoever, **Estina** must return without delay to the **Department** all materials in its possession, which belong to the **Department**, regardless of whether or not such materials were originally supplied by the **Department** to **Estina**.

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12. FINANCIAL CONTROL

This Agreement is subject to the provisions of the Public Finance Management Act, 1999 (Act No.1 of 1999).

13. PAYMENT

13.1 The Department shall make payment as follows:

13.1.1 to Estina an initial amount of R30 million to execute phase 1 as set out in Annexure A on the signature of the last party;

13.1.2 on certification that Annexure A has materially been complied with, as well as completion of milestones by Estina as set out in the Project Plan: Provided that advance payments may be made to Estina on properly motivated requests as approved by the Department.



13.2 The money payable by the Department during the term of this Agreement shall not exceed the amount of R342 million including Value Added Tax ('VAT') over a period of three years. To avoid doubt, the total amount of the invoices submitted throughout the term of this Agreement shall not exceed the aforementioned amount.

13.3 Estina shall pay R228 million towards the project payable as contemplated in clause 6.2 read with Annexure A.

13.4 Budget

13.4.1 Estina shall in all cases, irrespective of the basis payment, prepare an estimated budget (including allowance for VAT) for the cost of the Project for the various stages of the Project for approval by the Department in accordance with Annexures A, B and the contemplated Addendum; and

13.4.2 Such budgets must be revised and updated quarterly or as instructed by the Department and all potential additional expenditure and or over-expenditure must be with the consent and approval of the Department.

 
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13.5 Invoices

13.5.1 **Estina** shall submit to the **Department** invoices together with relevant reports in line with the Project Plan detailing description of the component of the Project completed by **Estina** for which payment is being claimed;

13.5.2 The **Department** shall pay the amount of the Invoice within 30 (THIRTY) days of its submission and delivery to the **Department** of a valid invoice in respect thereof, together with the relevant reports contemplated in clause 9 (*Performance and Monitoring*).

13.5.3 If the **Department** disputes, in good faith, any amount, or the calculation, composition or supporting information evidencing any amount, set out in a Invoice, the **Department** shall be entitled to withhold payment of the amount so disputed (the "Disputed Amount").

13.5.4 The Parties shall liaise and use reasonable endeavours to agree on the Disputed Amount. Where the Disputed Amount is not agreed upon within 10 (TEN) Business Days either Party may refer the matter to for resolution pursuant to clause 16 (*Dispute Resolution*).

13.5.5 All amounts payable in terms of this Agreement shall be inclusive of VAT.

14. INSURANCE

Estina shall maintain professional indemnity insurance with a limit of indemnity not less than the value of the Project for any claim in respect of any neglect, error or omission on the part of **Estina** in the performance of its obligations under this Agreement, for the duration of this Agreement.

15. TERMINATION

15.1 Non-default termination

15.1.1 This Agreement shall automatically be terminated on the termination date, unless it has been terminated earlier in accordance with the provisions of this Agreement.

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15.2 Breach

15.2.1 A party commits breach if he fails or refuses to perform as agreed in terms of the provisions of the agreement.

15.2.2 Should any Party (the "guilty party") commit a breach of this Agreement and fail or refuse to rectify that breach within 14 (FOURTEEN) days after receipt of a written notice from the other Party (the "innocent party"), calling upon the guilty party to rectify that breach, the innocent party shall be entitled, without prejudice to any other of his rights, to forthwith cancel this Agreement by written notice to the guilty party.

15.3 Exhaustion of Funds

It is also agreed that should funds no longer be available to pay for the execution of the Project, the Department may terminate this Agreement in its own discretion or temporarily suspend all or part of the Project by notice to Estina who shall immediately make arrangements to stop the performance of the Project and minimize further expenditure: Provided that Estina shall thereupon be entitled to payment in full for the services delivered, up to the date of termination or suspension.

16. DISPUTE RESOLUTION

16.1 The dispute resolution procedure contained in this clause shall apply to any dispute, claim or difference between the Parties arising out of or relating to this Agreement ("a dispute").

16.2 A dispute will not be deemed to be a dispute until one of the Parties has provided a written notice conveying the nature and scope of the dispute to the other Party.

16.3 Parties will endeavour to solve all disputes amicably first.

16.4 If the Parties have been unable to resolve any dispute within 10 (TEN) working days of the date of the notice contemplated in clause 16.2.

16.5 Nothing in this clause prevent any Party to approach the Free State High Court having to obtain urgent relief which may be required by such Party.

17. INDEMNITIES

Estina indemnifies and shall keep the Department indemnified at all times against all losses sustained by the Department in consequence of -

17.1 any -

17.1.1 loss of or damage to property;

17.1.2 breach of a statutory duty arising under any applicable Law;

17.1.3 claim for or in respect of the death or personal injury of any individual; or

17.1.4 other claim, action, charge, cost, demand or expense,

(including, without limitation, any legal fees or costs) arising in connection with the performance or non-performance of any of the obligations, save to the extent caused by the gross negligence or wilful misconduct of the Department or by a breach by the Department of an express provision of this Agreement that is directly linked to the loss; or

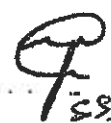
17.2 any breach by Estina of any warranties given by it in this Agreement.

18. CONTRACT MANAGEMENT

Both Parties shall nominate and appoint Contract Managers from time to time by written notification of their appointment to the other Party to facilitate the implementation of the agreement.

19. MISCELLANEOUS

19.1 Save as expressly permitted hereunder, a Party shall not, without the prior written approval of the other Party, which shall not be unreasonably withheld, assign, cede, delegate, transfer or otherwise dispose of any right or obligation under this Agreement to any other person.

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ESD QS

19.2 **Estina** shall not subcontract with any person for the carrying out of any of its obligations under this Agreement, without, in each case, the prior written consent of the **Department**, which consent shall not be unreasonably withheld or delayed.

19.3 This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa. Each Party agrees that the Free State High Court of South Africa shall have exclusive jurisdiction to hear and decide any application, action, suit, proceeding or dispute in connection with this Agreement, and irrevocably submits to the jurisdiction of the Free State High Court, Bloemfontein.

19.4 No provision of this Agreement including, without limitation, the provisions of this clause may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this Agreement, except (in any such case) by an agreement in writing signed by the duly authorised representatives of the Parties.

19.5 Any relaxation, indulgence or delay (together "Indulgence") by either Party in exercising, or any failure by either Party to exercise, any right under this Agreement shall not be construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that Party or any other person).

19.6 Except where expressly provided to the contrary in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations, understandings and agreements concerning the subject matter of this Agreement.

19.7 This Agreement may be executed in any number of identical counterparts, all of which when taken together shall constitute one agreement. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the Parties shall constitute a full original of this Agreement for all purposes.

19.8 All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of this Agreement or relating to it shall be given in writing and sent by registered post, or delivered by hand, or transmitted by facsimile or electronic mail to the recipient Party at its relevant address set out below:

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19.8.1 the Department, at:

Address: Building No 4
 Glen Agricultural College
 Gielie Joubert Street
 Glen

Postal address: PO BOX 01 Glen, 9360

Facsimile number: 051 861 8454

Marked for the attention of: The Head of Department

19.8.2 Estina, at:

Address: Block A, 1st Floor, Grayston Ridge, 144 Katherine Street Sandton

Postal address: BLOCK A, 1st FLOOR, GRAYSTON RIDGE
144 KATHERINE STREET, SANDTON

Facsimile number: 086 733 0022

Marked for the attention of: Managing Director

19.9 Either Party may, by written notice to the other Party, change any of the addresses at which, or the designated person for whose attention those notices or other communications are to be given.

19.10 Any notice or other communication given by any Party to the other Party which --

19.10.1 is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th (SEVENTH) day after the date of posting; or

19.10.2 is delivered by hand during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or

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19.10.3 is transmitted by facsimile copier to the addressee at the addressee's specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report; or


19.10.4 is transmitted by electronic mail to the addressee at the addressee's specified electronic mail address shall be rebuttably presumed to have received by the addressee on the date of transmission as reflected on the sender's electronic mail records.

19.11 The Parties choose their respective physical addresses in clause 19.8 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant Party until it nominates a new physical address within the Republic of South Africa in writing, to be its new *domicilium citandi et executandi*.

19.12 Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

19.13 Nothing in this Agreement shall be construed as creating a partnership or a contract of employment between Estina and the Department. Save as expressly provided for in this Agreement, Estina will not be, or deemed to be, an agent of the Department and Estina shall not hold itself out as having authority or power to bind the Department in anyway.

Thus done and signed at Bloemfontein on this 05 day of July 2012....



THE HEAD OF DEPARTMENT

Name: Mr Peter Thabethe



WITNESS

Name in print: SS Shlaminzi

Thus done and signed at BLOEMFONTEIN on this 5TH day of JULY
20...12...

S. Gautam

ESTINA
MANAGING DIRECTOR
Sanjeev Gautam

R. J. Sharma .

WITNESS

Name in print: R. J. Sharma .


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ANNEXURE A: OBLIGATION FOR FIRST PHASE

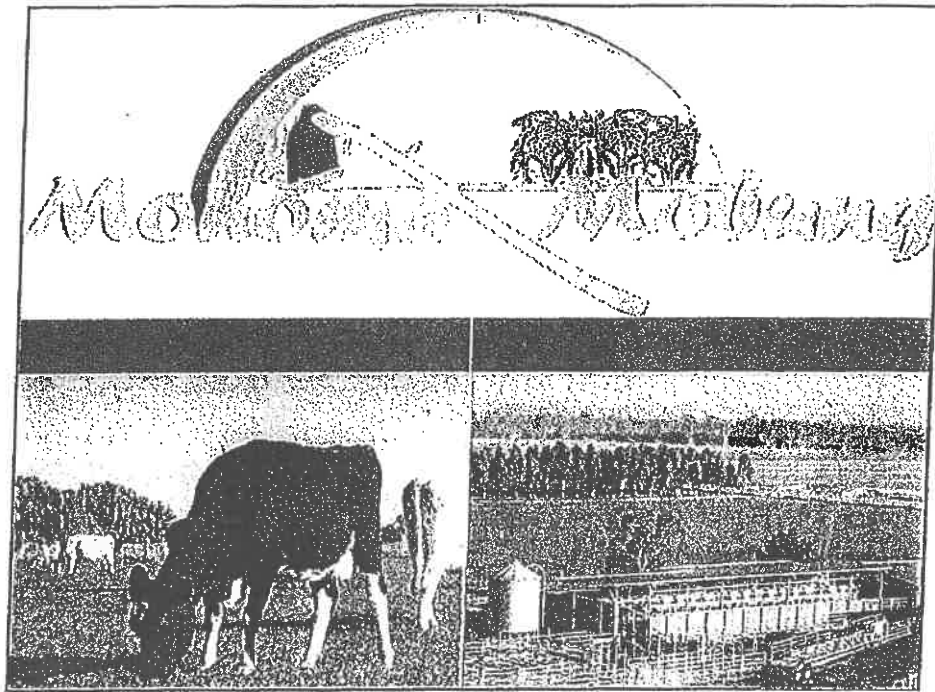
| Id | Tasks |
|----|--|
| 1 | Land acquisition |
| 2 | Environmental Impact Assessment |
| 3 | Feasibility study |
| 4 | Water reticulation |
| 5 | Electricity connections |
| 6 | Include identified beneficiaries in AGRIBEE entity |
| 7 | Set up of AGRIBEE entity and clarify roles of stakeholders (Department, AGRIBEE entity and Estina) |
| 8 | Draw a project plan in line with Estina Proposals which must have milestones and timelines for phase 2 as approved by Department |
| 9 | Determine the dates for capital injection by Estina |


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ANNEXURE B
ESTINA PROPOSAL

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Annexure “RJ6”



**Department of Agriculture & Rural Development :
Integrated Dairy Project
in Vrede, Free State**



in collaboration with



Grow with Paras

Vision Mission Values



Our Vision is to create a large scale integrated self-sustainable Dairy Project in the Free State Province to benefit black farmers

Our Mission is to build a self-sustainable business model that will:

- open up employment opportunities for black farmers at grass-root level and
- fuel economic growth in the Province

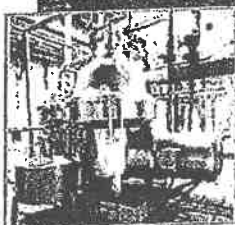
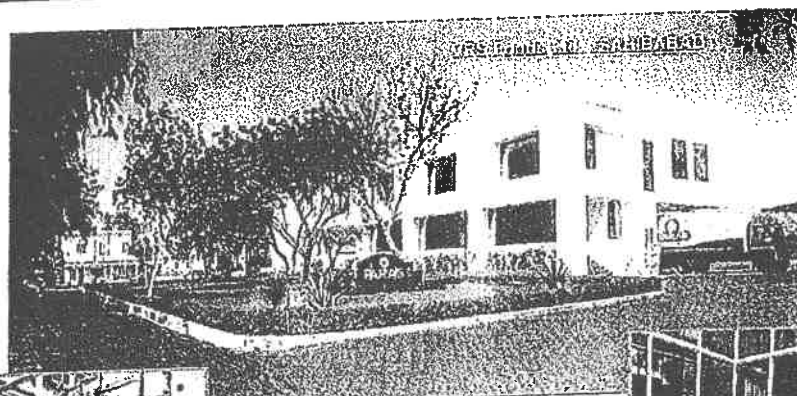
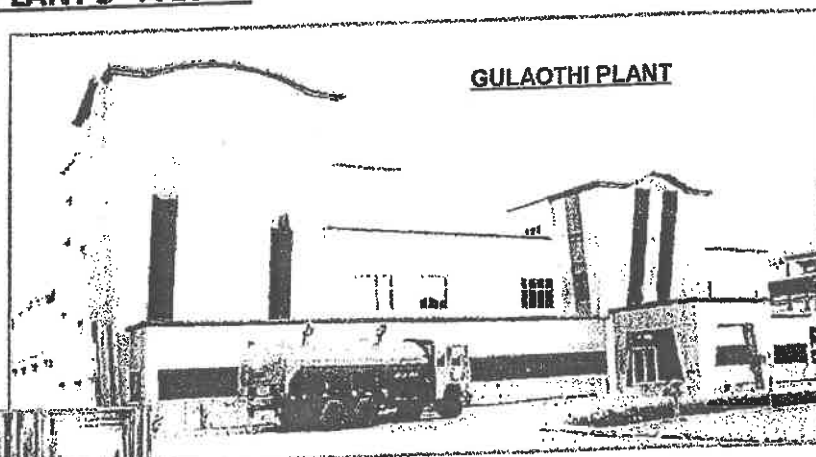
We are committed to our values of Trust, Honesty and Integrity as the core of our approach to business.

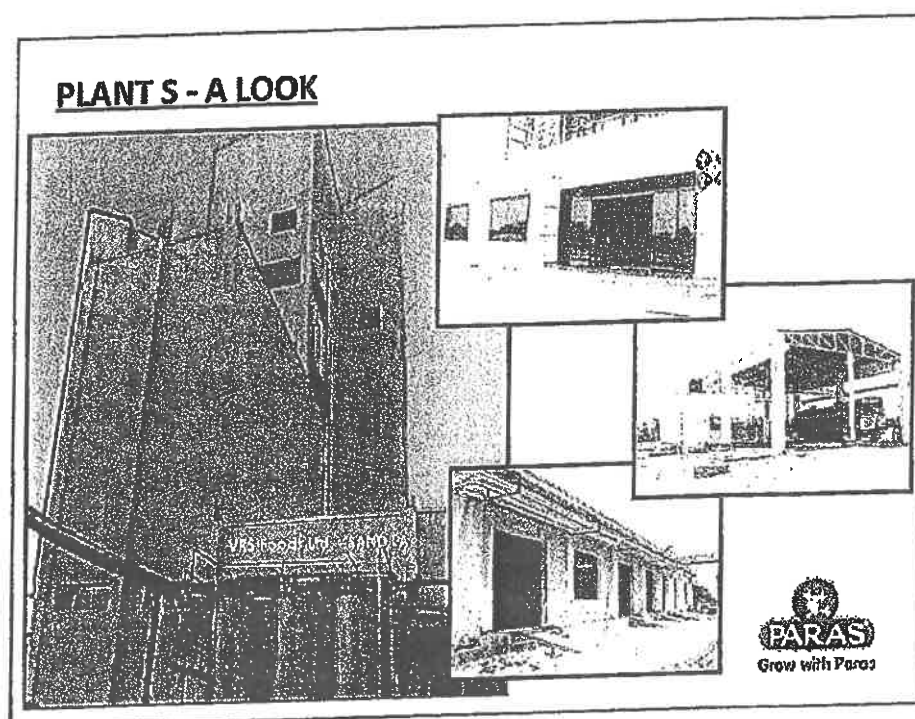
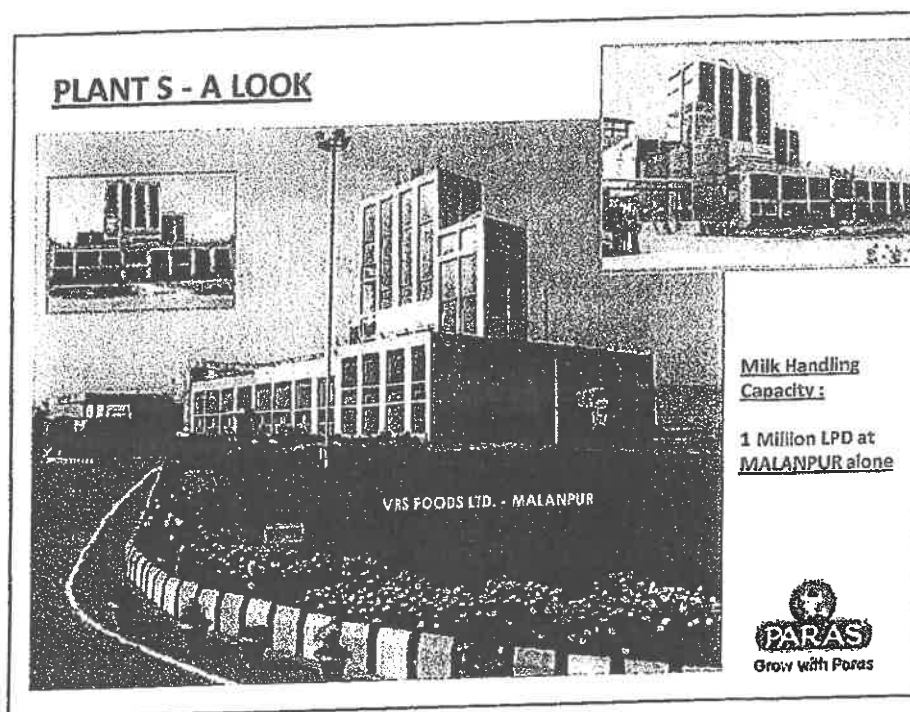
COMPANY PROFILE



- ❖ In operation since 1960 – 51 years of experience
- ❖ One of the Leading milk processing plants in India.
- ❖ Biggest Private Milk processors in India.
- ❖ 5 State of the Art ISO 9001-2000 and HACCP Certified Manufacturing Facilities
- ❖ Total Liquid Milk Intake of more than 720 Million Litres Per annum
- ❖ Processing capacity of 3 million Liters Per Day.
- ❖ Network Covering more than 5000 villages
- ❖ Amongst the Largest Suppliers of Liquid Polypack Milk In New Delhi with around 250,000 Litres supplied to the local market daily.
- ❖ The Only Company in North India to market Bactofuged Milk.
- ❖ Fleet of 300 Stainless Steel Insulated road milk tankers
- ❖ A strong brand equity and domestic acceptance.
- ❖ Modern Dairy Ingredients plant in collaboration with WESTFALIA SEPERATORS, A.G.GERMANY, FILTRATION ENGINEERING Inc. USA, APPLEXION FRANCE, ALFA LAVAL
- ❖ Accredited as a 2 Star Export House by the Govt of India
- ❖ ESTINA Pty Ltd. is the local representative company which has been appointed by Paras to engage with the Department on the Vrede Project.



PLANT S - A LOOK**PLANT S - A LOOK**

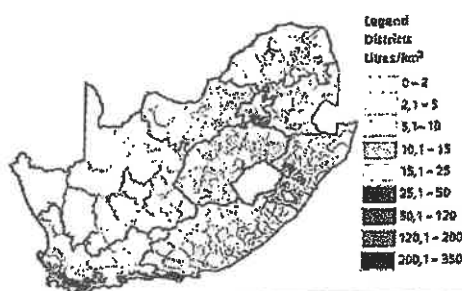


SOUTH AFRICAN MILK SCENARIO OVERVIEW



- ❖ Annual milk production shows a steady upward trend over time
- ❖ Total milk to market for 2011 was around 2.6 billion litres
- ❖ The number of milk producers has decreased from 3,899 in 2007 to 2,627 in 2011
- ❖ Since 1997, the number of milk producers in the Free State reduced by 47%
- ❖ In 2011, SA imported 149.4 million litres equivalent of milk and milk products while exports stood at 43.5 million litres.
- ❖ Of a total of 2,474 milk producers in the country, 535 are based in the Free State
- ❖ There is a compelling business case for the setting up of a Dairy Project in the Free State

Figure 1: Milk production density (litres/km²) per district, 2009



KESTINA

INTERNATIONAL MARKETS

- ❖ North America:
- ❖ EU: (Germany, France, Turkey, Belgium, Italy, Ireland, Denmark, Poland, Netherland etc.)
- ❖ Asia: (Singapore, Thailand, S Korea, Indonesia, Philippines, Japan, Bangladesh, Afghanistan, Pakistan, Srilanka etc.)
- ❖ Africa: (Sudan, Nigeria, Ivory Coast, Madagascar, Morocco, Egypt)
- ❖ Middle East: (UAE, Saudi Arabia, Yemen, Oman, Qatar, Kuwait, Jordan, Bahrain, Syria, Lebanon)
- ❖ Oceania: (New Zealand, Australia)



VREDE DAIRY PROJECT - HIGH-LEVEL OUTLINE



❖ DAIRY INFRASTRUCTURE

- ❖ Land – Identified at Vrede
- ❖ Cattle – 500 Cows in-Dairy and 500 Cows to be donated
- ❖ Infrastructure – Dairy Parlour/Feed Storage/Feed-Lots/Land cultivation for Feed

❖ COMMUNITY DAIRY

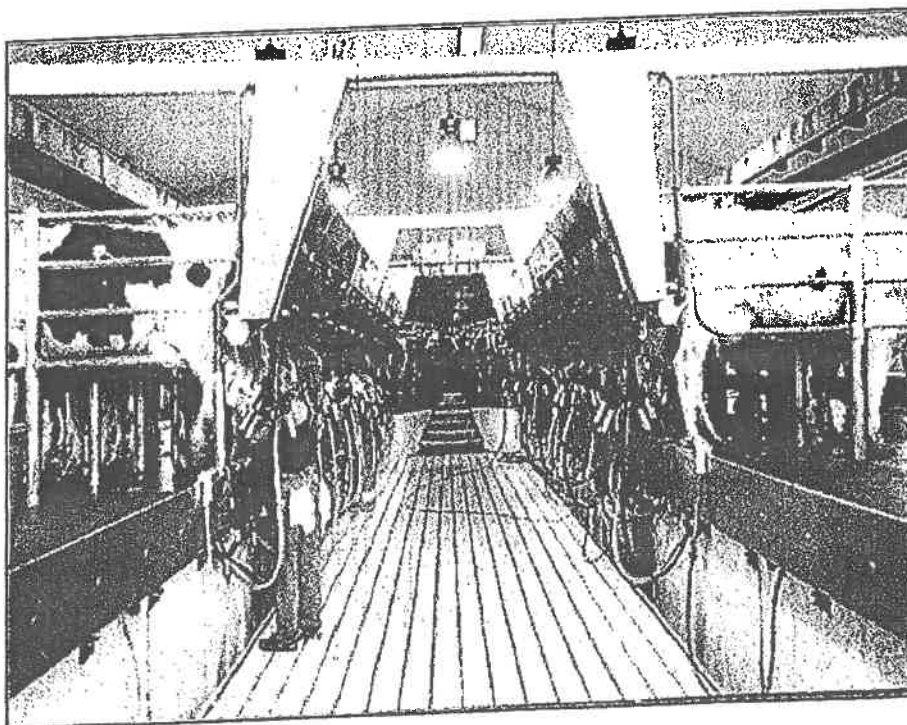
- ❖ Identify 100 members of the Community who will receive 5 Cows each
- ❖ Community Milking Centres to be setup with easy access to members
- ❖ Members will have access to Feed, Vet Services and Training
- ❖ Members will be paid for milk from the cows donated to them

❖ PROCESSING PLANT

- ❖ State of the Art ISO 9001-2000 and HACCP Certified Facility to be set up
- ❖ Initial Processing capacity of 100,000 litres per day
- ❖ Initial targeted milk intake of 40,000 litres per day.
- ❖ Products to include Liquid Milk, UHT Milk, Cheese and other products

❖ PRODUCT MARKETING & SALES

- ❖ Products will be branded "Mophoma Mobung"
- ❖ Aggressive marketing campaigns using celebrities and Sports Icons as brand ambassadors
- ❖ Supply of Bulk Milk to Hospitals and UHT Milk to Schools



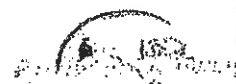
PROPOSED PLANT LOCATION



Department of Agriculture in consultation Phumelela Local Municipality have identified 4,400 Hectares of Municipal Land in Vrede as the general location where the project will be established.

The terms of transfer of Land or usage of the same have to be discussed and agreed between all stake-holders

K-E TINA



LIST OF PRODUCTS



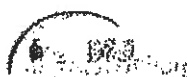
PRODUCT PROFILE

- * Skimmed Milk Powder (SMP)
- * Whole Milk Powder (WMP)
- * Casein (Acid & Rennet)
- * Caseinates (Na & Ca)
- * Demineralized Whey Powders (DM 70 & DM 90)
- * Whey Protein Concentrate (WPC 31 & WPC 35)
- * Ghee
- * Milk Protein Concentrate
- * Dairy Whitener
- * Lactose
- * UHT Milk
- * Butter



Purity comes first

www.parasdairy.com



K-E TINA

MANAGEMENT & FINANCIAL MODEL – HIGH LEVEL



MANAGEMENT

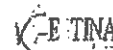
- ❖ The shareholding Company will be structured according to the Agri-BEE norms stipulated by Government
- ❖ Estina/Paras will be responsible for Project Implementation
- ❖ Estina/Paras will also be responsible for the operational management of the Project during its life cycle

DEPLOYMENT MODEL

- ❖ It is envisaged that the Project will be split into two phases
- ❖ Phase 1 will involve the deployment of the Dairy & Community Dairy Projects and is expected to be complete within 1 year of commencement
- ❖ Phase 2 will involve the deployment of the Processing Plant and is expected to be complete within 2 years of commencement

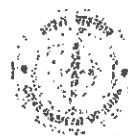
FINANCIAL MODEL

- ❖ The total cost of the Project is estimated at R500 million
- ❖ The initial investment for the establishment of the Dairy will be through Government funding
- ❖ The investment for the establishment of the Processing plant will be funded by Estina/Paras
- ❖ Government is requested to commit financially on the operations of the Dairy over a period of five years.
- ❖ Detailed Business Plan being prepared and will be submitted to the Department




THE SEAL OF QUALITY

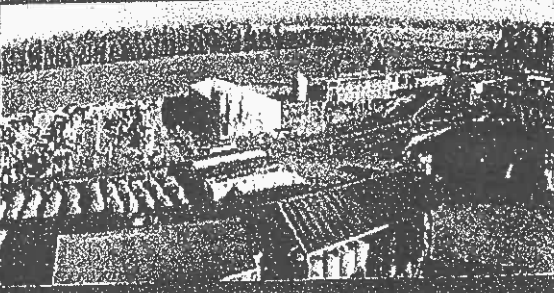
- ❖ An established ISO 9001 and HACCP certified system
- ❖ Kosher certified
- ❖ Export Inspection Council Certified
- ❖ An APEDA (Agri Products Export Development Authority) Member
- ❖ Halal certified (Malanpur Plant)
- ❖ BIS, ISI, AGMARK Mark
- ❖ FSSAI (Food Safety And Standard Act)
- ❖ US FDA (For Some of the products)



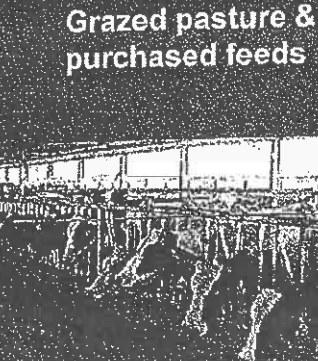
Planned Diversity of Feeding Systems in Vrede



100% grazed pasture & conserved fodder



Feed lots



Grazed pasture & purchased feeds

| FIXED & WORKING CAPITAL | UNITS | PROJECT VALUE |
|--|--------------------|---------------|
| Irrigation & mechanisation | 1,000 ha | R45,000,000 |
| Rein fed mechanisation | 1,350 ha @ R20,000 | R27,000,000 |
| Dairy cattle - "Cows in Milk" (CIM) | 500 ea @ R25,000 | R12,500,000 |
| Dairy cattle - Rest of herd (Folkmers) | 500 ea @ R25,000 | R12,500,000 |
| Dairy bulls / A.I. | | R500,000 |
| Milking parlour - 1,000 C.M.U. | 1,000 ea @ R5,000 | R5,000,000 |
| Bulk cooling tanks | | R25,500,000 |
| Dairy products manufacturing | | R60,000,000 |
| Pasteurizer | | R60,000,000 |
| UNIT Long Life Milk Plant | | R149,000,000 |
| Other dairy equipment | | R15,000,000 |
| Feedlot | | R14,000,000 |
| Grain & oilseed mill | | R19,000,000 |
| Animal feed plant | | R10,000,000 |
| IP/Working Capital Requirement | | R40,000,000 |
| Total Funding Required | Excluding VAT | R650,000,000 |
| Total Funding Required | Including VAT | R770,000,000 |
| Proposed Source of Funding: | | |
| Capital Injection/Equipment etc | ESTOA / PARAS | R220,000,000 |
| Grants of R15m/yr for 2 Years | DoARD | R142,000,000 |

| ADDITIONAL FUNDING REQUIRED CURRENT FINANCIAL YEAR | | |
|--|----------|---------------|
| Total Funding Required | Source | R\$14,000,000 |
| Current FY Capital Injection | DARD | R30,000,000 |
| Requested funding | Treasury | R84,000,000 |

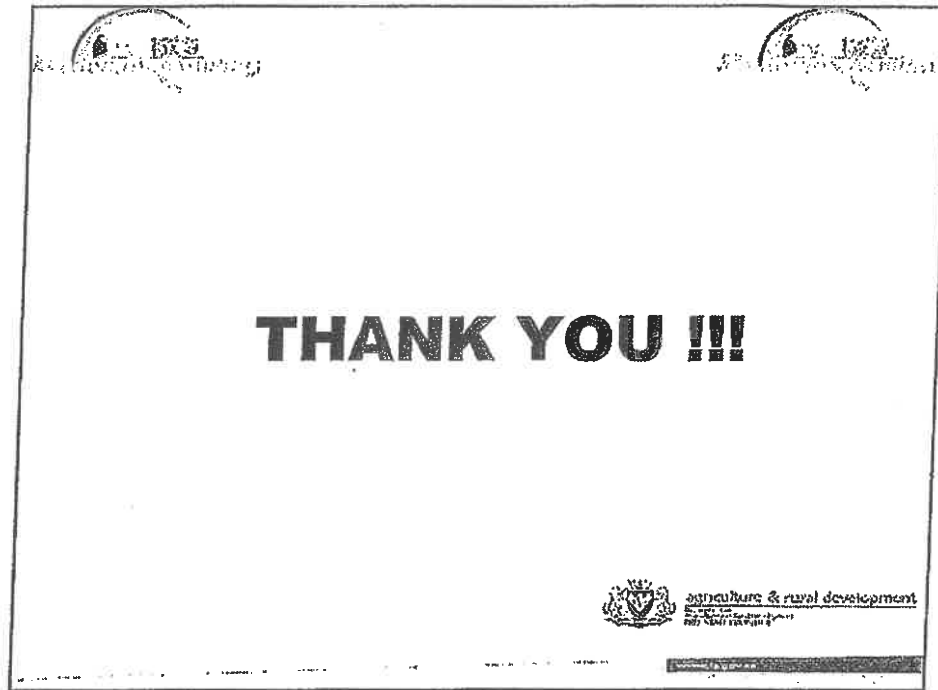
RECOMMENDATIONS

It is recommended that the Executive Council;

- 1.Considers and approves the implementation of the proposed Integrated Vrede Dairy agri-business Project.
- 2.Supports the sourcing of additional funding of R84 million for this current FY from the province.



Department of Agriculture, Forestry and Fisheries
South Africa





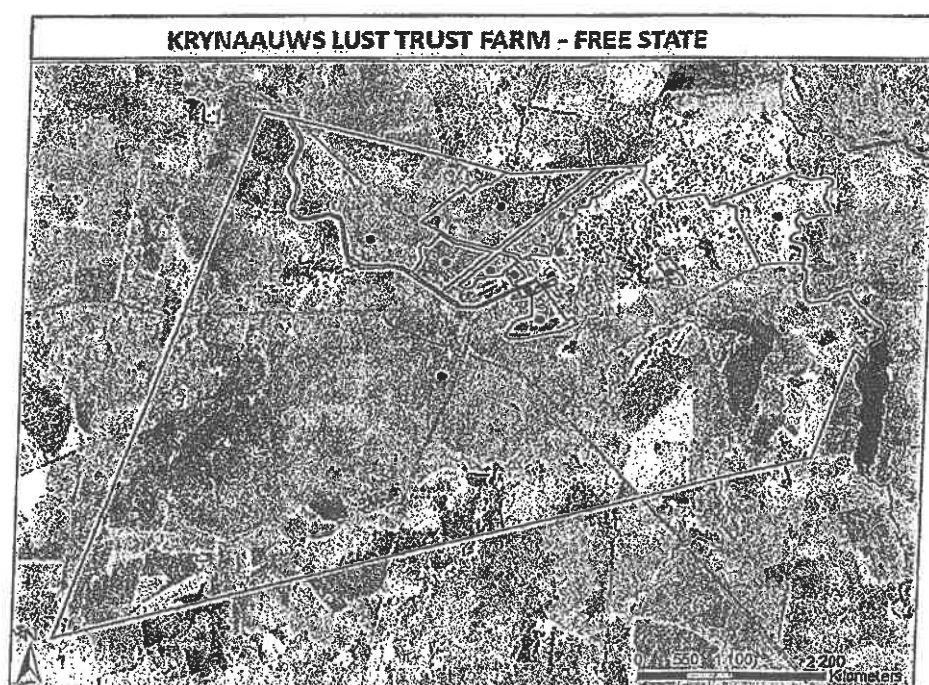
agriculture & rural development

Department of
Agriculture and Rural Development
FREE STATE PROVINCE

PROJECT PROPOSAL

Vrede Integrated Dairy Agribusiness project: Proposed integration of Dairy and other elements of production and processing with the emphasis on value-addition and beneficiation, such as a range of processed dairy products

aligned with the Agri-BEE business norms stipulated by Govt.



Strictly Confidential
Project :: Vrede Dairy Project Proposal



KESTINA

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1. Preamble

The Department of Agriculture and Rural Development (DoARD), in line with the vision of the Mohoma Mobung initiative, has identified the implementation of a Dairy Project in Vrede as its flagship Project. To this end DoARD had recently commissioned a detailed study which validates the implementation of such a Project. The DoARD subsequently commissioned a high-level team to visit India, the largest milk-producer in the world, to explore the possibilities of attracting investments in this area. The DoARD team met with PARAS Dairy, the largest private milk producer in India and have agreed in principle to work with them on this prestigious project.

2. Executive Summary

ESTINA PTY LTD is proud to inform the Department of Agriculture and Rural Development that it has signed a Memorandum of Understanding with PARAS DAIRY, the largest private milk producer in India, to deploy a flagship Dairy Project in Vrede. The Agreement covers setting up of Dairy Plants to produce milk and related Dairy products in South Africa. Although the DoARD team have already met with PARAS, it may be pertinent to list some of their strengths here :

- ✿ Biggest Private Milk processors in India & the only Co. in North India to market Bactofuged Milk
- ✿ 5 State of the Art ISO 9001-2000 and HACCP Certified Manufacturing Facilities
- ✿ Total Liquid Milk Intake of more than **720 Million Litres Per annum**
- ✿ Processing capacity of 3 million Liters Per Day.
- ✿ Network Covering more than 5000 villages & a strong procurement base at village level
- ✿ Amongst the Largest Suppliers of Liquid Polypack Milk (250,000 Litres/Day supplied locally)
- ✿ Fleet of **300 Stainless Steel** Insulated road milk tankers
- ✿ Modern Dairy Ingredients plant in collaboration with WESTFALIA SEPERATORS.
A.G.GERMANY, FILTRATION ENGINEERING Inc. USA., APPLIXION FRANCE, ALFA LAVAL.
- ✿ Accredited as a 2 Star Export House by the Govt of India



3. Proposed DARD flagship project

Thabo Mofutsanyana District :: Vrede Integrated Dairy Agribusiness project:
Proposed integration of Dairy and other elements of production and processing with the emphasis on value-addition and beneficiation, such as a range of processed dairy products

A large-scale integrated commercial agribusiness project is being envisioned for implementation at Vrede in the Thabo Mofutsanyana District of the Free State, which would be highly sustainable and which can make a significant contribution towards general development in the area.

The objectives with the project are to:

- Utilise the existing natural and other resources to create a viable large-scale integrated agro-industrial enterprise;
- Broaden the agro-industrial production base of the district;
- Improve the food security situation for a number of rural communities;
- Create a number of small enterprises; and
- Alleviate the poverty of the surrounding communities.

Despite the fact that a large-scale dairy operation is under threat of a number of risks, those risks can be mitigated by the deployment of a highly skilled management team. A well-planned dairy operation presents a number of opportunities for the integration of other activities and downstream value-adding and beneficiation.

For the planned integrated dairy project to be sustainable over the long term, it is planned to ensure that:

- The dairy over the long term, maintains at least 1 000 cows-in-milk, implying that another 1 000 non-producing followers, mainly female animals are fed, namely young or pregnant heifers and dry cows;
- The dairy cows are sheltered against the sun and heat stress during the summer months as well as against extreme cold during the winter months;
- Proper milking equipment and buildings are created;
- Milk processing equipment needed for pasteurising, cold storage, yoghurt, cheese and Amazi production, as well as distribution vehicles are in operation;
- Effluent usage on crop fields to reduce the use of chemical fertilizers;

Strictly Confidential
Project :: Vrede Dairy Project Proposal



- Feed production in the form of grains, annual legume crops, hay, lucerne and silage under dry land and 1 000 hectare of irrigation;
- Creation of facilities for the orderly storage, refrigeration, transport and marketing of the respective products; and
- Integration of small holder farmers on the periphery to produce various products under contract to the nucleus project.

In the short-term, the milk will be procured from the local farmers and then processed in-house. This operation will then gradually be expanded to include in-house rearing and milking of cows over the long term. In this manner, the risks envisaged in a large scale dairy operation will be mitigated by the gradual scaling up of the operation.

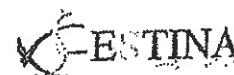
This project is designed to be the flagship of DoARD developments for the Free State in order to demonstrate the significant advantages to be enjoyed by the skilful integration of various elements in the agro-industrial value-adding system.

In Table 1 below a short summary is provided of the salient figures which apply to the planned project.

Project information table

| TM33: Estimated figures for the Vrede Project: Dairy, grains, beans, oilseeds, livestock production, processing, value addition, etc. | Estimated values |
|---|------------------|
| Total area available for project operations (hectare): | 4 450 |
| Natural veld grazing (hectare): | 3 100 |
| Arable area (hectare): | 1 350 |
| Irrigable area (hectare): | 1 000 |
| Initial Fixed capital to be invested to render project viable (R'million): | 500.00 |
| Turnover (R'million): | 80.00 |
| Net profit (R'million): | 16.00 |
| Employment opportunities: | 600 |

Strictly Confidential
Project :: Vrede Dairy Project Proposal



4. Detailed Project costing for a large scale Dairy Unit:

| FIXED & WORKING CAPITAL | UNITS | BUDGET VALUE |
|---|--------------------|---------------------|
| Irrigation & mechanisation | 1,000 ha | R45,000,000 |
| Rain fed mechanisation | 1,350 ha @ R20,000 | R32,000,000 |
| Dairy cattle – "Cows in Milk" (CIM) | 500 ea @ R25,000 | R12,500,000 |
| Dairy cattle – Rest of herd (Followers) | 500 ea @ R25,000 | R12,500,000 |
| Dairy bulls / A.I | | R500,000 |
| Milking parlour – 1,000 CIM unit | 1,000 ea @ R5,000 | R5,000,000 |
| Bulk cooling tanks | | R25,500,000 |
| Dairy products manufacturing | | R60,000,000 |
| Pasteurizer | | R60,000,000 |
| UHT Long Life Milk PLant | | R149,000,000 |
| Other dairy equipment | | R15,000,000 |
| Feedlot | | R14,000,000 |
| Grain & oilseed mill | | R19,000,000 |
| Animal feed plant | | R10,000,000 |
| Working Capital Requirement | | R40,000,000 |
| Total Funding Required | | R500,000,000 |

Proposed Source of funding:

| | | |
|------------------------------------|----------------|--------------|
| Capital Injection/IP/Equipment etc | ESTINA / PARAS | R200,000,000 |
| Grants of R100m/yr for 5 Years | DoARD | R300,000,000 |



5. Phases for Project Deployment

In discussions with the Department, the Department has brought to the fore the problem of lack of funding for this Project which has been a major stumbling block in the execution of this project in the past. With a view to crystalizing the vision of the Department, Estina together with Paras Dairy are proposing a phased approach to the Project, whereby the Department will release available funds and Estina will ensure the implementation of the project in a modular form with technical know-how inputs from Estina/PARAS and when required, **financial participation** as well. Estina will prepare a project plan with clear deliverables based on the available funds released by the Department and will work with the Project Management Unit of the Department to ensure maximum returns on the amounts invested by the Department over a period of time. It is envisaged that as the project is delivered in phases, additional funding can be procured from various stakeholders when the viability of the project is demonstrated through the actual deployed working model.

6. Business Model

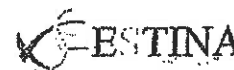
In line with the Agri-BEE business norms stipulated by Government, Estina proposes that a new Special Purpose vehicle (SPV) be created in which ESTINA will hold a 49% share while the remaining 51% shares will be distributed to at least three selected Grant recipients. Estina will provide the required capital injection as well as the technical know-how, which will be provided by Paras. Estina will endeavour to fund the entire Project itself and is **requesting the Government to commit to an annual Grant of R100m per year for FIVE years** to ensure that the Project remains sustainable and commercially viable.

7. Optimising the development potential of this flagship project

It is envisaged that this DARD integrated agribusiness project will become a centre of excellence for the entire Free State and even the neighbouring provinces.

Eventually this Project will provide:

- On-site, in-service practical agricultural training for aspirant farmers to equip them for the profitable operation and management of their own DARD projects, albeit:
 - Primary production of livestock and agricultural produce, or
 - Value-adding and beneficiation to livestock and agricultural produce
- Basic business, financial and management skills training and in-service application



- Cooperative processing, value-adding and beneficiation of livestock and agricultural produce for all DARD projects in the Free State

Cooperative marketing facilities into the major consumer markets of South and Southern Africa for all DARD projects in the Free State thus creating the necessary critical mass and economies of scale which will unlock additional financial benefit for all DARD project participants

8. The need for the chosen Dairy Project

It can be concluded that there is an urgent need for this project based on the following facts:

- The sale of milk provides extra income on a regular basis to rural people who often have just enough to get by. Milk sales also improve the nutritional status of rural populations, though not necessarily the urban needy. Milk is also one of the few agricultural products which can be supplied and marketed regularly by non-landowners. **A dairy plant creates jobs in rural areas, and thus helps check urban migration.**
- Milk and milk products are thought of as staple foods in Europe. Favourable production conditions mean that everyone can consume large amounts of milk and dairy products. For many of the world's peoples, however, even though milk plays no role in the diet, if balanced food is available in sufficient quantities, neither health nor welfare should be affected by the lack of milk. Recommended Third World dairy policies fall somewhere between these two extremes. Milk protein can enhance plant protein and in a diet combining several foods, a compensatory balance is established among the various sources of proteins. Animal proteins supply essential amino acids, plant proteins can then economically top up the total supply.
- Many Third World countries find it hard to right the balance of payments: imported dairy products are one foreign exchange savings which can be effected by a dairy development policy. Moreover, international prices may go up in the medium or long run, placing a country which is not in a position to partially substitute imports by local production at a disadvantage.



Annexure “RJ7”

National

Free State dairy project damned in treasury investigation

07 Feb 2014 00:00 Sam Sole, Tabela Timse, Stefaans Brümmer

A controversial R570-million Free State dairy project is riddled with irregularities, investigators for the national treasury have found.



A gate to Vrede, the farm given by the government to private company Estina rent free.
(Delwyn Verasamy, M&G)

A controversial R570-million Free State dairy project was riddled with irregularities, investigators for the national treasury have found.

Exclusive material from the investigation shows that the treasury launched a full-scale investigation of the Estina dairy following several *Mail & Guardian* exposés about it in mid-2013. The reports suggested the deal with Estina – a company without agricultural experience and led by a computer sales manager – flouted treasury rules and was designed to milk provincial government coffers.

The articles also flagged allegations of the Gupta family's proximity to the project and several of the role players.

Until recently, the treasury would not confirm that an investigation was taking place.

Now a document obtained by amaBhungane shows that in October last year a forensic team was dispatched by the treasury to Bloemfontein to question officials about the bizarre contract to develop a large dairy and milk processing plant in the northeastern Free State town of Vrede.

Investigators were shocked by what they heard, including:

- The Free State agriculture department did not follow any supply-chain procedures when agreeing to fund the project through Estina, a private company;
- The department did no due diligence on Estina or its claimed partnership with Paras, a major dairy company in India. Paras subsequently denied any involvement;
- The Free State paid grants directly into Estina's bank account and the responsible official admitted she had no real evidence of how the money was being spent;
- A "feasibility study" was done only after the contract was signed;
- It appears the "loosely drafted" contract – skewed in Estina's favour – was drawn up by Premier Ace Magashule's legal adviser. The contract commits the department to shelling out R342-million and Estina will be billed for the balance of the R570-million project cost "if necessary";
- Small-scale farmers, who were supposed to be beneficiaries of a 51% share in the scheme, were only identified recently and the official could not explain how they were chosen; and
- Approval for the project was rushed through despite the fact there was no budget, no feasibility study and no urgency.

One of the investigators remarked in apparent exasperation: "Estina is using government's money to establish a plant, putting cows on land that is given by government rent-free. Now they get to make a fortune off the infrastructure."

The disclosures are made in a confidential transcript, which records an extraordinary interview with the Free State department of agriculture chief financial officer, Dipatle Dlamini.

Dlamini was questioned on October 9 2013 by two forensic executives, Suad Jacobs and Trevor Barnard, of the law firm Edward Nathan Sonnenberg (ENS).

ENS conducted other interviews – to which amaBhungane has not had access – and has since completed its report to the treasury.

It is not known what their final conclusions were.

Despite the damning admissions, the treasury seems hamstrung by devolved accountability that makes it difficult for the national department to intervene in provincial procurement.

Political sensitivities

There are also political sensitivities, given that the project is publicly associated with allies of President Jacob Zuma, including Magashule and the influential Gupta family.

Although there is no evidence that the Guptas are beneficiaries or involved in the irregularities, their proximity does raise the question of whether political connectivity played a role.

For months, the treasury refused to respond to questions from amaBhungane. When confronted with the evidence contained in the transcript, a source within the department confirmed that the issue was a political hot potato.

But the treasury spokesperson, Jabulani Sikhakhane, would only say: "National treasury is still studying the report, after which a decision will be made on the way forward."

The transcript reveals that the dairy project appears to have been conceived during a visit to India by senior department officials and the then agriculture MEC, Mosebenzi Zwane, whose home town is Vrede.

The trip was signed off by Magashule, a close ally of Zwane.

Following the visit, officials in Bloemfontein were summoned to a presentation on the dairy project by Estina on May 24 2012.

Just three days later, on May 27, the head of department wrote to Estina accepting the proposal. On June 13, Magashule's legislature approved the deal.

The Free State government failed to respond to detailed questions but appears determined to press on with the project.

In a written response to a question in the provincial legislature in November last year, the MEC for agriculture, Mamiki Qabathe, said the project should be completed by July 2015. She detailed R114-million in expenditure so far, which includes 351 dairy cows at a cost of R6.2-million, a price that the opposition Democratic Alliance has noted is nearly double the market rate.

AmaBhungane was also told that about 30 cows and calves have already died – and this week saw many carcasses that had been dumped in a gully on the Vrede property. These losses suggest the project was poorly conceived and is being poorly run.

Other costs also seem inflated, such as a security gate and guard house for R2.6-million and a collection of basic tools – a spanner set and similar tools – for R2.5-million.

The doubtful beneficiaries

It appears there was a scramble to identify supposed beneficiaries of the dairy project only once the national treasury started asking difficult questions.

Local chair of the African Farmers Association of South Africa (Afasa) in Vrede, Ephraim Dlamini, told amaBhungane an urgent meeting was called in October last year by Mosebenzi Zwane, the former agriculture MEC.

"The hall was full of people, most I didn't know who they are. We were told to bring a copy of our IDs and you submitted names and addresses.

"Zwane gave a good speech about how we are going to be owners of this farm because we will own 51%. He begged us not to sell shares to anyone even if they offer millions.

"I warned people not to sign anything without fully understanding what is going on."

What breaks his heart, Dlamini said, is that people who had few cows sold them because they were promised they were going to get cows from the dairy, "but so far not a single person has received anything". He said beneficiaries appeared to have been "already chosen" by the politicians.

Dlamini said he understood that people were desperate: "But, by the look of things, this is not going to go anywhere and people will be worse off.

"Politicians don't understand ... these are people's lives. They have this habit of doing things as if they have community support and then when they get caught they come to the people to legitimise these fly-by-night projects. It's nothing we haven't seen before." – amaBhungane reporters

Mass grave points to daily deaths

Mystery surrounds a stinking stack of nearly 30 dead cows that were dumped in a ditch on the Vrede dairy farm project on the outskirts of the northeastern Free State town. The place where the animals were dumped is about four metres away from a river that provides Vrede with its drinking water.

It is clear from the state of some of the carcasses that some of the animals died quite recently, even as late as Wednesday, February 5. The site, visited by amaBhungane this week, is not far from the actual dairy where the more than 300 cows are milked, and backs up rumours that cows are dying on an almost daily basis on the controversial farm. Residents of the nearby Thembelihle township said they were concerned that diseases might spread as no one could offer any explanation for the deaths.

Along the R34 national road from Vrede to Newcastle, amaBhungane used the second entrance to the Vrede dairy farm and had to walk for about 2km. The sickly odour was present way before the actual site. The section where the cows were dumped was not easy to find as it was hidden among patches of tall bluegum trees, with overgrown grass in the area.

The smelly ditch was infested with clouds of flies hovering over the piles of decomposing cows. It looked as though three of the carcasses were dumped quite recently. One of them, a Friesland dairy cow, lay on the flattened remains of many other decomposing cows. The ears of many of them had been cut off.

A source who did not want to be identified said the fact that the makeshift graveyard was situated so close to a strategic water source was a health hazard, especially if it rained.

AmaBhungane could not establish the cause of death as the farm's project manager, Chandrana Prasad, did not respond to questions.

Vrede's municipality could also not be reached for comment. – Tabela Timse

** Got a tip-off for us about this story? Email amabhungane@mg.co.za*



Annexure “RJ8”

- 1 JACOBS: And who was the state law advisor who drafted the contract?
- 2 DLAMINI: [Inaudible 2:30:06.8] a Mr Venter in the Premier's office.
- 3 JACOBS: Ok and Mr Venter's contact details?
- 4 DLAMINI: I don't have it, will you please ask HOD for it.
- 5 JACOBS: Why were the beneficiaries in the project not identified before the project was
- 6 [implemented],
- 7 DLAMINI: Honestly let me say it was one of those lost and challenges in the system.
- 8 JACOBS: Meaning what?
- 9 DLAMINI: Under normal circumstances the beneficiaries were suppose to have been there
- 10 before that so I [won't] say.
- 11 JACOBS: This again adds to my concern that there seems to been a great deal of urgency in
- 12 getting this agreement signed when the department wasn't even clear that there were going
- 13 to be beneficiaries because now there appears to only be 80 beneficiaries.
- 14 DLAMINI: The beneficiaries were gonna be there, if you read under definition it says there
- 15 beneficiaries are persons from Vrede are, which means that the requirements of the Agri BEE
- 16 Charter on Black Economic Empowerment issued by the Minister of Tourism Industry [Inaudible
- 17 2:31:51.6] but also if you look at the minute that I gave to you of the consultation with the
- 18 municipality. One of the responsibilities of the municipality was to identify the beneficiaries in
- 19 their area.
- 20 JACOBS: So the beneficiaries weren't even consulted on whether or not they wanted this
- 21 facility. The agreement was entered into and then they were appointed or then they were
- 22 identified.
- 23 DLAMINI: This project is one of those initiated where you say when we get into this area and
- 24 you say you want to uplift the lives of the people in that area, you then group people like I said
- 25 it can be women in a group it can be. That normally it's not necessarily a process where you
- 26 can say: I advertise people who are interested must come. It's a process where mainly the

Annexure “RJ9”



Member of the Executive Council
for Agriculture & Rural
Development
FREE STATE PROVINCE

"RJ 176"
"259"

Me M O Tsopo
Honorable Speaker: Free State Provincial Legislature
Bloemfontein
9300

RE: RESPONSES TO THE PORTFOLIO COMMITTEE FOR AGRICULTURE AND RURAL DEVELOPMENT

- 3. Mr. R. Jankielsohn asks the MEC responsible for Agriculture and Rural Development, Ms. M. Qabathe:**

In view of the dairy project that is being established by the Department at Vrede;

3.1 How much money has been spent in each year since the project was initiated?

aThe department has committed to pay the total contribution of R342 million over a period of three year in tranches of R114 million/year. The first contribution was done in two payments of R30 million and R84 million which is equal to R114 million in 2012.

3.2 What were each of the respective amounts spent on since the project was initiated?

- Establish 151 Ha crops for fodder (Maize crops were planted on 86Ha. 240 tons were harvested and stored in the VKB (Vrystaat Kooperasie) silo's at Vrede. Soya beans were planted on 65 ha and had a yield of 60 tons. The soya beans are also stored at the VKB silo's). The cost for seeds, fertilizers, inputs and diesel was R 319 290.
- Labour cost was R1 309 097.00.
- Construction of Silage Bunker (R5 000 000.00).
- Construction of gravel access road. The road of ± 2 km has been completed (R1 200 000.00).
- Cattle shed (R500 000.00).
- Security gate and guard house (R2 600 000.00)
- Temporary Veterinary Laboratory (R300 000.00).

- Cattle Feed plant (R7 350 000.00).
- Milking Parlour (10 point static parlour & 72 point rotary parlour) and Milk Processing Plant (to process 20 000l milk per day and it should have the potential to expand to 30 000 l per day) R30 050 000.00.
- Purchasing of farm implements:
 - Tractors: 2 x Tractor John Deere 110 KWA and 2 x Tractor Tafe 61 KWA (R2 360 000.00).
 - Equipment: 2x Chisel ploughs with rollers, Inter row cultivator, 8 Row maize planter, Boom sprayer 800l capacity, Fertilizer spreader, 5t Cap trailer, Water browser 2500lt cap, Diesel Browser 1100lt cap, Spray gun, Generator with welding machine, Baler, Disc Mower, Disc harrow, 5 wheel rake, Long flatbed trailer, 3 x tipper trailer, Single row maize harvester, 5 kw generator, Front end loader and Fire fighter (The cost of the tractors and implements was R 3 507 494).
 - Farm Tools: Spanner set sizes 1-36, ring spanner and screw driver, Socket set, Heavy duty vice, Trolley jack, Pik, shovel, silage fork, axe, rake, Saw, Spot light, lamp torch, Grinder, Air compressor and Drill machine (R2 513 000.00).
 - Purchasing of Dairy Cows: In total 351 Dairy cows of different ages were purchased (62 x pregnant (3-5 months), 57 x Breeding cows, 70 x Calves older than 12 months, 77 x calves 9-12 months and 85 x calves 6-9 months) R6 212 000.00.
 - Land Surveyor, Agriculturists, Accounting Fees, Office Equipment, Insurance, Salaries and Wages, Professional Fees, Administration Fees, Legal Fees (R12 000 000.00).
 - Secured: Pasteurizer, Dairy Equipment, Irrigation Equipment (R37 779 613).

3.3 Whether any outside individuals or companies have been paid any money in respect of this project, if so, a) who are these respective individuals and companies and b) what services were provided by these respective individuals and companies?

- a) ESTINA
- b) ESTINA: Ensure the implementation of Project in the District with due skill, diligence, regularity and expedition and complete the project. At all material times complied with the relevant provisions of the Agreement, insofar as it pertains to the activities of the Project. Utilize the funds made available by the Department to the project. Ensure that sound financial management and accountability system are in place, and provide the Department (District Director) with monthly and annual reports as in line with the Monitoring and Evaluation System of the Department of Agriculture and Rural Development.

3.4 What is the total amount that the Department plans to spend on this project?

The total project cost is R570 million (Five Hundred and Seventy Million) of which the department has committed to contribution R342 million (Three hundred and forty two million), over a period of three years.

3.5 When will this project be completed?

The Vrede Dairy project was initiated on the 5th of July 2012 and is envisaged to be completed by July 2015.

3.6 What are the expected outcomes of this project for the Free State Province?

OVERARCHING BENEFITS FOR THE PROVINCE AND THE NATION

- In line with the Agri-BEE business norms stipulated by Government, Estina proposes that a new Special Purpose vehicle (SPV) be created in which ESTINA will hold a 49% share while the remaining 51% shares will be distributed to selected Grant recipients.
- Estina will provide the required capital injection as well as the technical know-how, which will be provided by Paras.
- It is envisaged that this integrated agri-business project will become a centre of excellence for the entire Free State and even the neighbouring Provinces.

- Eventually this Project will provide On-site, in-service practical agricultural training for aspirant farmers to equip them for the profitable operation and management of their own DARD projects, albeit
 - Primary production of livestock and agricultural produce, or
 - Value-adding and beneficiation to livestock and agricultural produce
- Basic business, financial and management skills training and in-service application
- Cooperative processing, value-adding and beneficiation of livestock and agricultural produce for all DARD projects in the Free State
- Cooperative marketing facilities into the major consumer markets of South and Southern Africa for all milk projects in the Free State thus creating the necessary critical mass and economies of scale which will unlock additional financial benefit for project participants

3.7 Who is the private sector partner?

ESTINA PTY Ltd.

3.8 How much money will the private sector partner invest in this project?

The total project cost is R570 million (Five Hundred and Seventy Million) of which Estina will contribute R228 million (Two hundred and twenty eight million).

3.9 What is the agreement between the Province and the private sector partner in terms of their investment, and

The Department has entered into an Agreement with ESTINA for the construction and implementation of Dairy Project with infrastructure. The first phase of the Project involves setting up of a Dairy Parlour with an in-house capacity of up to 1,000 cows to supply milk to the Parlour. The dairy construction will also include among others Feed Storage, Feed-Lots and Land Cultivation for Feed on 4.400 hectares of municipal land. The second phase of the project involves setting up of a Milk and Dairy products Processing Plant to produce packaged milk and other Dairy products. Estina agrees, in pursuance of this project, for the formation of a new Legal entity Mohoma Mobung Dairy Project Pty Limited wherein Estina shall hold 49% shares

and farmers shall hold 51% shares.

- ESTINA undertakes that any information or document submitted by it in terms of the Agreement shall be true and correct.
- ESTINA also undertakes to act in good faith and afford all reasonable and necessary co-operations in fulfilling its obligations in terms of its agreement.
- Train beneficiaries according to need analysis and marketing of produce and the products both locally and internationally (if applicable to the project, the training plan as well as the marketing plan should be submitted to the district).
- Provide beneficiaries with after care or mentorship in conjunction with extension support from the Department according to the scope of work for each project.
- Shall use local labourers and provide evidence as per agreement (signed ID copies and time sheet).

The training, mentoring and support will be assessed beforehand by Glen training institute (either by itself or services provider) and if it is not satisfactory it will have to be rectified by the service provider in conjunction with Glen training institute.

The following shall further be operational duties or obligations of the Services Provider:

- shall provide warranty according to manufacturer's prescripts or as outlined by the scope of work.
- shall be responsible to ensure that they comply with environmental requirements, Municipal by-laws, applicable legislations or Acts and standards and that they obtain water rights and ploughing certificates.
- In case where livestock is procured, the service provider will have to comply with the requirements as stipulated by the State Vet in consultation with the beneficiaries.

3.10 What guarantees does the department have that the private sector partner will meet their commitments?

Notwithstanding anything contained in the Agreement, the Department reserves the discretion

to verify and confirm any information or document submitted by the other Parties in the performance and execution of its duties and obligations in terms of the Agreement.

The two parties have entered into a binding Agreement.

Your support is highly appreciated.



Me. M.G. QABATHE (MPL)

MEC OF AGRICULTURE AND RURAL DEVELOPMENT

DATE: 13/11/013

Annexure “RJ10”

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Adv Suné Griesel
Public Protector
Free State Province

28 March 2014

Dear Adv Griesel

Re: Vrede Dairy Project

I have sent a request to investigate the allocation shares relating to the Vrede Dairy project to the Public Protector, but I would be grateful if you could investigate the following matters relating to this Provincial Government Project:

1. Allocation of shares

The Vrede dairy Project at Vrede has since its inception been shrouded in controversy and secrecy with a confidential agreements between a company Estina and the provincial government. The legislature portfolio committee for agriculture and rural development were informed by the provincial department that the agreement was confidential. In replies to questions to the MEC for Agriculture and Rural development, Ms M.G. Qabathe, indicated that in terms of the agreement the Indian company Estina will receive a 49% share with a R228 million investment in the R570 million project, while the 100 local beneficiaries will jointly receive 51% of the shares through a government investment of R342million. This implies that Estina will obtain a 49% share with an investment of only 40% of the projected cost of the project. Government will be investing R114 million more in the project than their private sector partners without the beneficiaries receiving the proportionate number of shares. This implies that Estina would benefit disproportionately at taxpayers' expense.

It has furthermore come to light that Estina would only contribute if necessary and that they are also benefitting from the supply of goods and services from the contributions from the provincial government.

2. Inflated payments for goods and services

The R342 million is also subject to hugely inflated costs, some of these include among others (see detailed list attached):

- Construction of a silage bunker for R5 000 000.
- A 2km gravel access road for R1 200 000.
- A security gate and guard house for R2 600 000.
- A cattle feed plant for R7 350 000.
- A milking parlour and milk processing plant for R30 050 000.
- tools such as spanners, shovels, grinders, air compressors, etc. for R2 513 000.
- Administrative, legal accounting and other consulting fees for R12 000 000.
- Irrigation equipment, pasteurizer and dairy equipment for R37 779 613.
- 351 dairy cows for R6 212 000.

The Free State government paid R2 838 000 more for the 351 dairy cows than was necessary. There also appears to be no official record of such transactions within the breed society that keep stud books of such cattle. Even though the value of the cattle bought is questionable, the DA made enquiries about the best possible market prices for stud cattle with the *Free State Friesland Breed Society*. The market prices for prime cattle are indicated in the following table:

| TYPES OF HEIFERS PURCHASED | NUMBER PURCHASED | MARKET PRICE OF FRIESLAND/HOLSTEIN STUD HEIFERS | TOTAL COST |
|-----------------------------------|-------------------------|--|-----------------------|
| Pregnant heifers | 62 | R15 000 per heifer | R930 000 |
| Breeding cows | 57 | R16 000 per cow | R912 000 |
| Calves 12 months + | 70 | R8000 per heifer | R560 000 |
| Heifers 9-12 months | 77 | R6000 per heifer | R462 000 |
| Heifers 6-9 months | 85 | R4000 to R6000 per heifer | R510 000 (maximum) |
| TOTAL | | | R3 374 000 |

Serious questions exist over the purchasing and payments of almost all other items such as, among others, tools and equipment, the access road, and the entrance gate.

Recently the national Department of Agriculture supplied the provincial government with R40 466 231 worth of equipment that included tractors and most of the other related equipment for planting and maintaining crops. Purchasing additional tractors and equipment for this project wasn't necessary and jointly cost the project and additional R5 867 494.

The top of the range rotary milking machines with electronic sensors cost about R55 000 per point. The machines for the 82 points should not have cost more than about R4,5 million. They are included as part of the R30 050 000 price tag that includes the milk processing plant.

It appears that the payments for goods and services are in some, if not all, instances highly inflated. It is also not known who the suppliers of the various goods and services are, and whether the suppliers, implementing agents, or officials are responsible for the inflated prices.

3. Complying with environmental requirements

The agreement with ESTINA includes a clause that the service provider will be "responsible to ensure that they comply with environmental requirements" has already been breached since complaints have been received of indiscriminate ploughing of natural fields and wetlands. This cannot be done without the necessary environmental procedures being followed.

4. Cattle deaths

Various reports indicate that up to between 50 and 100 cattle have died since being purchased. There is obviously a serious problem with these cattle and this is costing taxpayers a great deal of money. It is not known what the causes of the deaths are, or what the costs is of this.

Furthermore, some of the carcasses have also been dumped next to a stream that runs into the catchment area for water for the town of Vrede/Ezenzeleni. These have just been covered with gravel and still pose a risk when it rains.

I would be grateful if a detailed investigation could take place into the above issues which are costing the taxpayers a great deal of money and appear to be designed to do so.

Yours truly,

Roy Jankielsohn MPL
Cel: 082 562 4120
Fax: 086 528 1911
E-mail: roy@da.fs.org.za

Annexure “RJ11”



BENEFICIARY AGREEMENT

Entered into and between

DEPARTMENT OF AGRICULTURE FREE STATE
(The Department)

The Department of Agriculture, Private Bag x01, Glen 9360, herein represented by the Chief
Director: DISTRICT IMPLEMENTATION of the Department duly authorized thereto

AND

VREDE DAIRY PROJECT 2013/14
(Hereinafter referred to as "PROJECT BENEFICIARY")

Herein represented by :

Name of Beneficiary: JUN DAVID MAHLABA

Identity no : 7605305426081

Physical address: 179 MAGAEASANE STR
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BENEFICIARY AGREEMENT**PARTIES**

1. The parties to this agreement are cited on the cover page to this agreement.

RECORDAL

2. It is recorded that -
 - 2.1. the Comprehensive Agricultural Support Programme ("CASP") and Ilerna/ Letsema Programme of the Department, has as its long term goal, the enhancement of the living conditions of low income households in rural and peri-urban communities in the Free State through the use of capital funding from the CASP to establish economically viable and sustainable food and income generating activities, focusing in particular on the agricultural sector;
 - 2.2. the Department will make available Project Funds from the CASP and Ilerna/Letsema to the Beneficiary for purposes of funding the Project in accordance with the terms and conditions of this agreement;
 - 2.3. an Mentor may be appointed by the Department for the benefit of the Beneficiary, to assist the Beneficiary in the preparation and implementation of the Project by performing contractually agreed tasks and duties in relation to the Project, which performance shall be monitored by the Department and the Beneficiary;
 - 2.4. this agreement is concluded on the basis that the Beneficiary shall use its best endeavours to ensure the success, sustainability and profitability of the Project through the effective, efficient and accountable use and application of the Project Assets in relation to the Project; and
 - 2.5. the Parties agree as set out hereinafter.

DEFINITIONS AND INTERPRETATION

- 3.1 In this agreement, unless inconsistent with or otherwise indicated by the context the following words and expressions shall have the meanings set out opposite them:

"Aftercare Services" :

Technical, financial and management assistance and support provided to the Beneficiary by the Department (whether by the Department itself or outsourced by the Department) in its sole discretion (taking into account the availability of funds and capacity to provide such services) after the Project Completion Date;

"Beneficiary" :

the Party contemplated in clause 1.2;

"BP" :

the business plan for the Project, or where such business plan does not exist at the date of signature of this agreement any future business

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| "Financial Year" | a period of 1 (ONE) year being the financial accounting period nominated by the Beneficiary, or as determined by applicable law; |
| "Mentor" | Mentor(s) or departmental official(s) or service provider(s) contracted by the Department to assist the Beneficiary in the preparation and implementation of the Project; |
| "Members" | the individual beneficiaries listed in the Constitution who are to benefit from the Project and form part of the Beneficiary whether as members, partners, shareholders, trust beneficiaries or otherwise, depending on the legal nature of the Beneficiary; |
| "Parties" | the Department and the Beneficiary, and any reference to "a Party" shall refer to one of the relevant Parties as required by the context; |
| "PIP" | the Project implementation plan for the Projects, or where such Project implementation plan does not exist at the date of signature of this agreement any future Project Implementation plan drafted for the Project and approved by the Department, and any future updates thereto or amendments thereof, containing details regarding the nature of the Project, the Project implementation framework and timeframes, production methodology, cost estimates and allocations, asset life and replacement cycles, cash flows and marketing strategy of the proposed business, as well as such other matters which are required by the Department; |
| "PMU" | the Project Management Unit of the Department responsible for the management and administration of the CASP and all aspects of projects implemented in terms thereof; |
| "PPAC" | the Provincial Project Appraisal Committee of the Department, being the final decision-making body with authority to grant approval for the Implementation of projects in terms of the CASP; |
| "Production Commencement Date" | the date on which the first draw downs from the Project Funds are made for working capital (as defined and set out in the PIP); |
| "Project" | the project identified in the BP to be implemented by the Beneficiary in accordance with the PIP with the assistance of the Department and IO and in accordance with the terms and conditions of this agreement; |
| "Project Completion" | the alienation of the Project Assets to the Beneficiary, entailing the transfer of title and ownership in the Project Assets to the Beneficiary and the alienation of control in the Project to the Beneficiary and, subject to the provisions of clause 10, the termination of this agreement and all responsibilities of the Department in terms of this agreement; |
| "Project Completion Date" | 12 (TWELVE) months from the Production Commencement Date, or such longer period as extended in terms of clause 11 or unilaterally approved by the Department in its sole discretion; |

plan drafted for the Project and approved by the Department, and any future updates thereto or amendments thereof, containing details regarding the nature, description, objectives, cost estimates, cash flows and marketing strategy of the envisaged business;

"Certificate of Completion":

the certificate issued by the Department's auditor containing the final asset register compiled during the Completion Audit and the Completion Date, and signed by the Beneficiary and Department signifying that Project Completion has taken place;

"Completion Audit":

the audit conducted by the Department's auditor for the purpose of determining the nature, quantity and value of the Project Assets as at the date the audit is conducted in terms of clause 12.1;

"Completion Date":

the date certified by the Department's auditor in the Certificate of Completion as the date on which the Project is completed and this agreement, subject to its terms and conditions, is terminated;

"Constitution":

the founding document of the Beneficiary, approved by the Department, which may be a founding constitution, trust deed, articles of association, partnership agreement or association agreement, depending on the legal nature of the Beneficiary;

"CASP":

the Comprehensive Agricultural Support Programme;

"Department":

the Free State Department of Agriculture and Rural development being a provincial department of the Government of South Africa as contemplated in section 7(2) of the Public Service Act, 1994 (promulgated under Proclamation No. 103 of 1994) read with Schedule 2 thereof (as amended);

"Department's auditor": the person nominated by the Department to conduct an Alienation Audit;

"Effective Date": date of approval of the Project by the PPAC, notwithstanding the date of signature of this agreement by the Parties;

"Extension Services":

the ancillary services supplied by the Department (whether by the Department itself or outsourced by the Department) to the Members of the Beneficiary on an ad hoc basis, for the duration of this agreement, which may include but shall not be limited to technical, financial and management assistance and advice, the provision of technical, financial and management information, training and development and informal transfer of skills to the Members of the Beneficiary;

"Financial Statements" at a minimum shall include a Balance Sheet, Income Statement and Cash Flow statement;

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- "Project Assets" all buildings, plant, fixtures and fittings, and all improvements constructed/and or installed on the Project Site, as well as all equipment, livestock, furniture, tools, spare parts and other assets, all of the aforesaid in relation to the Project and procured by the Department for the Beneficiary with the Project Funds in terms of a competitive procurement process;
- "Project Extension 11;" "an extension of the Project in accordance with the provisions of clause 11;
- "Project Funds" the total funds as indicated in the PIP and BP to be made available for the Project by the Department in terms of this agreement, as well as any further funds made available for the Project pursuant to a Project Extension, which funds may include amounts for planning and implementation, training, materials and equipment, services, transport, capital expenditure, working capital and sundries;
- "Project Site" the site, subject to clause 5, on which the Project is to be executed;
- "Termination Date" any date of termination of this agreement in accordance with its terms earlier than the Completion Date;
- "the/this agreement thereto;" this agreement between the Parties together with the Annexures
- "Trial Balance" a summary statement of the debit and credit balances of all Project accounts at a specified point in time and in a format approved by the Department;
- 3.2. In this agreement, unless inconsistent with or otherwise indicated by the context -
- 3.2.1. the headings of clauses, sub-clauses and Annexure have been inserted for convenience only and shall not affect the interpretation of this agreement;
- 3.2.2. any reference to any agreement or annexure, shall be construed as including a reference to any agreement or annexure amending, varying, novating or substituting that agreement or annexure, provided all approvals required to be given pursuant to this agreement for any amendment, variation, novation or substitution of such agreement or annexure has been obtained;
- 3.2.3. any reference to "Parties" shall include the Parties' respective successors-in-title;
- 3.2.4. any reference to one gender shall include the other gender;
- 3.2.5. words in the singular number shall include the plural and *vice versa*;
- 3.2.6. references to a "person" shall include where the context so requires, an individual, firm, company, corporation, juristic person, local authority, and any trust, organisation, association or partnership, whether or not having separate legal personality;
- 3.2.7. words defined in a specific clause have the same meaning in all other clauses of this agreement;

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- 3.2.8. if any definition in this clause 3 contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of this agreement; and
- 3.2.9. the main body of this agreement (excluding Annexures) and the Annexures thereto should be read and interpreted together to be consistent with the intention of the Parties. In the event of any inconsistency between the main body of the agreement and the Annexures thereto, the provisions of the main body shall prevail.

PURPOSES AND OBJECTIVES

4. The purpose and objective of this agreement is to provide for and govern the implementation and disbursement of the Project Funds and to create a framework for the successful and sustainable development, implementation and management of the Project by utilizing the Project Funds, Project Assets and Extension Services and the services of the Mentor.

PROJECT CONDITIONS

- 5.1. This agreement is subject to the suspensive condition that the Beneficiary shall, on or before the Effective Date, have valid legal ownership of the Project Site, or have legal access and use thereof in the form of a valid and duly executed lease agreement or other similar legal arrangement approved by the Department, for the purposes of the execution of the Project.
- 5.2. If the condition stipulated in clause 5.1 is not fulfilled, on or before the date of last signature of this agreement, or such later date as the Department may in its sole discretion indicate to the Beneficiary in writing, this agreement shall be automatically cancelled and shall be of no force and effect, with the exclusion of any clauses which need to remain to apply to give effect to the provisions of this clause 5.2.

STATUS OF THE PARTIES

6. It is recorded that, notwithstanding any provision to the contrary or any provision which could be construed to the contrary, the status of the Beneficiary shall be that of an independent party, and the Beneficiary shall under no circumstances and for no purposes whatsoever be regarded as a partner or employee, as the case may be, of the Department. The Parties hereby specifically record that they are contracting on an independent basis, and the Beneficiary shall under no circumstances and for no reason whatsoever have the right to in any way bind or represent the Department.

THE PROJECT

- 7.1. The Department shall make available for the carrying out of the Project the Project Funds, which Project Funds shall be approved and released in accordance with and for the purposes and requirements of the PIP.

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- 7.2. The Project Assets shall only be utilized in relation to the Project and for no other purpose whatsoever, unless authorized in writing by the Department and in accordance with this agreement.
- 7.3. The Department, with appropriate assistance by the mentor where necessary, shall utilize the Project Funds to procure the necessary services, supplies and work items required in accordance with the PIP for the Project on behalf of the Beneficiary.
- 7.4. The Project Funds shall be capped at the amounts contained in the PIP and BP approved by the Department, and the Beneficiary shall have no claim in terms of this agreement for any further amounts or funds from the Department, unless approved by the Department for purposes of a Project Extension.
- 7.5. The Beneficiary shall have no title or claim against the Department for any portion of the Project Funds not utilized in relation to the Project at the Completion Date or Termination Date.
- 7.6. The Project Assets shall be procured by the Department utilizing the Project Funds. At Project Completion, all title and ownership of the Project Assets, including all risk, costs and expenses associated therewith, shall pass to the Beneficiary, and the Department shall have no ownership or obligations in respect of such Project Assets.

RIGHTS AND OBLIGATIONS OF THE BENEFICIARY

8.1. General obligations in relation to the Project

The Beneficiary shall –

- 8.1.1. use its best endeavours in the execution of the Project and shall at all times act in good faith towards the Department and mentor and act in the best interests of its Members;
- 8.1.2. ensure that its Members at all times comply with and execute the Project in accordance with the provisions of its Constitution;
- 8.1.3. at all times ensure that the Project is carried out in compliance with all applicable legislation, law, regulations, ordinances, proclamations, consents, and applicable health, safety and environmental standards;
- 8.1.4. execute the Project at its own risk and shall be solely responsible to ensure the success and sustainability of the Project; and
- 8.1.5. be entitled to generate, charge and collect revenue from the Project for its own account, and the Department and mentor shall have no entitlement to any share, distribution or dividend from the revenue generated by the Project.

8.2. Project Assets

The Beneficiary shall –

- 8.2.1. use the Project Assets solely for the execution of the Project and for no other purpose whatsoever, unless the prior written consent of the Department for the

alternative use of the Project Assets has been obtained;

- 8.2.2. sell, dispense, replace, encumber, cede, assign, transfer, depreciate or alienate the Project Assets deemed to be capital items reasonably in accordance with the asset life and replacement cycle contained in the PIP, provided that where the Beneficiary requires a substantial deviation from the asset life and replacement cycle for the treatment of any capital item, such deviation must be approved by the Department in writing;
- 8.2.3. use, consume, alienate, sell, transfer, dispense, destroy or replace Project Assets deemed to be working capital items in accordance with the PIP, provided that where the Beneficiary requires a substantial deviation from the PIP for any working capital item, such deviation must be approved by the Department in writing.
- 8.2.4. at its own cost and expense be responsible for the maintenance and up-keep of the Project Assets, and shall ensure that such are maintained at a reasonable level and standard;
- 8.2.5. take all reasonable steps against third parties who are in unlawful possession of Project Assets to recover such assets and compensation for damages thereto;
- 8.2.6. ensure that all Project Assets acquired are without undue delay, recorded in an asset register kept on the Project Site, which asset register shall be regularly updated by the Beneficiary and kept current to at any given time reflect the status and condition of all Project Assets;
- 8.2.7. furnish the Department within 14 (FOURTEEN) working days of the receipt of a request from the Department, with full details regarding the use and whereabouts of all Project Assets;
- 8.2.8. allow the Department to recover and remove any remaining Project Assets from the Project Site in the event of any breach of this agreement by the Beneficiary;
- 8.2.9. be liable to reimburse to the Department the monetary value of all Project Funds, or any portion thereof, disbursed in the carrying out of the Project in the event of the Beneficiary failing to substantially comply with the provisions of clause 8.2; and
- 8.2.10. allow the Department where the Department so requires, to register a bond for the benefit of the Department over any of the Project Assets which are capital items, as security for the due fulfilment of the Beneficiary of its obligations in terms of clause 8.2.2. The entitlement of the Department to such bond shall terminate in accordance with clause 10.3.

8.3. Access

The Beneficiary shall -

- 8.3.1. for the duration of this agreement at all reasonable times during normal working hours grant unrestricted access to the Project Site to the Department and the mentor in order to enable the Department and the mentor to perform their respective activities and ensure the compliance of the Beneficiary with the terms of this agreement; and

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- 8.3.2. for the duration of this agreement at all reasonable times during normal working hours grant unrestricted access to all books, records, documents, notices, invoices, financial statements, and other records or documents required by the Department or mentor which are in the possession or under control of the Beneficiary.

8.4. Finances and management

The Beneficiary shall -

- 8.4.1. implement and maintain a proper accounting or bookkeeping system in respect of the Project which complies with generally accepted accounting practice and which is kept current and managed on a daily basis;
- 8.4.2. supply the Department, for the duration of this agreement, within 14 (FOURTEEN) days after the end of each calendar month with a Trial Balance for that month together with a progress report in a format approved by the Department, briefly detailing the progress of the Project in relation to the PIP. The first Trial Balance shall be submitted in the first calendar month following the month in which the bookkeeping system was implemented;
- 8.4.3. supply the Department, for the duration of this agreement, within 3 (THREE) months after the end of each Financial Year, with the Financial Statements of the Beneficiary for that Financial Year;
- 8.4.4. pay all taxes which apply to the Beneficiary and the Project, and without limiting the generality thereof, pay any VAT (where the Beneficiary is a registered VAT vendor), regional service levies, taxes relating to employees, duties and other taxes which may apply;
- 8.4.5. implement good management practices in relation to the Project in order to ensure the effective management and monitoring of all aspects of the Project; and
- 8.4.6. ensure that the conditions of employment and treatment of employees of the Beneficiary (if any) are in accordance with current labour laws and standards.

8.5. Project specific requirements

The Beneficiary shall ensure compliance in all respects with the specific obligations of the Beneficiary relating to the Project.

RIGHTS AND OBLIGATIONS OF THE DEPARTMENT

9. The Department shall -

- 9.1. provide, subject to clause 13.2.8, the Project Funds / Assets as required in terms of this agreement and may contract an mentor (if deemed necessary and upon condition of available funds for doing so) to provide the necessary support to the Beneficiary;
- 9.2. for the duration of this agreement provide Extension Services to the Beneficiary; and
- 9.3. after the Completion Date at its discretion and on request of the Beneficiary provide Aftercare Services to the Beneficiary.

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DURATION AND TERMINATION OF AGREEMENT

- 10.1. This agreement, subject to clause 10.3, shall commence on the Effective Date and shall thereafter endure until the Completion Date or Termination Date, whichever the earlier.
- 10.2. Upon termination of this agreement for whatever reason, the Beneficiary shall furnish the Department within 1 (ONE) month after the termination, such accounting records, asset register as contemplated in clause 8.2.4 and other documentation relating to the Project as requested by the Department.
- 10.3. Clause 8.2 shall survive the termination of this agreement for a further period of 3 (THREE) years.

PROJECT EXTENSION

- 11.1. The Beneficiary may at any time during the existence of the agreement apply to the Department for a Project Extension, which application must be in writing and must clearly state whether the Beneficiary is requesting an extension of the Project Completion Date and/or an allocation of further Project Funds to the Project.
- 11.2. The Department after considering the application for Project Extension may –
 - 11.2.1. grant an extension of the Project Completion Date; or
 - 11.2.2. grant an allocation of further Project Funds to the Project; or
 - 11.2.3. grant both 11.2.1 and 11.2.2; or
 - 11.2.4. refuse the application for Project Extension, in which event the Department shall provide the Beneficiary with written reasons for such refusal.

PROJECT COMPLETION

- 12.1. Project Completion shall only occur in the event of the Project being determined by the Department to be a sustainable Project carried out to the satisfaction of the Department in accordance with this agreement, which determination shall not be unreasonably withheld. Until the Department has made such determination, the Department may extend the Project Completion Date until such time as the Department determines the Project to be sustainable.
- 12.2. Approximately 1 (ONE) month prior to the Project Completion Date approved by the Department, the Department's auditor shall conduct a Completion Audit of the Project and shall reconcile and verify the Project asset register kept by the Beneficiary (or where no such asset register exists, compile an asset register of the Project Assets on the Project Site), with the disbursement of Project Funds and the BP and PIP for the Project.
- 12.3. Discrepancies, differences, shortfalls or any other matter of concern to the Department's auditor arising from the audit contemplated in clause 12.2 must be clarified and substantiated by the Beneficiary. In the event that the Beneficiary fails to provide substantiation to the reasonable satisfaction of the Department's auditor as to the concerns raised, such failure shall be deemed a breach of this agreement.

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- 12.4. In the event that the Department's auditor is satisfied with the outcome of the Completion Audit, the Department's auditor shall draft a Certificate of Completion which shall be signed by the Department and the Beneficiary.
- 12.5. A Letter of Donation will be given to the project to indicate the alienation of the procured assets after the successful verification of the procured assets. The Letter of Donation shall state the Completion Date, on which date this agreement, subject to clause 10.3 shall terminate.

BREACH

- 13.1. Should the Beneficiary commit a breach of any provision of this agreement and fail to remedy or rectify such breach within 14 (FOURTEEN) days after receipt of a written notice from the Department, calling upon the Beneficiary to remedy such breach, the Department shall be entitled, without prejudice to any other of its rights, to forthwith cancel this agreement by written notice to the Beneficiary.
- 13.2. Without limiting the generality of clause 13.1, the Department shall be entitled to cancel this agreement without notice to the Beneficiary on the occurrence of one or more of the following events -
- 13.2.1. the termination of activities, dissolution, deregistration, or winding up of the Beneficiary;
 - 13.2.2. any act of insolvency as defined in the Insolvency Act 24 of 1936, by the Beneficiary;
 - 13.2.3. any wilful or negligent destruction of a material part of the Project Assets;
 - 13.2.4. any failure to comply with the provisions of clause 8.2;
 - 13.2.5. any removal from the Project Site of the Project Assets other than in the ordinary course of the execution of the Project, without the approval of the Department;
 - 13.2.6. failure or refusal by the Beneficiary for a period of more than 14 (FOURTEEN) days to sign the Certificate of Completion as contemplated in clause 12.4;
 - 13.2.7. a continued and prolonged refusal by the majority Members of the Beneficiary to participate in the Project leading to stagnation and failure of the Project; and
 - 13.2.8. the unavailability of the Project Funds, for whatever reason, for disbursement by the Department in terms of this agreement.
- 13.3. In the event of cancellation by the Department of this agreement in terms of this clause 13, the Department, notwithstanding any other rights which it may have, shall be entitled to recover any remaining Project Assets from the Beneficiary and/or the monetary value of the Project Funds, or any portion thereof, utilized in relation to the Project together with interest thereon from the Beneficiary.

INDEMNITY

14. The Beneficiary hereby indemnifies and shall keep the Department indemnified at all times against any claim in respect of the death and/or personal injury of any person,

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including employees of the Department and the public, and/or any claims for loss or damage to the property or assets of any person, including employees of the Department and the public, arising in consequence of any act by any employee, member, agent or invitee of the Beneficiary in the course of carrying out the Project, but excluding any claims for loss or damage arising from the gross negligence of the Department or its employees.

DISPUTE RESOLUTION

- 15.1. The Dispute Resolution Procedure set out in this clause 15 (the "Dispute Resolution Procedure") shall apply to any dispute, claim or difference arising out of or relating to this agreement.
- 15.2. All disputes shall first be referred to a mediation committee (the "Mediation Committee") consisting of the Head of the PMU and a representative of the Department and the Chairperson of the Beneficiary and a further representative nominated by the Beneficiary, for resolution. An agreement reached by the Mediation Committee shall be reduced to writing and shall be binding on the Parties.
- 15.3. If the Parties have been unable to resolve any dispute within 21 (TWENTY-ONE) working days of referral to the Mediation Committee, either Party may refer the dispute for arbitration.
- 15.4. The arbitration shall be conducted in accordance with the provisions of the Arbitration Act, 1965 (Act No 42 of 1965, as amended from time to time), provided that –
 - 15.4.1. a single arbitrator shall be appointed;
 - 15.4.2. the arbitrator shall be a practicing counsel or attorney of not less than 10 (TEN) years standing agreed upon by the Parties within 10 (TEN) days after the date on which the arbitration is called for.
- 15.5. If the Parties fail to reach agreement within 10 (TEN) days after arbitration has been called for on the arbitrator to be appointed, such arbitrator shall be appointed by the President for the time-being of the Law Society of the Free State.
- 15.6. The arbitration proceedings shall take place in Bloemfontein at a venue and time to be determined by the arbitrator.
- 15.7. The arbitration proceedings shall be held informally and in a summary manner, and all procedural requirements and formalities shall be determined by the arbitrator. In determining such formalities and procedure, the arbitrator does not need to observe the normal strict rules of evidence or usual formalities of procedure.
- 15.8. The decision of the arbitrator shall be final and binding.
- 15.9. The cost of the arbitration proceedings shall be borne by the Parties as decided by the arbitrator.
- 15.10. This arbitration clause shall not prevent the Parties from acquiring urgent relief from a court of law by means of motion proceedings.

INSURANCE

- 16.1. The Beneficiary must ensure that for the duration of this agreement adequate insurance at the replacement value of the relevant assets is procured and maintained in accordance with the relevant insurance industry standards for Project Assets which are capital items, unless the Department in writing waives the obligation to insure specific assets.
- 16.2. The Beneficiary hereby cedes and undertakes to cede all amounts receivable in terms of the insurance referred to in clause 16.1 as security against the damage or destruction of the Project Assets contemplated in clause 16.1.
- 16.3. The Beneficiary shall do all necessary, and sign all documentation, including to notify the insurers of the insurance contemplated in clause 16.1, of the cession thereof as contemplated in clause 16.2, to give effect thereto.
- 16.4. In the event of the damage or destruction of the Project Assets contemplated in clause 16.1, the Beneficiary shall utilize the proceeds of the insurance to restore, repair or replace such damaged or destroyed Project Assets.
- 16.5. Where the Beneficiary fails to utilize the proceeds of the insurance as contemplated in clause 16.4, the Department shall be entitled to demand immediate payment of all such proceeds and to, at its discretion, utilize the proceeds to either restore, repair or replace the damaged or destroyed Project Assets, or to return such proceeds back to the CASP and to terminate the agreement.

ENTIRE AGREEMENT

17. This agreement and the Annexures therewith, contain all the terms and conditions of the agreement between the Parties concerning the subject matter thereof and no terms, conditions, warranties or representations whatever apart from those contained in this agreement have been made or agreed to by the Parties.

AGREEMENT: DARD: VREDE DAIRY PROJECT

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INDULGENCE

18. No relaxation or indulgence which any Party ("the first party") may grant to the other Party ("the second party") in regard to any of the second party's obligations in terms hereof shall constitute a waiver of or prejudice any of the first party's rights in terms hereof.

NOTICES AND DOMICILIUM

- 19.1. All notices given by either Party to the other in terms of this agreement shall be given in writing by pre-paid registered post or telefax, or delivered by hand to the addresses of the Parties indicated on the coverpage to this agreement or such other address as the one Party may inform the other in writing, which address will not be a *post restante*, and shall be deemed to have taken effect 14 (FOURTEEN) days after posting of the required written notice.
- 19.2. A notice -
- 19.2.1. given by registered post, will be deemed to have been received 5 (FIVE) days after the date of posting thereof;
- 19.2.2. sent by telefax, shall be deemed to have been received on the first working day following the date of transmission of such notice;
- 19.2.3. delivered by hand shall be deemed to have been received on the date of delivery thereof.
- 19.3. Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the Parties from another, including by way of facsimile transmission, shall be adequate written notice or communication to such party.
- 19.4. The Parties choose as their *domicilium citandi et executandi* for all purposes under this agreement at the addresses referred to in clause 19.1.

NON-VARIATION

20. No variation or consensual termination of this agreement or any part thereof shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

COSTS

21. The Department shall bear all costs relating to the drafting and administration of this agreement.

Z L M

M. T. E.

CM

JAM

SIGNED AT GLEN ON

Meyer
WITNESS

AGRICULTURE & Rural Dev
THE DEPARTMENT

[Signature]
WITNESS

[Signature]
Dr. T. Mastong

Who by his/her signature
warrants that he/she is duly
authorized thereto

SIGNED AT Vrede ON

[Signature]
WITNESS

JUN DAVID MANHARA
BENEFICIARY:

[Signature]
WITNESS

[Signature]
Who by his/her signature
warrants that he/she is duly
authorized thereto

Cm: Kuhn & Prinsloo Street

VREDE, 0835

Tel: 058 913 8300

PHUMELELA
LOCAL MUNICIPALITY

Private Bag x 5

VREDE, 0835

Fax: 058 913 2317

VREDE DAIRY BENEFICIARY LIST

| No | Name & Surname | ID No. | Contacts | Address |
|----|-------------------------------|-------------------|--------------|-----------------------|
| 1 | Mpumelelo Ngubeni | | 073 237 7511 | 76 Dlamini Street |
| 2 | Kenneth Radebe | | 083 4784 632 | 219 Zamanani |
| 3 | Nomusa Mzizi | | 076 9703314 | 276 Zamani |
| 4 | Jun David Mahlaba | 760530 9426081 | 082 5972 557 | 91 Dladla Street |
| 5 | Lindiwe Masiteng | | 076 580 7739 | 2646 Sisulu Street |
| 6 | Dhlamini Ephraim Makhošini | 631021 5284081 | 083 9655 409 | 2387 Khanye Street |
| 7 | Meshack Mphaleni Ncongwane | 5701255870089 | 084 389 6821 | |
| 8 | Velly Dhlamini | 640516 5452 082 | 084 389 6821 | |
| 9 | Paulos Khumalo | | 083 5346994 | 1503 Mashinini Street |
| 10 | Josias Mahlaba | | 072 504 6594 | 1863 Radebe Section |
| 11 | Samuel Msimanga | 4621004 5759080 | 076 818 7824 | 91 Dladla Street |
| 12 | Petrus Sangweni | 5005165235080 | 071 2473 433 | 1868 Radebe Section |
| 13 | Phumulane Sibeko | 6508185455082 | 084 351 0936 | 2538 Ext 3 |
| 14 | Piet Mokoena | 6007285969082 | 073 3637 395 | 2328 Khanye Street |
| 15 | Samuel Dlamini | 5412025377088 | 084 965 1415 | 2162 Ndaba Street |
| 16 | Mokhashane Jantjie Mphuthi | 6455015327088 | 083 5092 181 | 2005 Ndaba |
| 17 | Selina Mthabela | 400101 5257 094 | 076 646 6851 | Arandel Plaas |
| 18 | Moses Motaung | | 076 7298 112 | 25 Mntungwa Street |
| 20 | Aletta Mbele | 6603285521089 | 076 379 4152 | Lady Vlei |
| 21 | Josinah Limakatso Radebe | | 079 851 1534 | 44 Mphuthi Street |
| 22 | Makhosini Josua Mokoena | 560409 0835087 | 083 499 0885 | 339 Vilane Street |
| 23 | Tshabalala Buti Andries | 36 45011 35433083 | 079 302 3657 | Langvirwag |
| 24 | Tshabalala Fanie | | 078 2921 594 | 1874 Radebe Section |
| 25 | Doctor Abednigo Moloi | | 078 2921 594 | 1874 Radebe Section |
| 26 | Mbele Johannes | 7506105357080 | 084 3133 039 | 2385 Modise Section |
| 27 | Twala Pickup Michael | 9002225454088 | 072 8120 151 | 1712 Radebe Street |
| | | 3801085130084 | | 1728 Radebe Section |

| | | | | |
|------|-----------------------------------|---------------|--------------|---------------------|
| 28 | Jan Mruphi | | 072 8573 640 | Sweetwater farm |
| 29 | Jim Twala | | 073 820 1674 | 219 Three Section |
| 30 | David Khumalo | 6106135419082 | 073 492 2969 | 3248 Mabheha Street |
| 31 | Petrus Molefe | 7505155357081 | 084 6096 853 | Warden |
| 32 | Teboho Nala | 7603056068087 | 072 276 7727 | Warden |
| 33 | Sipho David Sigasa | 6908185737085 | 084 0664 351 | 3098 Ntsele Street |
| 34 | Mandla Mkhwanazi | 8501195645083 | 078 912 9297 | Warden |
| 35 | James Ngqosini | 7310315309084 | 072 481 0423 | Vrede |
| 36 | Kubeka Eric | 7905065878087 | 078 288 5192 | Vrede |
| 37 | Motahane Teboho | 6301155790088 | 079 7380 774 | Warden |
| 38 | Ntshingila Samson | 9105105319089 | 071 706 6578 | Warden |
| 39 | Mokoena Jacob | 4906105465086 | 079 555 9309 | Warden |
| 40 | Oupa Tshabalala | 6309285340088 | 083 467 4716 | Warden |
| 41 | Amos Malinga | | 076 2388 205 | Warden |
| 42 | Agnes Ntshingila | 5306265473088 | 084 650 1731 | Warden |
| 43 | Tshabalala Therisia | 5007240393082 | 082 568 7632 | Warden |
| 44 | Thabo Mabula | 6702110286080 | 078 2690 338 | Warden |
| 45 | Mazibuko Velaphi | 8612175322084 | 073 656 4600 | Warden |
| 46 | Mokoena Simon | 6209015443089 | | Warden |
| 47 | Leah Motahane | 4003285172086 | 078 812 5578 | Warden |
| 48 | Lizzy Moloi | 6202020739088 | | Warden |
| 49 | Matebesi Sebiloane | 4803200414086 | 083 5335427 | 756 Warden |
| 50 | Mbele MJ | 6306305205082 | 073 156 5587 | Roadside |
| 51 | Adam Selepe | 6110105559083 | 076 5539 784 | Warden |
| 52 | Ellia Tshabalala | 8602175322080 | 071 595 0432 | 1691 Radebe Section |
| 53 | Lucas Khanye | 6310025749083 | 071 2720 704 | 3093 Extension 3 |
| 54 | Twala Motlalepule | 6308075354085 | 072 569 3434 | 3048 Extension 3 |
| 55 | Mlangeni Khehla Jim | | 071 269 4046 | 3444 Mhlambi Street |
| 56 | Wellem Khanye | 5112285601082 | 078 474 6699 | 3049 Mhlambi Street |
| 57 | Jose Mofokeng | 4811225218086 | 082 598 1689 | 21 Dungwa Street |
| 58 | Phillmon Ngwenya | 3505145155088 | 083 5240 509 | 2156 Ndaba Village |
| 59 | Selina Ruth Masiteng | 6501255887086 | 071 143 8901 | 3182 Extension 3 |
| 60 | Maria Phindile Dhlamini | 4812050438088 | 083 965 5409 | 2646 Ext 3 |
| 61 | Pauline Matse | 6812030316089 | | 2387 Khanye Street |
| 62 | Nomshado Ireen Twala | | 084 850 7331 | 2385 Kheswa Street |
| * 63 | Annah Mkhanye | 7410160437083 | 083 697 9946 | 56B Mphuthi Street |
| 64 | Julai Khumalo | 6209130431084 | 083 340 9195 | 1737 Radebe Section |
| 65 | Zwelithini Cambridge Sebiloane | | 083 863 4034 | 1580 Mpholo Village |
| * 67 | B.H Motlounq | 7705275289087 | 084 6410840 | 2488 Extension 3 |
| 68 | Moses Mollo | 3702025207083 | 071 4594 202 | Smal Deer Farm |
| | | 4302145359085 | 074 750 0965 | 2520 Ext 3 |

| Name & Surname | ID No | Contacts | Adress |
|---------------------------------|-----------------|------------|--------------------|
| 69. Khumalo Elliot | | 0792482824 | 9140 Ndaba village |
| 70. Sebiloane Lili Emma | 5908230647 082 | 0726759205 | 36 Uys street |
| 71. Mokonehatsi Silas | 6202126013 081 | 0818872761 | 1512 Modise |
| 72. Mkwebane Isaac | 5605175719 088 | 0730615056 | 1718 Hambanathi |
| 73. Radebe Khehla | 6103305491 082 | 0826350484 | Pramkom Farm |
| 74. Ngubeni Meshack | 8609046362 083 | 0711763784 | 3412 Ext. 3 |
| 75. Tshabalala Richard | 7805285272 089 | | |
| 76. Motaung Simon Ntoeng | 6907045288 081 | | |
| 77. Moloi Maki Ntsoaki | 7009120408 087 | | |
| 78. Mkhwanazi Thokozani | 8304206072 082 | | |
| 79. Mdlala Lungile Favourite | 7611060248 082 | | |
| 80. Nkabinde Mbuyiswa Johan | 81111058630 085 | | |
| | | | |

Management Committee:

Chairperson: Jun David Mahlaba

Secretary: Zelpha Lindiwe Masiteng

Treasure: James Dumalisile Ngqosini Cell:

Cell: 08259972557

Cell: 0765807739

Cell: 0724810423

Annexure “RJ12”



Minister of the Executive Council
for Agriculture & Rural
Development
FREE STATE PROVINCE

TO: Mr BF MOTHUPI
Table Assistant
Free State Provincial Legislature
Bloemfontein

Dear Mr Mothupi

**DRAFT RESPONSE
OUTSTANDING REPLIES TO DA QUESTIONS
11 NOVEMBER 2014**

Herewith my replies to outstanding questions posed by the DA to late
MEC GM Qabathe:

1. Question 066/2014 by Mr R Jankleisoohn:

1. Estina was appointed as service provider. Supply Chain
Management procedures were followed.
2. See response to Question 1 above.
3. See Question 1 above.
4. The one replaced the other

2. Question 068/2014 by Mr R Jankielsohn:

1. Beneficiaries were residents from the areas surrounding the project, previously disadvantaged and with a keen interest in farming.

2. The beneficiaries thus far identified are:

Kindly refer to attached *Annexure "A"*.

3. No.

3. Question 071/2014 by Mr D van Vuuren:

1. There was no contract between the Office of the Premier, Estina and the Provincial Department of Agriculture.

Kind regards



.....
Ms SM MLAMLELI
Acting MEC: Agriculture & Rural Development

30 APRIL 2015
Date

Annexure “RJ13”

"RJ-201" "A"

| Name & Surname | ID No | M | F | Y |
|-------------------------------|----------------|----|---|---|
| 1. Mpumelelo Ngubeni | | x | | |
| 2. Kenneth Radebe | | x | | |
| 3. Mzizi Nomusa | | | x | |
| 4. Jun David MAhlaba | 7605305426 081 | x | | |
| 5. Mashang Lindiwe | | | x | |
| 6. Dhlamini Ephraim Makhosini | 6310215284 081 | x | | |
| 7. Meshack Mphaheni | 5701255870 089 | x | | |
| 8. Velly Dhlamini | 6405165452 082 | x | | |
| 9. Paulus Khumalo | | x | | |
| 10. Josias Mahlaba | 6210045759 080 | x | | |
| 11. Samuel Msimanga | 5005165235080 | x | | |
| 12. Sangweni Petrus | 6508185455 082 | x | | |
| 13. Sibeko Phumulane | 8007285969 082 | x | | |
| 14. Mokoena Piet | 5412025377 088 | x | | |
| 15. Dlamini Samuel | 6405015327 088 | x | | |
| 16. Makhasane Jantji Mphuthi | 4001015257 094 | x | | |
| 17. Mthabela Selina | | | x | |
| 18. Motaung Moses | 6603285521 089 | x | | |
| 19. Mbele Aletta | | | x | |
| 20. Radebe Josina Limakatso | 5604090835 087 | | x | |
| 21. Makhosini Joshua Mokoena | | x | | |
| 22. Tshabalala Buti Andries | | x | | |
| 23. Tshabalala Fanie | | x | | |
| 24. Moloi Doctor Abednigo | | x | | |
| 25. Mbele Johannes | 9002225454088 | x | | |
| 26. Twala Pickup Michael | 3801085130084 | x | | |
| 27. Mfuphi Jan | | x | | 1 |
| 28. Twala Jim | 6106135419082 | x | | |
| 29. Khumalo David | 7505155357081 | x | | |
| 30. Molefe Petrus | 7603056068087 | x | | |
| 31. Nala Teboho | 6908185737085 | x | | |
| 32. Mgqosini James | 7905065878087 | x? | | x |
| 33. Sigaza David Siphos | 8501195648083 | x? | | x |
| 34. Mkhwanazi Mandla | 7310315309804 | x | | |

| | | | | |
|--------------------------------------|----------------|---|---|---|
| 35. Khubheka Eric | 6301155790088 | x | | |
| 36. Motahane Teboho | 9105105319089 | x | | x |
| 37. Ntshingila Samson | 4906105465086 | x | | |
| 38. Mokoena Jacob | 6309285340089 | x | | |
| 49. Tshabalala Oupa | | x | | |
| 40. Malinga Amos | 5306265473088 | x | | |
| 41. Ntshingila Agnes | 5007240393 082 | | x | |
| 42. Tshabalala Therisa | 6702110286080 | | x | |
| 43. Mabula Thabo | 861175322084 | x | | x |
| 44. Mazibuko Velaphi | 6209015443089 | x | | |
| 45. Mokoena Simon | 4003285172086 | x | | |
| 46 Motahane Leah | 6202020739088 | | x | |
| 47. Moloi Lizzy | 4803300414086 | | x | |
| 48. Sebiloane Matebesi | 6306305283082 | x | | |
| 49. Mbele M. J. | 6110105559083 | x | | |
| 50. Selepe Adam | 8402175322080 | x | | x |
| 51. Tshabala Elija | 6310025749083 | x | | |
| 52. Khanye Lucas | 6308075354085 | x | | |
| 53. Twala Motalepule | | x | | |
| 54. Mlangeni Khetha Jim | 5112285601 082 | x | | |
| 55. Khanye Willem | 4811225218086 | x | | |
| 56. Mofokeng Jose | 3505145183088 | x | | |
| 57. Ngwenya Phillimon | 6501255887 086 | x | | |
| 58. Masheng Ruth Selina | 4812050438 088 | | x | |
| 69. Dhlamini Maria Phindile | 6812030316 089 | | x | |
| 60. Matse Paulina | | | x | |
| 61. Twala Nomshado Ireen | 7410160439 083 | | x | |
| 62. Mkhanye Anna | 6209130431 084 | | x | |
| 63. Khumalo Julai | | x | | |
| 64. Zwlithini cambridge Sebiloane | 7705275289 087 | x | | |
| 65. Motloung B. H. | 3702025207 083 | x | | |
| 66. Mollo-Moses | 4302145359 085 | x | | |
| | | | | |

| Name & Surname | ID No |
|---------------------------------|-----------------|
| 69. Khumalo Elliot | |
| 70. Sebiloane Lili Emma | 5908230647 082 |
| 71. Mokonehatsi Siles | 6202126013 081 |
| 72. Mkwabane Isaac | 5605175719 088 |
| 73. Radebe Khehla | 6103305491 082 |
| 74. Ngubeni Meshack | 8609046362 083 |
| 75. Tshabalala Richard | 7805285272 089 |
| 76. Motaung Simon Ntoeng | 6907045288 081 |
| 77. Moloi Maki Ntsoaki | 7009120408 067 |
| 78. Mkhwanazi Thokozani | 8304206072 082 |
| 79. Mdlala Lungile Favourite | 7611060248 082 |
| 80. Nkabinde Mbuyiswa Johan | 81111058630 085 |

Annexure “RJ14”

National Treasury

Report on the investigation into the Vrede Integrated Dairy Farm Project

Prepared for: Zanele Mxunyelwa

Date: January 2013

Our Ref: 2002723/S Jacobs
Your Ref: 03-408-02-3-2014

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Executive Summary

On 12 June 2013, the National Treasury (NT) Chief Procurement Officer requested NT's Specialised Audit Services (SAS) to investigate allegations of procurement irregularities allegedly committed by the Free State Department of Agriculture and Rural Development (FSDA&RD). The investigation was requested because NT became aware that the FSDA&RD may not have adhered to supply chain management prescripts in procuring the services of Estina (Pty) Ltd (Estina)/Paras Dairy as a result of an article published by the Mail & Guardian newspaper (M&G) on 14 June 2013.

ENS Forensics (Pty) Ltd was co-sourced by NT's SAS division to assist with this investigation. ENS' mandate in respect of this investigation was to:

- establish if the project was an approved PPP arrangement or a sole provider engagement
- verify the supply chain management process followed in appointing the service provider, Estina/Paras
- verify how much the FSDA&RD committed to the project and the source of the funds, and if there was any capital injection by the service provider
- investigate the reasons and supporting documentation for the BAS payments made in excess of the R30 million, which was said to be available from the department
- verify if there were any beneficiaries identified for the AGRIBEE and if so, who they were
- establish through liaising with Agri SA whether there is value for money to the State on this project
- establish the current state of the project and provide recommendations.

The supply chain management process followed in appointing Estina/Paras

Throughout this investigation, it was clear to ENS from the interviews we conducted that Mr Thabethe has played a pivotal role in the Vrede Dairy Project. He identified the service provider Paras and visited India within a month of being appointed as HOD of the FSDA. He later signed the first agreement with Estina on 7 June 2012, before Provincial Exco had approved the project.

It appears that the authority to deviate from the prescribed procurement process document was signed after Mr Thabethe obtained advice from the State Attorney's Office. Prior to the State Attorney's, involvement there was no attempt to engage in any supply chain management process.

It further appears that Mr Thabethe signed a second agreement with Estina after the State Attorney advised that the first agreement was defective.

Mr Thabethe has been involved in every stage of the identification and appointment of Estina/Paras. As the accounting officer for the department, he ultimately bears the responsibility of ensuring that the department has a procurement system that is fair, equitable, transparent, competitive and cost-effective as set out in section 38(1)(a)(iii) of the Public Finance Management Act, Act 1 of 1999 (the PFMA). He is further responsible for ensuring that his department procures in line with its supply chain management policy as well as the PFMA, the PFMA Regulations as well as section 217 of the Constitution. Mr Thabethe did not follow the requirements of the PFMA, its Regulations or the Constitution. He did not engage in any meaningful supply chain management process before engaging the services of Estina/Paras. Mr Thabethe was consistent and adamant that he believed it was not necessary to follow a supply chain management process in this project. Mr Thabethe's reasoning was however not convincing on closer scrutiny.

ENS was requested to establish if the Vrede project was an approved PPP arrangement or a sole provider arrangement; we were further required to verify what supply chain management process was

followed in appointing the service provider, Estina/Paras. The investigation has revealed that the Vrede project is neither a PPP nor a sole provider arrangement. Mr Thabethe did not follow any supply chain management process. He signed an authorisation to deviate from the prescribed procurement process because, in his opinion, he is authorised to deviate from the procurement process when he deems it appropriate. He signed the authority to deviate without believing it was necessary or relevant or required in this instance. Mr Thabethe was also not clear regarding the grounds that justified him deviating from the prescribed process. In his opinion it was sufficient that he had decided that a deviation from the prescribed process was appropriate. Mr Thabethe stated that he has followed the same process, or lack of process, in appointing service providers on other projects.

Mr Thabethe obtained advice from the State Attorney's Office in an attempt to remedy the flawed procurement process as well as the gaps in the agreement with Estina. ENS was not able to interview the attorney at the State Attorney's Office that had advised Mr Thabethe because Mr Thabethe refused to waive attorney/client privilege.

Mr Thabethe signed a 99-year rent-free lease in favour of Estina in respect of the land on which the Vrede Dairy project is being constructed.

Mr Thabethe further refused to facilitate a meeting between ENS and Estina's director, Mr Kamal Vasram. Mr Vasram refused to attend a meeting with ENS without Mr Thabethe's express authorisation.

The funds committed to the Vrede Dairy project, the source of the funds and contributions by Estina/Paras

According to the agreement between FSDA&RD and Estina, the department is required to pay R114 million in respect of the project annually for 3 years. These contributions were due to start in the 2012/2013 financial year and end in the 2014/2015 financial year.

The department only obtained R30 million for the Vrede Project in the 2012/2013 adjustment budget. There was therefore a shortfall in its contribution towards the project in the first year, the 2012/2013 financial year. The FSDA&RD and the Free State Provincial Treasury (FSPT) had to make a concerted effort to obtain funds for this project in the 2012/2013 financial year as well as for the two subsequent years because there was no existing budget for the project at the point at which Mr Thabethe signed the agreement with Estina/Paras.

In the 2013/2014 financial year the department budgeted for the Vrede project as follows:

- R53.95 million was to be obtained from the CASP grant
- R60 million was to be obtained from the department's equitable share.

Ms Dlamini, the department's CFO, indicated that the department will continue to fund the project on this basis in subsequent years; part of its contribution being sourced from the CASP grant and the remainder being obtained from the department's equitable share. This is however doubtful because the National Department of Agriculture, Forestry and Fisheries (DAFF) has withheld its CASP allocation in respect of the Vrede project for the 2013/2014 financial year because it is dissatisfied with certain elements of the project.

Further, Mr Thabethe should not have committed the department to a liability for which funds had not been appropriated. If the DAFF continues to be dissatisfied with the Vrede project and it is unwilling to fund the project in future, it is not clear how the FSDA&RD will meet its financial obligations in respect of the Vrede Dairy project.

The FSDA&RD does not exercise oversight over the finances of the Vrede Dairy project. Payments are made into Estina's bank account and the department is not able to objectively ascertain how its

funds are being spent. Further, the department is not able to verify if Estina has in fact made any financial contributions to the project.

Payments made by the Department to date

ENS has established that a total of R114 million has been paid to the service provider to date. The payments made by are reflected below:

- On 12 June 2012 a payment of R30 million
- On 18 April 2013, a payment of R 34.95 million
- On 23 April 2013, a payment of R 30 million
- On 30 April 2013, a payment of R 19.05 million.

Beneficiaries of the Vrede Project AgriBEE entity

No beneficiaries were identified for this project until the issue was raised by DAFF after its visit to the Vrede Dairy project site in August 2013. When ENS questioned Mr Thabethe about why beneficiaries were only identified after the project had been initiated, he stated that the identification of beneficiaries was an on-going process.

Ms Mtshiza, the DAFF CASP grant co-ordinator, was however clear that the FSDA&RD only started to scramble to find beneficiaries for this project when DAFF indicated that it might be withdrawing its approval for this project.

The department provided ENS with a copy of the list of project beneficiaries. To date only 80 potential beneficiaries have been identified, instead of the projected 100 beneficiaries. There are serious concerns about the manner in which the beneficiaries were identified.

The AgriBEE entity was only incorporated on 11 October 2013; the only director of the AgriBEE entity is Mr Vasram, Estina's director. None of the current beneficiaries are listed as directors of the AgriBEE entity; it is also not clear if these beneficiaries will become directors of the entity.

Value for money for the State

Mr Maree, a senior economist at Agri SA assessed the Vrede Dairy project documents. He concluded that the State should not continue with the project in its current state since government will not receive value for money, as the costs associated with the project are not reasonable or market related.

Current status of the project

In October 2013, ENS visited the Vrede Dairy project site accompanied by Mr Thabethe. At the site it was clear that various buildings were in the process of being erected. Approximately 350 cows have been purchased for the project to date.

The two Estina officials on site had a good understanding of how the project would unfold and they also possessed project plans, which were not in the possession of the department.

ENS cannot comment on the current financial status of the project. To date, the department has paid R114 million to Estina in terms of the agreement. This contribution however only covers the funds that were due by the department during the 2012/2013 financial year. The department has not paid over any of the funds due in the 2013/2014 financial year. DAFF also informed ENS that it withheld its

CASP contribution towards the Vrede Project for the 2013/2014 financial year. It is therefore likely that the project is experiencing cash flow difficulties.

Recommendations

ENS recommends that disciplinary action be taken against Mr Thabethe for his role in concluding this agreement with Estina/Paras. Further, he committed the department financially without ensuring that the department had the funds available to fund this project.

ENS recommends that disciplinary action be taken against Ms Dlamini the CFO of the FSDA&RD. As the head of the department's finance division, Ms Dlamini should have ensured that proper financial oversight controls were in place before transferring funds to Estina.

ENS recommends that no further funds are invested in the project until all of the risk factors set out in this report are addressed. Ultimately the project should be re-assessed and the necessary due diligence should be completed to ensure that the project is viable. In its current form the project is not likely to yield value for money to the State.

1 Introduction

1.1 Background to the investigation

- 1.1.1 On 12 June 2013, the National Treasury (NT) Chief Procurement Officer requested NT's Specialised Audit Services (SAS) to investigate allegations of procurement irregularities allegedly committed by the Free State Department of Agriculture and Rural Development (FSDA&RD). The investigation was requested because NT became aware that the FSDA&RD may not have adhered to supply chain management prescripts in procuring the services of Estina (Pty) Ltd (**Estina**)/Paras Dairy as a result of an article published by the Mail & Guardian newspaper (**M&G**) on 14 June 2013.
- 1.1.2 The M&G article, attached as **Exhibit 1**, alleged that the FSDA&RD irregularly appointed a service provider, namely Estina, to establish an integrated dairy farm in Vrede (**Vrede Project**). SAS mandated ENS to conduct an investigation of certain aspects related to the project; ENS' mandate is set out in section 1.3.
- 1.1.3 ENS has investigated the Vrede project in line with the mandate we received from SAS; our findings are set out in this report.

1.2 The allegations set out in the various newspaper articles

M&G – 14 June 2013 article

- 1.2.1 In the M&G article of 14 June, **Exhibit 1**, the allegations in respect of the Vrede project were that:
- The FSDA&RD flouted treasury rules related to procurement by entering into a R500 million dairy partnership with a company named Estina, which is allegedly linked to the Gupta family
 - The project was not concluded as a public private partnership (**PPP**) deal nor had FSDA&RD sought permission to partner with the company Estina
 - Estina was given a 99-year rent-free lease over the 4,400 hectares of State farmland on which the project would be established
 - The FSDA&RD has redirected a huge chunk of its budget to the dairy, punting it as a mega public private partnership
 - Estina assumed little risk on this project, stating vaguely that it would participate financially "when required"; the department told the M&G that Estina would contribute R200 million
 - Estina lacks discernible infrastructure, track record and resources
 - Estina may raise funds for this project by pledging the property as security for a bond, which if the project fails could see the land being forfeited to the bank
 - The lease agreement does not tie the lease to the project's success, so Estina would have the use of the land for the next 99 years rent-free.

- 1.2.2 Estina's only director, Mr Kamal Vasram (**Mr Vasram**), commented in the article that, "The project has been initiated after following all due processes".

M&G – 31 May and 7 June 2013

- 1.2.3 ENS obtained three further M&G articles related to this matter, one article dated 31 May 2013, see **Exhibit 1**, and two articles dated 7 June 2013, see **Exhibit 1**.

- 1.2.4 The 31 May 2013 article stated that the project was a PPP project, with government set to contribute R342 million to the project over 3 years; the article also questioned Estina's credentials, stating that its director, Mr Vasram, had no apparent dairy farming experience. According to the article, Estina claims to be linked to Indian dairy company Paras and that it therefore has the expertise to participate in this type of project. The M&G, however, contacted a spokesperson for Paras, which stated, "We don't do any business in South Africa and we don't have any Estina on our database". The article further set out some of the same concerns communicated in the 14 June article and went into great detail about Estina's possible links with the Gupta family.
- 1.2.5 The first 7 June 2013 article set out the following concerns about the project:
- The provincial budget shows a huge redirection of resources towards this single PPP project.
 - There are serious doubts about the project's viability and many locals have questioned its viability.
- 1.2.6 The Indian dairy giant, Paras' spokesperson, Bharti Singh, repeated the company's position that it knows nothing of the project; she circulated the M&G query to all of Paras' directors and they confirmed that Paras has no business in South Africa and does not have any dealings with Estina.
- 1.2.7 Further, the article went into significant detail regarding the project's possible link to the Gupta family, alleging that the Estina project co-ordinator/project manager for the Vrede Project, Mr Chandrama Prasad (Mr Prasad) was also linked to the Guptas.
- 1.2.8 The second article dated 7 June 2013, linked Mr Prasad to a corruption scandal in India relating to the recruitment of 18,000 police constables on which the Mayawati administration had requested an investigation; the investigation report, prepared by the Uttar Pradesh chief secretary, concluded, *"Prima facie it is clear that the then Honourable Chief Minister [Mulayam Singh] meticulously engineered the entire recruitment in a planned systematic manner.....it is prima facie proved that direct and indirect co-operation in these activities were given by the then director general of police and the then special secretary to chief Minister, Chandrana Prasad"*. The investigation report appears to implicate Mr Prasad in the corruption scandal.

1.3 The mandate to ENS

- 1.3.1 During our investigation of the Vrede Project, ENS was requested to:
- establish if the project was an approved PPP arrangement or a sole provider engagement
 - verify the supply chain management process followed in appointing the service provider, Estina/Paras
 - verify how much the FSDA&RD committed to the project and the source of the funds, and if there was any capital injection by the service provider to this project
 - investigate the reasons and supporting documentation for the BAS payments made in excess of the R30 million, which was said to be available from the department
 - verify if there were any beneficiaries identified for the AGRIBEE and if so, who they were
 - Establish through liaising with AGRI.SA whether there is value for money to the State on this project, and
 - Establish the current state of the project and provide recommendations.
- 1.3.2 The articles published by the M&G placed significant emphasis on Estina being linked to the Gupta family. ENS was not mandated to investigate this issue and no investigation has been completed on this aspect. We have approached the investigation from the perspective of

establishing whether or not relevant legislation and treasury guidelines were complied with in appointing Estina.

- 1.3.3 On 18 September 2013, ENS started interviewing witnesses with regard to this investigation. The limitations to this investigation are set out in **Annex A** to this report as well as in section 1.4 below. The ENS methodology is set out in **Annex B** to this report.

1.4 Specific limitations to this report

- 1.4.1 This report seeks to advise NT of our findings in this investigation.
- 1.4.2 ENS cannot guarantee that we have had access to all of the information relevant to this project. We have requested various documents from the department, and specifically the HOD, that we have not received.
- 1.4.3 Further, during the investigation it became apparent that the HOD was potentially intentionally withholding information from the investigation team, three examples are easily identifiable, first the HOD did not inform the investigation team that two agreements were signed with Estina, the HOD only provided us with the second agreement; the HOD did not provide us with a copy of the 99-year lease agreement with Estina and specifically denied its existence in our first interview with him and third, the HOD did not provide us with copies of the memoranda approving his trip to visit Paras in India. In addition, the HOD would not facilitate our access to important witnesses in this case like the State Attorney's Office and Estina/Paras.
- 1.4.4 The lack of candour on the part of the HOD, as well as the fact that it appears that documents were kept from the investigation team means that we are not aware of all of the facts related to this matter.
- 1.4.5 Nevertheless, ENS has obtained a significant amount of information regarding this project and we have interviewed various witnesses from various departments regarding the project. We are therefore of the opinion that the information we have obtained should provide NT with a fair representation of the process that was followed by the FSDA&RD in appointing Estina. We have also obtained sufficient information regarding the project to answer the other questions posed by NT in its mandate letter.

1.5 Structure of the report

- 1.5.1 This report sets out ENS's findings with regard to the investigation conducted into the Vrede Project. The report is drafted for NT to obtain clarity on the role-players involved in appointing the service provider Estina/Paras. In addition, the report provides an indication of the total funds allocated to the project, the funds already spent on the project and whether or not the State will receive value for money in this project.
- 1.5.2 In section two of the report we set out a timeline of the how the service provider was engaged and the procurement process followed, as established from the documents we obtained and witnesses we interviewed.
- 1.5.3 Section three of the report will address the extent of the funds the FSDA&RD committed to the project and the source of the funds, and if there was any capital injection by the service provider. In addition, we will cover the reasons and supporting documentation for the BAS payments made in excess of the initial R30 million.
- 1.5.4 Section four of the report will address the issue of beneficiaries identified for the AGRIBEE entity.

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- 1.5.5 Section five of the report will address whether the State will receive value for money in this project.
- 1.5.6 In section six of the report we will comment on the current status of the project
- 1.5.7 Section seven of the report will set out recommendations in respect of the project.

2 FSDA&RD deviated from the prescribed procurement process

2.1 ENS attempted to reconstruct what process was followed by FSDA&RD

2.1.1 ENS interviewed the following officials:

- The head of department (HOD) of the FSDA&RD, Mr P Thabethe (Mr Thabethe)
- The chief financial officer (CFO), Ms S Dlamini (Ms Dlamini), who is also the chairperson of the department's bid adjudication committee (BAC)
- The general manager district services, Dr T Masiteng (Dr Masiteng)
- The head of procurement for the FSDA&RD, Mrs L Mngomezulu (Mrs Mngomezulu)
- The office manager in the Office of the FSDA&RD Head, Mr M Gama (Mr Gama), who is also the chairperson of the department's bid evaluation committee (BEC)
- The Vrede project FSDA&RD co-ordinator, Ms Alta Meyer (Ms Meyer)
- The chief executive officer (CEO) of the Free State Provincial Treasury (FSPT), Mr M Mahlatsi (Mr Mahlatsi)
- The previous CEO of the FSPT, Mr Kgomongwe
- The FSPT Accountant General, Ms Anna Fourie (Ms Fourie)
- The FSPT Acting Senior Executive Manager: Assets and Liability Management, Mr T Mabilo (Mr Mabilo)
- The FSPT Senior Executive Manager for Sustainable Resource Management, Mr I Moses (Mr Moses)
- Mr Chandrama Prasad the Project Manager/Project Co-ordinator for Estina.

2.1.2 ENS obtained documentary and oral evidence from various witnesses; we have combined what we have learnt in the interviews with the documents obtained to attempt to reconstruct the process that was followed in appointing Estina.

2.2 The procurement process followed by the FSDA&RD was flawed

The initiation of the project and Estina's Project Proposal

- 2.2.1 ENS conducted two interviews with Mr Thabethe¹. During these interviews it became clear that Mr Thabethe played an integral role in identify Paras Dairy; in signing the contract with Estina/Paras and he is currently involved in the execution of this project.
- 2.2.2 Mr Thabethe was appointed as the HOD of the Free State Department of Agriculture (FSDA) in March 2012. The Free State Departments of Agriculture and Rural Development merged in March 2013, with Mr Thabethe being appointed as HOD of both departments in March 2013. These appointment dates are important when the timeline of the Vrede Project is considered because Mr Thabethe identifies Paras as a suitable partner in the first month of his appointment and the first contract with Paras/Estina is signed on 7 June 2012.
- 2.2.3 Shortly after his appointment as HOD of FSDA, Mr Thabethe's became aware of a report compiled by the National Agricultural and Marketing Company (NAMC) highlighting the Free State Province's suitability for dairy farming. According to Mr Thabethe the province had been involved in dairy farming prior to his appointment, citing as an example the province's involvement in the Maluti Dairy with Nestle. In terms of the NAMC study, the Free State Province was ranked second in terms of suitability for dairy farming; it further mentioned that there had been a decrease in dairy farmers nationally. Mr Thabethe saw this as an opportunity

¹ The first interview was conducted on 9 October 2013; the second interview on 22 November 2013.

to increase the province's involvement in this industry. He further stated that the cost of transporting the milk to Johannesburg for processing was having a negative impact on the industry's profitability in the province – one of the major inhibitors of dairy farming being the cost of having milk processed after it is produced. He started to look at opportunities to establish an integrated dairy project.

- 2.2.4 Mr Thabethe further stated that he/the department saw the potential of the province becoming a large player in the dairy industry if it found the correct location because it would benefit from its proximity to the KwaZulu-Natal (KZN) and Mpumalanga provinces. The idea being that the Free State could assist KZN and Mpumalanga with their dairy industry or processing of milk.
- 2.2.5 Mr Thabethe was initially interested in establishing the dairy project in an area near Sasolburg² but when MEC Zwane, the previous MEC for FSDA, advised him of the availability of the land in the Vrede area, he decided to establish the project there instead. Mr Thabethe interacted with the Phumelela Municipality in respect of the land; according to him, the municipality had no plans for the land which it was leasing (on a short-term basis) to certain commercial dairy farmers. The municipality apparently informed Mr Thabethe to interact with the local community to gain its support for the project, which, according to Mr Thabethe, he did.
- 2.2.6 When attempting to identify a partner for this project Mr Thabethe stated that he conducted research on the dairy industry and identified India, Germany and Sweden as suitable partner countries. He discounted Germany and Sweden because they were first world countries and too advanced; he focused on India because – in his opinion – it had similar economic conditions to South Africa. He stated that he had been particularly impressed by Paras Dairy, an Indian company producing dairy products, because it collected milk from local producers and then processed it profitably. He stated that in the past the Free State Province had not been able to make this model work; so he was interested to see how Paras Dairy made it work.
- 2.2.7 During our first interview with Mr Thabethe, we requested that he provide us with copies of the documents he accessed during his research, so that we could understand the rationale behind his decision to approach Paras Dairy. Mr Thabethe was not able to produce the documents; during the second interview he informed us that he had conducted internet research and could provide us with the addresses of the websites he had accessed. As at the date of this report, he has not furnished us with these website addresses.
- 2.2.8 After having identified India as the suitable partner country for this project, Mr Thabethe visited India in March 2012, shortly after his appointment as HOD of FSDA. Mr Thabethe was not clear on the exact date of this trip; despite numerous requests, he has not provided us with the trip authorisation documents related to this official trip. He further informed ENS that he was the only official from the department that visited India on this assignment.
- 2.2.9 After being questioned extensively on his trip to India and its purpose, Mr Thabethe admitted that the only dairy producer he met with on his trip to India was Paras Dairy. Mr Thabethe arranged the meeting with Paras Dairy before he travelled to India. Upon his arrival in India, Paras Dairy apparently presented its credentials to Mr Thabethe in the form of a presentation and, according to Mr Thabethe, expressed an interest in becoming involved in South Africa. (The presentation provided to him by Paras Dairy forms part of the presentation he made to the Free State Provincial Executive Committee (Provincial Exco), see Exhibit 2.) According to Mr Thabethe, Paras Dairy indicated that it already had existing markets in Nigeria and would like to be operating in South Africa. At the end of the meeting with Paras Dairy, Mr Thabethe invited Paras Dairy officials to visit South Africa.

² At the time of the interview Mr Thabethe was not able to remember the name of the town near Sasolburg where he initially wanted to establish the project.

- 2.2.10 Mr Thabethe provided us with a memorandum of understanding (MOU) signed between Paras and Estina, attached as **Exhibit 3**. The MOU is dated 11 April 2012 and was signed by Mr Sanjeev Gautam (**Mr Gautam**) on behalf of Estina (Pty) Ltd and Mr Gajinder Kumar (**Mr Kumar**) on behalf of VRS Foods Limited trading as Paras India (referred to in this report as Paras or Paras Dairy). The MOU indicates that Mr Gautam is an authorised signatory for Estina and Mr Kumar is a director of Paras. The MOU states, on page 6, point 3:
- "3.1 The Company hereby appoints ESTINA as its Agent for identifying and securing opportunities for Dairy Projects in the Territory.*
- 3.2 The Parties hereby agree and acknowledge that they are independent contractors. No partnership, joint venture or employment is created or implied by this MoU."*
- 2.2.11 In this document the "Company" is defined as Paras; the "Territory" is defined as the Republic of South Africa; "Project" is defined as the strategic partnership between Estina and the FSDA&RD to implement a dairy project in the province. It is not clear when this project became a strategic partnership between Estina and the FSDA because this is the first formal indication of Estina's involvement in the project.
- 2.2.12 The document does state at point 5.4 that, *"Once a bid/order is secured by Estina, the Company shall be solely responsible for ensuring timely completion of the Product in strict compliance with the specifications mentioned in the Tender or bidding document or Contract".* At point 5.5 it states that *"The Company shall alone be responsible for complying with all conditions and for all after-sale support services to the clients through ESTINA."*
- 2.2.13 In light of the allegations in the media, regarding the relationship between Estina and Paras Dairy, we questioned Mr Thabethe on whether he had any other assurances that a relationship existed between the two companies. Mr Thabethe stated that the two companies presented their proposal to the department jointly in April 2012 and he was further assured of the relationship between Estina and Paras by the Paras CEO, when the CEO visited South Africa later in 2012.³
- 2.2.14 Representatives of Paras Dairy accompanied by representatives from Estina (Pty) Ltd⁴ visited the FSDA around 24 April 2012, to meet with the department's senior officials to present its project proposal in respect of the integrated dairy project to be situated in Vrede. The project proposal presentation provided to us by the department is attached as **Exhibit 4**⁵. The project proposal presentation sets out that an integrated dairy project is envisaged for the Vrede area that will create employment opportunities for black farmers at grass-roots level and fuel economic growth in the province. The presentation also provides a brief company profile on Paras Dairy, it further states that, *"Estina Pty Ltd. Is the local representative company which has been appointed by Paras to engage with the Department on the Vrede Project."*
- 2.2.15 The department provided ENS with a copy of the project proposal submitted by Estina, it is attached as **Exhibit 5**; the document is signed by Mr Sanjeev Gautam the managing director of Estina and it is dated 15 May 2012. ENS obtained a second copy of the Estina project proposal, see **Exhibits 6**; which was not signed or dated. The second project proposal was obtained from Ms A Meyer, the FSDA&RD project co-ordinator for the Vrede project. The two project proposals for the project are identical except for the budgets associated with the projects:

³ Mr Thabethe was not able to provide us with the CEO of Paras' name or contact details despite various requests.

⁵⁵ The department indicated that it could not provide us with minutes of this meeting because the minutes were lost after the meeting.

- Exhibit 5 signed by Mr Gautam, sets out on page 6 that the proposed budget for the project excluding VAT is R500 million excluding VAT and R570 million including VAT; the department is responsible for contributing R342 million to the project and Estina R228 million
 - Exhibit 6 is not signed by Mr Gautam, on page 6 the document sets out the proposed budget for the project but our copy of the document is not legible in respect of the total cost of the project; however, the document sets out that the department is responsible for contributing R500 million to the project and Estina R500 million.
- 2.2.16 The reason for the difference in the proposals is not clear; the difference was detected after our interviews with officials in the department were concluded so we were not able to obtain an explanation.
- 2.2.17 The Estina project proposal mentions that the, "Department of Agriculture and Rural Development (DoARD), in line with the vision of the Mohoma Mobung Initiative, has identified the implementation of a Dairy Project in Vrede as its flagship Project.....DoARD had recently commissioned a detailed study which validates the implementation of such a Project. The DoARD subsequently commissioned a high-level team to visit India, the largest milk-producer in the world, to explore the possibilities of attracting investments in this area. The DoARD team met with PARAS Dairy, the largest milk producer in India and have agreed in principle to work with them on this prestigious project." The department could not provide us with a copy of the detailed study it commissioned and we suspect that this may refer to the internet research completed by Mr Thabethe. Further, it appears that the high-level team that visited India comprised of Mr Thabethe.
- 2.2.18 Below we have copied some of the salient provisions of the Estina proposal:

"2. Executive Summary

ESTINA PTY LTD is proud to inform the Department of Agriculture and Rural Development that it has signed a Memorandum of Understanding with PARAS DAIRY, the largest private milk producer in India, to deploy a flagship Dairy Project in Vrede. Although the DoARD team have already met with PARAS, it may be pertinent to list some of their strengths here:

- Biggest Private Milk processors in India & the only Co. in North India to market Bactofuged Milk
- 5 State of the Art ISO 9001-2000 and HACCP Certified Manufacturing Facilities
- Total Liquid Milk Intake of more than 720 Million Litres Per annum
- Processing capacity of 3 million litres per day
- Network Covering more than 5000 villages & a strong procurement base at village level
- Amongst the Largest Suppliers of Liquid Polypack Milk (250,000 Litres/Day supplied locally)
- Fleet of 300 Stainless Steel insulated road milk tankers
- Modern Dairy Ingredients plant in collaboration with WESTFALIA SEPERATORS, A.G.GERMANY, FILTRATION ENGINEERING Inc USA, APPLIXION FRANCE, ALFA LAVAL
- Accredited as a 2 Star Export House by Govt of India."

The project proposal further states under section 3 that,

"The objectives with the project are to

- *Utilise the existing natural and other resources to create a viable large-scale integrated agro-industrial enterprise;*
- *Broaden the agro-industrial production base of the district;*
- *Improve the food security situation for a number of rural communities;*
- *Create a number of small enterprises; and*
- *Alleviate the poverty of the surrounding communities.....*

For the planned integrated dairy project to be sustainable over the long term, it is planned to ensure that

- *The dairy over the long term, maintains at least 1000 cows in milk, implying that another 1000 non-producing followers, mainly female animals are fed, namely young or pregnant heifers and dry cows;*
- *The dairy cows are sheltered against the sun and heat stress during the summer months as well as against extreme cold during the winter months;*
- *Proper milking equipment and buildings are created;*
- *Milk processing equipment needed for pasteurising, cold storage, yoghurt, cheese and Amazi production, as well as distribution vehicles are in operation;*
- *Effluent usage on crop fields to reduce the use of chemical fertilizers;*
- *Feed production in the form of grains, annual legume crops, hay, lucerne and silage under dry land and 1000 hectares of irrigation";*
- *Creation of facilities for the orderly storage, refrigeration, transport and marketing of the respective products; and*
- *Integration of small holder farmers on the periphery to produce various products under contract to be nucleus project.*

In the short term, the milk will be procured from the local farmers and then processed in-house. This operation will then gradually be expanded to include in-house rearing and milking of cows over the long term. In this manner, the risks envisaged in a large scale dairy operation will be mitigated by the gradual scaling up of the operation.

*In section 5, under the heading 'Phases for Project Deployment', the proposal states, "the Department has brought to the fore the problem of lack of funding for this Project which has been a major stumbling block in the execution of this project in the past....the Department, Estina together with Paras Dairy are proposing a phased approach to the Project, whereby the Department will release available funds and Estina will ensure the implementation of the project in a modular form with technical know-how inputs from Estina/PARAS and when required, financial participation as well....It is envisaged that as the project is delivered in phases, additional funding can be procured from various stakeholders when the viability of the project is demonstrated through the actual deployed working model." The project proposal therefore foresees that the project may go beyond the proposed funding of R570 million as set out in **Exhibit 5**.*

In section 6 of the proposal it states that, "In line with the Agri-BEE business norms stipulated by Government, Estina proposes that a new Special Purpose vehicle (SPV) be created in which ESTINA will hold a 49% share while the remaining 51% share will be distributed to at

least three selected Grant recipients. Estina will provide the required capital injection as well as the technical know-how, which will be provided by Paras. Estina will endeavour to fund the entire Project itself and is requesting the Government to commit to an annual Grant of R100m per year for FIVE years to ensure that the Project remains sustainable and commercially viable." This statement is made in both versions of the project proposals; it is therefore clearly foreseen even at the project proposal phase that this project will eventually exceed the R342 million budget set by the department for this project.

The department signed two agreements with Estina

- 2.2.19 On 27 May 2012, Mr Thabethe addressed an acceptance letter to Mr Sanjeev Gautam titled, "Acceptance Letter: Project Proposal for Vrede Integrated Dairy Agribusiness". In the letter Mr Thabethe refers to the project proposal submitted by Estina; he accepts the proposal subject to the signing of the partnership agreement; see **Exhibit 7**.
- 2.2.20 During our second interview with him, Mr Thabethe further provided ENS with a company profile for Estina, see **Exhibit 8**. The document is a page long and provides no real details on the company or its expertise. Attached to the company profile for Estina there is a Partnership Agreement between the FSDA and Estina in relation to the implementation of a dairy project at Vrede through a special purpose vehicle created to fulfil the stipulated Agri-BEE business norms, called Zayna Investments Pty Ltd trading as Mohoma Mobung Dairy Project. The partnership agreement was signed on 5 June 2012 by Mr Gautam on behalf of Estina and Mr Thabethe signed on behalf of the department on 7 June 2012. The partnership agreement set out various provisions regulating the department and Estina's relationship in respect of the Vrede Dairy Project. This contract was not mentioned to ENS by Mr Thabethe or Ms Dlamini during our interviews with them. It was also not provided to ENS or NT when documents related to the project were initially requested.
- 2.2.21 In our interview with Mr Thabethe he indicated that after his trip to India he presented his findings to the Provincial Exco so that the Provincial Exco could approve the project before he entered into an agreement with Estina. The Provincial Exco comprises of the Premier and various provincial members of the Executive Council (MECs). The presentation and cabinet memorandum compiled by Mr Thabethe are not dated or signed but Mr Thabethe indicated that he prepared and delivered the documents around 12 June 2013. The cabinet memorandum and presentation are attached as Exhibits 2 and 9 respectively.
- 2.2.22 In his presentation and cabinet memorandum to Provincial Exco, Mr Thabethe provided a brief synopsis of Paras' background. The cabinet memorandum states that, *"The Department of Agriculture and Rural Development, in line with the vision of the 'Mohoma Mobung' initiative, has identified the implementation of a Dairy Project in Vrede as its flagship project. To this end DoA had recently commissioned a detailed study which validates the implementation of such a project. The DoA subsequently commissioned a high-level team to visit India, the largest milk producer in the world, to explore the possibilities of attracting investments in this area. The department met with PARAS Dairy, the largest private milk producer in India and have agreed in principle to work with them on this prestigious project."*
- 2.2.23 Under the section "Financial Model", the cabinet memorandum states that, *"The total cost of the Project is estimated at R570 million. The initial investment for the establishment of the Dairy will be through Government funding of R114 million per year and the investment for the establishment of the Processing plant will be funded by Estina/Paras".* Further on in the document, it states that the department would be required to invest R114 million per annum for 3 years totalling an investment by the department of R342 million and that as the

department had R30 million available in the current financial year, the 2012/2013 financial year, it would require additional funding from Treasury of R84 million.

2.2.24 Mr Thabethe's Cabinet memorandum then requested that Provincial Exco:

- "a) Considers and approves the implementation of the proposed Integrated Vrede Dairy agri-business Project*
- b) Supports the sourcing of additional funding of R84 million for this current FY from the province."*

2.2.25 Provincial Exco approved Mr Thabethe's request on 13 June 2012, the approval is attached as **Exhibit 9**.

2.2.26 Mr Thabethe indicated that after obtaining Provincial Exco approval, he started to engage with Paras regarding the signing of an agreement.

2.2.27 ENS was alerted to the existence of the first agreement, potentially **Exhibit 8**, between Estina and the department by Ms Anna Fourie (**Ms Fourie**) the Provincial Accountant General. On 15 June 2012, the MEC for Agriculture contacted the MEC for Finance to request that an urgent payment of R30 million be made to Estina and that Provincial Treasury expedite the payment on the same day. Ms Fourie was called in to assist with the payment. She stated that she was provided with the initial contract between the department and Estina as well as a payment request from the department. Ms Fourie was not able to effect the payment of R30 million on 15 June 2012 because Provincial Treasury did not have the required amount available. Further, Ms Fourie had concerns about the initial contract signed with Estina and in addition she noted that no procurement process had been followed in procuring Estina's services. Provincial Treasury did not effect the payment to Estina on 15 June 2012. Ms Fourie highlighted her concerns with the contract and the lack of procurement process to the FSDA; she further referred the contract and her concerns to the Adv. Ditira, a DDG: Legal Services in the Office of the State Attorney.

2.2.28 Adv. Ditira responded to Ms Fourie in a letter dated 19 June 2012, see **Exhibit 10**. In the letter Adv. Ditira states, *"We refer to our consultation with you on 18 June 2012 with regard to the abovementioned agreement. You requested us to peruse and advise on the contract which the Department of Agriculture has entered into with Estina. It appears that the procurement process was not followed. The contract may be invalid due to a number of reasons. We suggest that you propose to the Treasury Committee that the agreement and the procurement documents be sent to us for review."* Ms Fourie was not able to provide ENS with a copy of the initial agreement signed between the FSDA and Estina but it is probable that **Exhibit 8**; is a copy of that initial agreement. Ms Fourie indicated that Adv. Ditira and the State Attorney's Office became involved in the process thereafter and they advised the FSDA. She is aware that the State Attorney's Office advised the FSDA on the second agreement concluded with Estina as well as on the procurement process that was flawed. Ms Fourie was however not aware of the extent of the consultations between the State Attorney's Office and the FSDA.

2.2.29 The second agreement between the FSDA and Estina was signed on 5 July 2013. ENS noted that the second agreement concluded between the FSDA and Estina was more comprehensive in terms of regulating the legal relationship between the department and Estina but the contract contains very little with regard to project specifications and deliverables. The contract does not provide details on what precisely Estina will deliver in return for R342 million. Mr Thabethe was questioned about the lack of clarity in the agreement and the fact that it is not clear regarding the project deliverables. Mr Thabethe's response was that he signed the agreement in its current state on the advice of the State Attorney's Office. The agreement is attached as **Exhibit 11**.

- 2.2.30 ENS approached the State Attorney's office to understand the nature of the advice given to the department; Adv. Ditira stated that she would only meet with ENS to discuss the project and their advice to the FSDA, if Mr Thabethe waived his right to legal privilege. ENS requested Mr Thabethe to waive privilege in this instance and allow us to interview Adv. Ditira but he refused ENS access to the State Attorney, indicating that he did not have the authority to waive privilege. When it was explained to Mr Thabethe that he did have the authority to waive privilege, he still would not allow ENS access to the State Attorney. We were therefore unable to establish the nature and extent of the advice the FSDA received from the State Attorney.
- 2.2.31 In terms of the second agreement the department's annual contribution to this project is R114 million per annum for three years. The contract was initially intended to run over the financial years 2012/2013; 2013/2014 and 2014/2015.
- 2.2.32 Mr Thabethe indicated that he did not sign a contract with Paras, the company with the actual expertise, but rather signed it with Estina because Estina is a company registered in South Africa, unlike Paras, which is a company registered in India. Mr Thabethe believed it important to have a South African company as a counterpart for this project because if there was a problem he would have legal recourse to a South African entity. When questioned about Estina's financial status, it was clear that Mr Thabethe had no idea if Estina was a company of means or if the company had only recently been incorporated.

No procurement process was followed in procuring the services of Estina

- 2.2.33 Mr Thabethe confirmed that no procurement process was followed in appointing Estina. Mr Thabethe approved an, "APPROVAL TO ACCEPT THE PROPOSAL FOR THE ESTABLISHMENT OF INTEGRATED DAIRY IN VREDE FROM ESTINA" on 5 July 2012, see **Exhibit 12**. This is the same date on which the second agreement with Estina was signed. **Exhibit 12** is in effect an authorisation to deviate from the normal supply chain management process.
- 2.2.34 We interviewed the following witnesses who confirmed that no formal procurement process was followed in appointing Estina:
- Mrs Mngomezulu, the FSDA's head of procurement, according to her Estina was appointed by the executive of the FSDA
 - Mr Gama, the FSDA's BEC chairperson, indicated no procurement process was followed and that the appointment of Estina was dealt with by Mr Thabethe
 - Ms Dlamini, the department's CFO and BAC chairperson, also confirmed that no procurement process was followed.
- 2.2.35 Mr Thabethe stated that it was not necessary to follow a procurement process in this matter since no other local milk producer had indicated any interest in this project. He stated that various role-players in the milk industry, including various private companies had been approached with the Mohoma Mobung Strategy but they had indicated no interest in the dairy project. These private milk producers were invited to public meetings in which the department discussed its plans and interest parties could indicate if they were interested in becoming involved in these projects. Mr Thabethe said he conducted these presentations in the latter part of 2011; and if private milk producers in South Africa were interested in the dairy project they would have indicated their interest. He stated it was not necessary to use a public procurement process like a tender because no companies in South Africa expressed an interest during his road show.

- 2.2.36 ENS reviewed Mr Thabethe's Mohoma Mobung Strategy presentation, it contains little mention of a dairy project and certainly no mention of a project of the size of the one engaged in with Estina. ENS explained that the purpose of a public tender was to advertise the department's intention to engage in this type of project, including the size of the project and to allow all possible participants an equal opportunity to compete for this project. Mr Thabethe was adamant that a tender process was not required because he had canvassed relevant local service providers. We further noted that the presentation was dated June 2012, see Exhibit 13. Mr Thabethe was only appointed as the HOD for FSDA in March 2012; it is therefore unlikely that he presented the Mohoma Mobung Strategy to other private companies in the latter part of 2011. Mr Thabethe was also not able to provide us with details on exactly when and which private milk producers were approached.
- 2.2.37 Mr Thabethe stated that it was not necessary to follow a procurement process because Estina was not a service provider. Estina was a partner that had agreed to invest in a project with the department. Further, Mr Thabethe indicated that the project was not a public private partnership (PPP) and should not be dealt with as a PPP because he had read the requirements for a PPP and this project did not fall within the scope of a PPP. He was further of the opinion that PPP's do not work and he has not used the process in the department.
- 2.2.38 Mr Thabethe agreed that Paras/Estina was not a single source service provider nor was it a situation of an emergency procurement. He further did not deal with the project on the basis that it was an unsolicited bid because he indicated that the department had approached Estina/Paras and not the other way around. Further, Mr Thabethe indicated that the supply chain management process was not relevant because the department was not procuring a service on its behalf, it was partnering with a company that would benefit the community (as opposed to the department) and hence a procurement process was not required.
- 2.2.39 Mr Thabethe further justified his actions by stating that he has the authority to deviate from the supply chain management process and he signed Exhibit 12, even though the supply chain management process was not relevant. He inferred that even though the supply chain management process was not relevant, he signed the document so that he would be acting regularly if it was later found that the supply chain management process was relevant.
- 2.2.40 When it was pointed out to Mr Thabethe that he could only use his discretion in a reasonable manner when it was justified, he reverted to his previous justifications of the supply chain management process not being relevant.
- 2.2.41 When it was put to Mr Thabethe that the authority to deviate stated no reason justifying the deviation, he stated that it was not necessary to substantiate the deviation because the supply chain management process was not relevant. Nevertheless, Mr Thabethe was of the opinion that the following statements in the authority to deviate justified his deviating from the supply chain management process:

"The department has introduced "MOHOMA MOBUNG STRATEGY" as a provincial approach when implementing agricultural initiatives and "Zero Hunger" strategy. Therefore, the identified and prioritised projects have been carefully analysed and selected to contribute to the Mohoma Mobung Strategy. In line with the value adding approach, the department has identified Thabo Mofutsanyane as a dairy hub. Vrede Integrated Dairy project was identified and accepted as multi-year mega project that will contribute to income generation, decent job creation and the creation of on and off farm agri-business, value chain enterprises. The department in consultation with ESTINA/PARAS have identified 4400 hectares of Municipal land in Vrede as the general location where the project can be suitably established. The Municipality have agreed to avail the land for the implementation of the project. The PARAS is the largest private milk producer in India and have the technical know-how and has agreed to work with the department. PARAS's involvement in milk industry will improve milk productivity locally, provincially, nationally and internationally. The PARAS are already experienced and knowledgeable on International Marketing.....which will serve as an added advantage for the

project. The PARAS are internationally recognised and would like to maintain that recognition. It is against this background the department is seeking to deviate against the Normal SCM processes and procedures and enter into a Memorandum of Agreement with ESTINA/PARAS to implement and manage the operations of the project during its life cycle. The shareholding company will be structured according the AGRIBEE norms as stipulated by the Government of the Republic of South Africa. The total cost of the project is estimated at between R400 to R570 million (inclusive of vat). The initial investment for the establishment of the dairy will be through government funding. The investment for the establishment of the processing plant will be funded by ESTINA/PARAS. Government is committing financially on the operations of the dairy over a period of three years."

- 2.2.42 Mr Thabethe further indicated that he could not understand NT's interest in this project because NT had approved various projects that had been concluded on a similar basis with other companies. He further mentioned that the Auditor General had reviewed the process followed in this project and had had no concerns related to the project or the procurement process followed. He repeatedly drew comparisons between the Vrede project and various other projects where no procurement process was followed. The projects he mentioned were the VKB, Hoopstad and Gariep projects. Mr Thabethe did not provide any substantiation for his averments that NT or the Auditor General had previously approved these projects.

FSDA&RD signed a 99-year rent-free lease agreement with Estina in respect of the Vrede project land

- 2.2.43 On 12 September 2012, the Premier of the Free State Province signed a "Delegation of Authority" (DOA) in favour of Mr MJ Zwane, the MEC for Free State Department of Agriculture. The DOA is in terms of the Free State Land Administration Act: Phumelela Land Rental Agreements. The delegation, attached as **Exhibit 14**, states that,

"Following advice from the State Law Advisors, you are hereby assigned the authority, in terms of Section 5 of the Free State Land Administration Act, 1998, to consider and sign the proposed Agreement between the Department of Agriculture and the Phumelela Municipality relating to the assignment of the Municipality's rights and obligations in terms of various rental agreements relating to communal land, to the Department of Agriculture..... The decision should be taken in consultation with the MEC for Public Works, duly delegated by the Executive Council."

- 2.2.44 On 12 September 2012, Mr Zwane the MEC for Free State Department of Agriculture signed a DOA in favour of Mr Thabethe. The DOA is in terms of the Free State Land Administration Act: Phumelela Land Rental Agreements. The delegation, attached as **Exhibit 14**, states,

"Kindly be advised that you are hereby assigned the authority, in terms of Section 5 of the Free State Land Administration Act, 1998, to consider and sign the proposed Agreement between the Department of Agriculture and the Phumelela Municipality relating to the assignment of the Municipality's rights and obligations in terms of various rental agreements relating to communal land, to the Department of Agriculture..... This decision should be taken in consultation with the MEC for Public Works, duly delegated by the Executive Council."

- 2.2.45 These delegations effectively authorised Mr Thabethe to deal with the land for the Vrede Dairy project as he deemed appropriate.
- 2.2.46 At the end of our first interview with Mr Thabethe, ENS requested copies of all lease agreements related to the land on which the project was to be established. Mr Thabethe was asked clearly various times whether or not a 99-year rent-free lease was signed with Estina. He was clear that such a lease had not been signed and that the land would be leased and probably given to the project once it was established. However, in between our two interviews

with Mr Thabethe, another department official provided us with a copy of the 99-year rent-free lease concluded between Estina and the department, see **Exhibit 15**.

- 2.2.47 At our second interview with Mr Thabethe, he provided us with copies of various leases concluded in respect of the land but did not provide us with a copy of the Estina lease. ENS then confronted Mr Thabethe with the Estina lease and questioned why he had denied its existence. Mr Thabethe responded that the lease had been given to the project and that there was no inconsistency between his comments in the two interviews. Mr Thabethe refused to acknowledge that he had denied the existence of the Estina lease and had effectively misled the investigation team in the first interview. The transcripts of the two interviews clearly indicate that Mr Thabethe denied the existence of the Estina lease repeatedly during the first interview.
- 2.2.48 In effect no project exists, the Agri-BEE entity named Mohoma Mobung Diary (sic) Project Pty Ltd was only incorporated on 11 October 2013, see **Exhibit 16**.
- 2.2.49 The lease agreement is signed but it is not dated. The lease agreement is however concluded between the FSDA&RD and Estina, Mr Thabethe represented the FSDA&RD.

Consultations with the Free State Auditor General's Office

- 2.2.50 The Free State Office of the Auditor General (FSAG), as part of its regularity audit for the 2012/2013 financial year, reviewed the Vrede Project and payments made to the service provider; a copy of the report is attached as **Exhibit 17**.
- 2.2.51 We interviewed two officials from the FSAG:
- Mr Weidemann, a manager involved in the audit of the FSDA
 - Mr Zwane, a senior manager in charge of the audit of the FSDA.
- 2.2.52 It was clear from our interviews with the FSAG that the deviation from the procurement process by the FSDA in respect of the Vrede project was not considered in any detail. The FSAG accepted the authority to deviate from the prescribed supply chain management process document that was presented to them by the department without question, see **Exhibit 520**. The FSAG did not interrogate the department's actions to determine if they were reasonable or justifiable.
- 2.2.53 The FSAG focussed on whether the department correctly effected the transfer payments made in respect of the Vrede Project and other projects that were concluded in a similar manner. The FSAG indicated that approximately nine other projects are dealt with in a similar manner by the FSDA&RD. The FSAG indicated that there were weakness in the level of oversight the FSDA&RD exercised over its projects. The FSAG made the following comments in its *"Report of the Auditor General on the financial statements and other legal and regulatory requirements of Vote 11 – Department of Agriculture and Rural Development for the year ended 31 March 2013"* under the section *"Transfer of funds"*,
- "35. The accounting officer did not maintain appropriate measures to ensure that transfers and subsidies to entities were applied for their intended purposes, as required by TR8.4.1
36. The department did not evaluate its performance in respect of programmes funded by the allocation, as required by section 11(6)(a) of the DoRA."

2.3 We were unable to interview Estina's only director

- 2.3.1 After our first interview with Mr Thabethe we approached Estina's director, Mr Kamal Vasram, to discuss the project with him. Mr Vasram is Estina's only director. Mr Vasram would not agree to an interview with ENS and stated that Estina was bound to confidentiality in terms of the agreement signed with the department. At our second interview with Mr Thabethe, we requested him to waive confidentiality and facilitate a meeting between ENS and Mr Vasram. Mr Thabethe refused to assist ENS and stated that we should conduct our own investigation without his assistance. Thereafter ENS again requested an interview with Mr Vasram but he refused to attend an interview. As a result we were not able to interview Mr Vasram/Estina in this investigation to obtain its perspectives and explanations regarding the project. Correspondence between ENS and Mr Vasram is attached as **Exhibit 18**.

2.4 Conclusions

- 2.4.1 Throughout this investigation, it was clear to ENS from the interviews we conducted that Mr Thabethe has played a pivotal role in the Vrede Project. He identified the service provider Paras and visited India within a month of being appointed as HOD of the FSDA. He later signed the first agreement with Estina on 7 June 2012, before Provincial Exco had approved the project. ①
- 2.4.2 It appears that the authority to deviate from the prescribed procurement process document was signed after the department obtained advice from the State Attorney's Office, prior to that there was no attempt to engage in any supply chain management process. It further appears that Mr Thabethe signed a second agreement with Estina after obtaining input from the State Attorney's Office. ②
- 2.4.3 Mr Thabethe has been involved in every stage of the identification and appointment of Estina/Paras. As the accounting officer for the department, he ultimately bears the responsibility of ensuring that the department has a procurement system that is fair, equitable, transparent, competitive and cost-effective as set out in section 38(1)(a)(iii) of the Public Finance Management Act, Act 1 of 1999 (the PFMA). He is further responsible for ensuring that his department procures in line with its supply chain management policy as well as the PFMA, the PFMA Regulations as well as section 217 of the Constitution. He did not engage in any meaningful supply chain management process in engaging the services of Estina/Paras. Mr Thabethe was consistent and adamant that he believed it was not necessary to follow a supply chain management process in this project. Mr Thabethe's reasoning was however not convincing on closer questioning.
- 2.4.4 In our mandate letter, ENS was requested to establish if the Vrede project was an approved PPP arrangement or a sole provider arrangement; we were further required to verify what supply chain management process was followed in appointing the service provider, Estina/Paras. The investigation has revealed that the Vrede project is neither a PPP nor a sole provider arrangement. Mr Thabethe was clear in his interviews that he did not follow any supply chain management process. He signed an authorisation to deviate from the prescribed procurement process because, in his opinion, he is authorised to deviate from the procurement process when he deems it appropriate. He signed the authority to deviate without believing it was necessary or relevant or required in this instance. Mr Thabethe was also not clear on the grounds that justified him deviating from the prescribed process, in his opinion it was sufficient that he had decided that a deviation from the prescribed process was appropriate. ③ ④

3 The budget allocated to the Vrede Project

3.1 The department will use part of its equitable share and the CASP grant to fund the project

- 3.1.1 According to the agreement between FSDA&RD and Estina, the department is required to pay R114 million in respect of the project annually for 3 years. These contributions were due to start in the 2012/2013 financial year and end in the 2014/2015 financial year.
- 3.1.2 The department only obtained R30 million for the Vrede Project in the 2012/2013 adjustment budget, see **Exhibit 19**. There was therefore a shortfall in its contribution towards the project in the first year. It is not clear if this means that the department will continue to make payments beyond the 2014/2015 financial year. From our interviews with Ms Dlamini, the FSDA&RD's CFO, it appears that the department will continue to make payments until its contribution of R342 million has been invested in the project.
- 3.1.3 At the stage that Mr Thabethe signed the first agreement with Estina on 7 June 2012 there was no budgetary allocation for this project. The FSDA was allocated R30 million for the project as part of the 2012/2013 adjustment budget. This was confirmed during our interview with Mr Itumeleng Moses, the FSPT's Senior Executive Manager for Sustainable Resource Management; he is responsible for the provincial budget. (S)
- 3.1.4 Mr Moses stated that the FSDA and FSPT had to make a concerted effort to obtain funds for this project in the 2012/2013 financial year as well as for subsequent years because there was no existing budget for the project at the point at which Mr Thabethe signed the agreement with Estina/Paras.
- 3.1.5 In the 2013/2014 financial year the department budgeted for the Vrede project as follows:
- R53.95 million was to be obtained from the CASP grant
 - R60 million was to be obtained from the department's equitable share (MTEF allocation), see Exhibit 20.
- Ms Dlamini indicated that the department will continue to fund the project on this basis in subsequent years; part of its contribution being sourced from the CASP grant and the remainder being obtained from the department's equitable share.
- 3.1.6 In terms of section 38(2) of the PFMA, Mr Thabethe should not have committed the department to a liability for which funds had not been appropriated. When questioned on why he had approved a project without having the necessary funds available prior to implementation, Mr Thabethe stated that he had made sure that he included provision 15.3 in the contract with Estina, which would allow him to extricate the department from the project, if the funds for the project were not obtained. Further, Mr Thabethe indicated that there was nothing wrong in signing the agreement with Estina/Paras without having the necessary funds available. He indicated that it was a normal process to sign an agreement with a service provider and then to later make plans to finance the agreement.
- 3.1.7 As a result of NT's intervention and the National Department of Agriculture, Forestry and Fisheries' (DAFF) review of this project, DAFF has refused to release further funds to the FSDA&RD for the Vrede project. If the DAFF continues to be dissatisfied with the Vrede project and it is unwilling to fund the project in future, it is not clear how the department will meet its obligations in respect of this project.

3.2 The department has no oversight over the finances of the project; it is not clear if Estina has made any contribution towards the project

- 3.2.1 During our interview with Ms Dlamini we questioned her on the level of oversight the department has over the finances of the project. The department makes payments directly to Estina's bank account and Estina then applies the funds in the project as it deems appropriate. According to Ms Dlamini neither she nor the department have access to Estina's bank account or financial systems so the department has no real transparency on how its funds are being utilised. The AgriBEE entity is not operating as yet and does not have its own financial systems, so Estina is responsible for the financial management of the project.
- 3.2.2 Payments are made to Estina based on progress reports that are submitted to the department. In the progress report Estina indicates the funds it will require during the next period and these funds are then deposited into its bank account by the department. Payments are not based on deliverables delivered, nor are there bills of quantities or milestone evaluations substantiating further payments.
- 3.2.3 Ms Dlamini provided us with a copy of Estina's cash flow report and projections for the period August 2012 to September 2013 see **Exhibit 21**. In this document Estina sets out the funds it will require and how the funds will be applied but the document does not set out what has been delivered to date nor does it account for how funds, already invested, were utilised.
- 3.2.4 We were also provided with various monthly financial progress reports, the most recent report is dated 28 February 2013, and it is attached as **Exhibit 22**. In this report, Estina notes that the department is severely behind on its contributions towards the project. Estina further notes that as a result of the shortfall of funds it has contributed R7.9 million towards the project. There is no way for the department to verify if Estina actually made this contribution towards the project.
- 3.2.5 The agreement signed between the department and Estina is not clear on when Estina is required to make its contribution in this project. According to Mr Thabethe the R342 million invested by the department will be used to establish the entire project, all except the processing plant; apparently Estina's funds will be used to establish the processing plant.
- 3.2.6 In conclusion, it is clear that the FSAG was correct in indicating that Mr Thabethe does not maintain appropriate measures to ensure that funds transferred to entities are applied for their intended purposes. With the department's lack of oversight over the finances of the project, we are not able to ascertain whether or not Estina has made any financial contribution towards this project. According to **Exhibit 22**, Estina has invested funds in the project but there is no objective way of ascertaining if this investment actually occurred. We are further not able to comment on how funds invested by the department were spent.

NB

3.3 Payments to date on the Vrede Project

- 3.3.1 Initial information obtained by SAS regarding payments on this project indicated that the FSDA&RD has made a total of R198 million in payments to the service provider.
- 3.3.2 ENS has established that a total of R114 million has been paid to the service provider. The payments made by Provincial Treasury to FSDA&RD in respect of this project are as follows:
- On 12 June 2012 a payment of R30 million
 - On 16 April 2013 a payment of R84 million was refused by Provincial Treasury, Provincial Treasury agreed to break the R84 million payment into three smaller payments:
 - On 18 April 2013, a payment of R 34.95 million
 - On 23 April 2013, a payment of R 30 million

- On 30 April 2013, a payment of R 19.05 million.

3.3.3 Mr Tshepo Mabilo (**Mr Mabilo**), the FSPT Acting Senior Executive Manager: Asset and Liability Management, explained the difference between the payments SAS identified and those actually made by Provincial Treasury as follows,

"We declined the request from Agriculture for a R84 million (one payment) and agreed that The R84 million would be divided in three payments (which was implemented). My view is that Agric Dept captured the R84 million before getting approval and after they realised that the payment will be done in three payments, they did not go back to do a journal to correct it on BAS. This view is supported by the fact that we never received a BCT from Agriculture Dept for Estina amounting to R84 million", see Exhibit 23.

3.3.1 We obtained supporting BCT payment approvals from Mr Mabilo in respect of all of the payments made to the FSDA&RD in respect of this project, they are attached as follows:

- On 12 June 2012, a payment in the amount of R30 million was approved; the BCT payment approval is attached as Exhibit 24
- On 16 April 2013, a payment of R84 million was refused by Provincial Treasury, Provincial Treasury agreed to break the R84 million payment into three smaller payments, there is no BCT document for this payment
- On 18 April 2013, a payment in the amount of R 34,95 million was approved; the BCT payment approval is attached as Exhibit 24
- On 23 April 2013, a payment of R 30 million was approved; the BCT payment approval is attached as Exhibit 24
- On 30 April 2013, a payment of R 19,05 million was approved; the BCT payment approval is attached as Exhibit 24.

3.3.2 It conclusion it therefore appears that to date the department has invested R114 million in the Vrede project.

4 Beneficiaries for this project were only identified late in 2013 after this issue was queried by DAFF

4.1 Project beneficiaries

- 4.1.1 No beneficiaries were identified for this project until the issue was raised by DAFF after its visit to the Vrede Dairy project site in August 2013. As a result of its visit to the project, Ms Elder Mtshiza (**Ms Mtshiza**), the DAFF CASP grant co-ordinator made a recommendation to the DAFF Director General that the CASP grant be withheld from the project. The salient part of Ms Mtshiza's report reads as follows,

"4. Recommendations

- i. The province must conduct a proper feasibility study;*
- ii. The province must develop a business plan for the project;*
- iii. The province must conduct a biological impact study;*
- iv. The province must get approval for water rights for the project;*
- v. The province must outline clearly who the 100 smallholder farmers are and mobilize and structure them accordingly*
- vi. The R53 million allocated from CASP in 2013/2014 be withdrawn from the project and be directed to incomplete projects in the province and to smallholder famers..."*

- 4.1.2 Mr Thabethe indicated that the beneficiaries for this project were identified following consultations held with the public. The beneficiaries are "farmers" or "persons who indicated an interest in farming" from the areas of Memel, Warden and Vrede, the three towns making up the Thabo Mofutsanyana District Municipality. Mr Thabethe was not able to specify if any criteria were used to identify the beneficiaries of the project. It appears that members of the community were called together in Vrede and Warden with a loud-speaker; the project was explained to them and they were signed up as beneficiaries if they were interested in participating in the project.⁶

- 4.1.3 When ENS questioned Mr Thabethe about why beneficiaries were only identified after the project had been initiated, he stated that the identification of beneficiaries was an on-going process. Ms Mtshiza was however clear that the FSDA&RD only started to scramble to find beneficiaries for this project when DAFF indicated that it would be withdrawing its approval for this project and would not disburse CASP funds in respect of this project.

- 4.1.4 The department provided ENS with a copy of the list of project beneficiaries, see **Exhibit 25**. To date only 80 potential beneficiaries have been identified, instead of the projected 100 beneficiaries. We discussed the beneficiaries with Ms Meyer and she indicated that no criteria were used to identify the beneficiaries. She has drafted criteria to assess the suitability of the potential beneficiaries and has indicated that the list of beneficiaries provided to ENS will not be the final list. Her beneficiary assessment criteria document is attached as **Exhibit 26**. In the document she *inter alia* sets out the following criteria for excluding beneficiaries:

- The beneficiaries should not be government officials
- They should not have criminal records
- There should be no double-dipping

⁶ These was confirmed by Ms A Meyer the FSDA&RD project co-ordinator

- The beneficiaries should be of a suitable age to farm
- They should be South African citizens that reside in the Vrede, Memel or Warden areas.

Using these criteria ENS completed a preliminary assessment of the potential beneficiaries and a number of the beneficiaries did not comply with the evaluation criteria.

- 4.1.5 As previously mentioned the AgriBEE entity was only incorporated on 11 October 2013, the only director registered in the entity is Mr Vasram from Estina. None of the current beneficiaries are listed as directors of the AgriBEE entity; it is also not clear if these beneficiaries will become directors of the entity.

5 It is likely that the State will not receive value for money if this project continues in its current state

5.1 AGRI.SA report on Vrede Project

5.1.1 ENS requested that a senior economist of Agri SA assess the Vrede Dairy project documents to determine if the state would receive value for money in respect of this project.

5.1.2 Mr Maree of Agri SA was provided with the following documents in respect of the project:

- Project Proposal
- Business Plan
- Feasibility Study

5.1.3 Mr Maree was requested to review the documents to determine:

- the reasonableness of the costs quoted in the documents
- whether there was/would be any benefit for government in the project – thus value for money spent/invested
- any other concerns regarding the feasibility or sustainability of the project.

5.1.4 Mr Maree's full report is attached as **Exhibit 27**.

5.1.5 Mr Maree conclusions and recommendations are set out below:

Conclusions and concerns:

"Specific concerns related to the documents reviewed have been set out in the body of this report and are not repeated here. Below, I have set out further concerns and comments arising from the review:

All three documents lacked the information required to carry out a proper analysis of the project; for example, information on the detailed costing for equipment.

This feasibility study is more an academic study than a feasibility study and therefore contains a significant amount of jargon. In particular, however, the following concerns are raised:

- *The study does not indicate, with respect to the buildings, whether local weather and climatic conditions were taken into consideration*
- *The purchasing of cows information is very academic, but makes no mention of the following:*
 - *What type of cows will be sourced*
 - *Where the cows will be sourced*
 - *When the cows will be bought etc.*
- *A further concern arising from this is the availability of cows, since cows and pregnant heifers are scarce; furthermore, current established producers buy the cows when they become available. It is also not generally recommended to buy cows from all over the place, since the experience of dairy producers is that moving cows, for example, from one production area to another can result in significantly declining milk production, with the farmer potentially ending by culling the cow, thus turning a R15 000 milk cow into a R5 000 cull cow.*

- Equipment and tractors seems to be double counted for, e.g. there is provision made for 8 82kW tractors, although it is not mentioned again. Furthermore the price of the individual pieces of equipment is lacking.
- In terms of irrigation water, there is an overabundance of academic jargon although the major concern is the availability of water and the licensing of the water rights.
- In terms of silage, using a contractor to make the silage would be recommended over producing it, since the production cost and the capital outlay would be lower.
- In terms of animal nutrition, the feeding requirements for the different categories of animal also differ. The services of an animal nutritionist should therefore be sourced to compile a proper feeding requirement.
- One crucial point which is also not noted in the feasibility study is possible contingency plans with regards to electricity cost and supply. The cost of electricity for a dairy is substantial, and more so for a processing plant. But the reliability of supply is even more crucial. Milking has to take place at more or less the same time every day and milk has to be kept cooled at all times, the same with manufactured dairy products. It is assumed that an Eskom electricity supply point is available for the dairy project; however provision should be made for alternative options in the case of interrupted electricity supply. Contingency plans in the form of generators, which are expensive, or the use of alternative and renewable energy may be an option to explore.
- In terms of the processing plant, the following additional comments should be noted:
 - o If the processing plant relies solely on its own production, it is not worth the capital outlay projected in the costing. Even if the production is as assumed in the project, namely 22 500 litres per day, a batch pasteurizer can be installed for approximately R450 000, which is substantially less than the R60 million envisaged.
 - o The same applies to the other dairy equipment – the projected costing is far too high for the quantity of milk to be processed.
- In terms of the UHT milk plant budgeted for in the project proposal, this plant will not be viable for the production of the dairy project alone (less than 30 000 litres per day). Research indicates that a plant able to process 120 000 l/day would require an investment of approximately R65 million in equipment and R30 million in buildings and stores, totalling R95 million. For a further R20 million investment, an additional line could be installed, doubling the production capacity to 240 000 l/day. These figures demonstrate that the R149 million budgeted in the project for the envisaged UHT plant is substantially above cost.
- Given the current trends and realities in the South African dairy sector, the most appropriate investment in the dairy industry would be in the coastal areas where the conditions for production are more favourable. An investment of this magnitude in the Free State province is considered too risky and not sustainable.

Recommendations

With the above concerns and comments in mind, the following recommendations are made:

- A detailed cost analysis of project should be done, which would require more detailed information to be provided.
- The unnecessary academic jargon should be removed from the feasibility study, which should then be reworked to conform to the principles of a feasibility study. To elaborate more, one should note that a feasibility study should also include the following (not an

exhaustive list), which was found lacking or not well defined in the case for the Vrede Dairy Project:

- *An analysis of the market, for both the primary production and the manufacturing level*
- *More clarity on the business model and comparisons with other possible models*
- *For the processing unit, a marketing and sales strategy where absent*
- *Little mention is made of the management and personnel requirements and structure*
- *Environmental issues where not addressed*
- *Critical risk factors were absent and should be included in a feasibility study*
- *In terms of the financial performance the feasibility study included an income statement. However the following financial documents, with projections and assumptions, should also have been included: balance sheet, cash flow statement, and a break-even analysis*
- *A time-schedule for the project should form part of feasibility study.*
- *The profit and loss or income statement should be more detailed, with the primary dairy production and the processing unit being separated, in order to make more meaningful comments on the income statement in terms of industry benchmarking.*
- *In terms of risk associated with this type of project, it is recommended to determine a feasible exit strategy as well. Will there be a reasonable chance to recover the money investment should the project not come to fruition? The market risk for the manufactured products should have also been discussed in the feasibility study.*
- *In conclusion, it is not recommended to continue with project in its current state since government will not receive value for money. The costs are not reasonable or market related."*

5.1.6 Mr Maree is of the opinion that the Vrede Dairy project is risky. Further, the costs associated with the project are very high and he believes there is a good probability that the state will not receive value for money on the project in its current state.

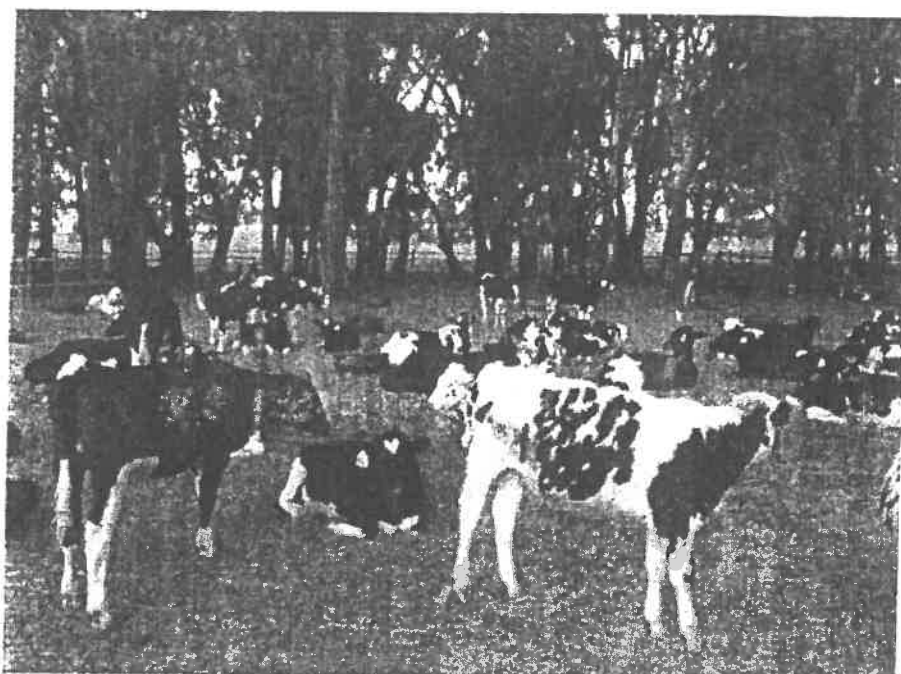
6 The current state of the project

6.1 ENS visited the Vrede Project site

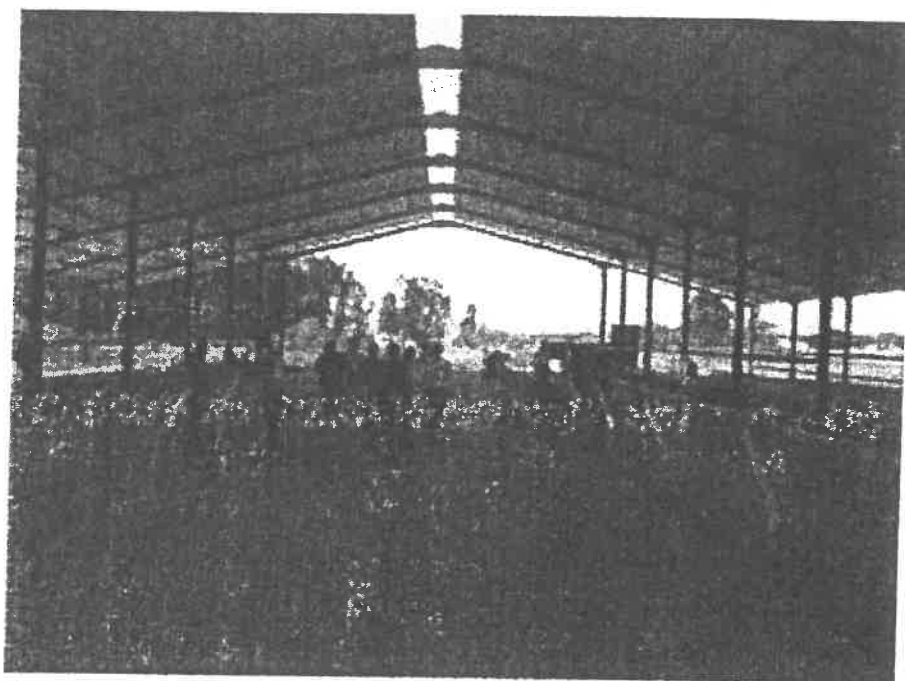
- 6.1.1 In October 2013, ENS visited the Vrede Dairy project site accompanied by Mr Thabethe. At the site it was clear that various buildings were in the process of being erected. We were also shown the approximately 350 cows that were already purchased for the project. We met two Estina officials charged with the day-to-day management of the project.
- 6.1.2 It was clear to us that the Estina officials had a good idea of how the project would unfold and they also possessed project plans, which were not in the possession of the department. We requested copies of the project plans but these were not furnished to us. We obtained various photographs of the progress to date; they are set out below.



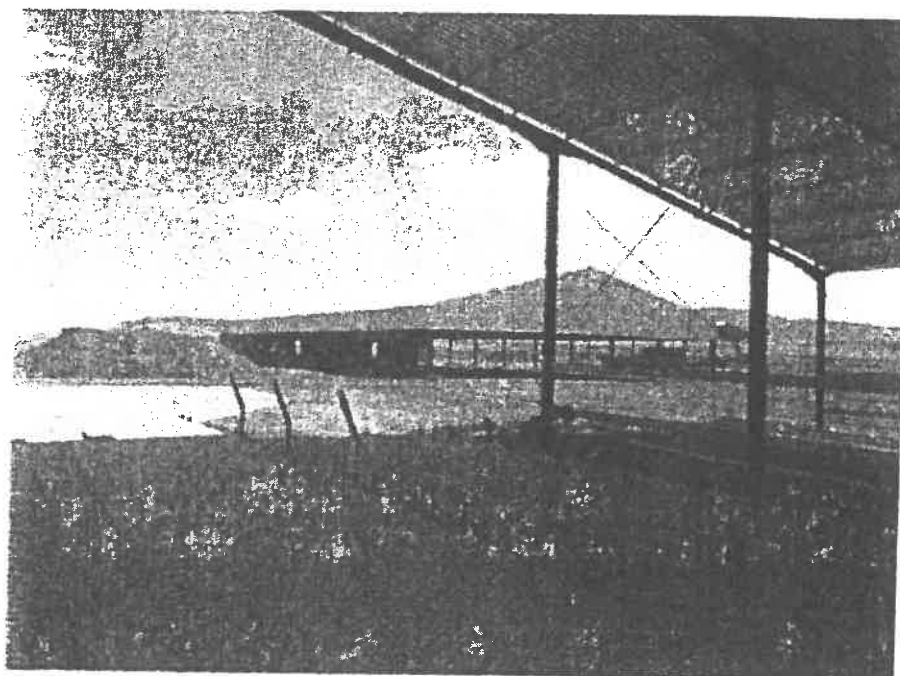
- 6.1.3 Approximately 351 cows have been purchased for the project so far. One cow is in-milk, 116 cows are pregnant, there are an additional 208 adult cows and 26 juveniles.



- 6.1.4 The construction of the milking parlours, pictured above, was underway when we visited the Vrede project site on 11 October 2013. According to Mr Prasad the milking parlour would be completed at the end of November 2013.



6.1.5 The first cow shed was at an advanced stage of construction when ENS visited the Vrede Dairy Project site in October.



6.1.6 The second cow shed is also at an advanced stage of construction, a total of four sheds will be constructed in total. The silage store was also complete when we visited the project site.

- 6.1.7 ENS cannot comment on the current financial status of the project. To date, the department has paid R114 million to Estina in terms of the agreement. This contribution however only covers the funds that were due by the department during the 2012/2013 financial year. The department has not paid any of the funds due in the 2013/2014 financial year. DAFF also informed ENS that it withheld its CASP contribution towards the Vrede Project for the 2013/2014 financial year. It is therefore likely that the project is experiencing cash flow difficulties.

7 Recommendations

- 7.1.1 ENS recommends that disciplinary action be taken against Mr Thabethe for his part in concluding this agreement with Estina/Paras. Mr Thabethe did not adhere to the requirements of the PFMA and no supply chain management process was followed prior to entering into the agreement with Estina. Further, Mr Thabethe committed the department financially without ensuring that the department had the funds available to fund this project. The effect of this is that the department is currently struggling to meet its financial commitments in respect of this project.
- 7.1.2 ENS recommends that disciplinary action be taken against Ms Dlamini the CFO of the FSDA&RD. As the head of the department's finance division, Ms Dlamini should have ensured that she did not disburse funds to Estina without ensuring that the proper financial oversight controls were in place.
- 7.1.3 ENS recommends that no further funds are invested in the project until all of the risk factors set out in this report are addressed, most notably:
- That a proper project plan is developed for the project with clear deliverables, timelines and costs
 - That a proper feasibility study and risk assessment is completed in respect of the project to determine if the project is viable
 - The beneficiaries of the project should be clearly identified and vetted
 - The operating model for the AgriBEE entity should be finalised before the project proceeds any further
 - The department will have to take control of the financial management of the project so that it can ensure that its funds are spent appropriately and further that Estina does make its contributions towards the project.

Ultimately the project should be re-assessed and the necessary due diligence should be completed to ensure that the project is viable. In its current form the project is not likely to yield value for money to the State.

Annex A – Limitations on this investigation

General Limitations

The procedures followed in this investigation do not constitute an audit in accordance with Generally Accepted Auditing Standards and we did not express an audit opinion. The findings of the investigation do not form part of any audit report.

Although we endeavour to be as comprehensive as possible in gathering information, we cannot guarantee the accuracy or completeness of information obtained from external sources. In this investigation there was little independent corroboration of statements made by witnesses. The evidence provided by each witnesses was assessed and corroboration was sought from other witnesses; however many facts could not be independently verified.

Although we have taken reasonable steps to ensure that the information obtained is authentic, we cannot guarantee the authenticity of the information. Our findings are based on information at hand to date of the report; as such, we cannot conclude that we have had sight of all relevant information.

The report is based on the facts established from documentation reviewed and information obtained during the course of the investigation. Should we receive any additional information after date of issuing this report, our findings and recommendations may change.

This report is to be used solely for the purposes of making internal management decisions on managing the situation and risks identified. This report may not be used for any other purpose, without our prior consent.

Information is provided to you on the basis that it will remain confidential and will not be disclosed to any third party, unless agreed to in writing.

Specific limitations

In this matter it was clear to ENS that Mr Thabethe and/or other officials may have withheld information from the investigation team. We may therefore not have obtained access to all of the documents relevant to this project.

ENS was not able to interview Mr Vasram of Estina or Adv. Ditira of the State Attorney's Office because Mr Thabethe would not facilitate our access to these witnesses. Our report is therefore based on information available to us at the time that we finalised the investigation; we have not obtained Estina/Paras' version of events.

Annex B – Investigation Methodology

Interviews

We conducted various interviews with officials employed by the FSDA&RD, the FSPT, NT, DAFF and FSAG. The list of officials interviewed is set out below:

| Witness Interviewed | Designation |
|----------------------------|--|
| Mr Chris Adams | NT Director in the Intergovernmental Relations department |
| Ms S Dlamini | CFO of FSDA&RD; as well as chairperson of the department's BAC |
| Ms Anna Fourie | The FSPT Accountant General |
| Mr Gama | The office manager in Mr Thabethe's office; also the chairperson of the department's BEC |
| Mr Kgomongwe | The previous CEO of the FSPT |
| Dr Loubser | Farming expert that consulted to the FSDA&RD |
| Mr T Mabilo | The FSPT Acting Senior Executive Manager: Assets and Liability Management |
| Mr M Mahlatsi | The CEO of the FSPT |
| Dr T Masiteng | General manager district services for FSDA&RD |
| Ms Alta Meyer | The Vrede project FSDA&RD co-ordinator |
| Mrs L Mngomezulu | The head of procurement for the FSDA&RD |
| Mr I Moses | The FSPT Senior Executive Manager for Sustainable Resource Management |
| Ms Elder Mtshiza | DAFF CASP grant co-ordinator |
| Mr Chandrama Prasad | Vrede Dairy Project Manager/Project Co-ordinator for Estina |
| Mr P Thabethe | From March 2012 to March 2013; HOD of FSDA; from March 2013 HOD of FSDA&RD |
| Mr Weidemann | Manager in the Free State Auditor General's office |
| Mr Zwane | Senior Manager in the Free State Auditor General's office |

Review of documents

We reviewed all of the documents provided to us by the witnesses that we interviewed. The investigation was limited in that ENS was only able to rely on the documents provided to us, we were not required to forensically mirror-image the computers and other electronic devices in the possession of the witnesses.

Background checks

We conducted background checks on the companies and individuals involved to determine if we could establish any links between the parties.

Annexure “RJ15”

"R15"
"F"

MEMORANDUM OF AGREEMENT

ENTERED INTO BY AND BETWEEN

THE DEPARTMENT OF AGRICULTURE &
RURAL DEVELOPMENT,

~~FREE STATE PROVINCIAL GOVERNMENT~~

(hereinafter referred to as the "Department" and
represented by the Head of the Department,
Mr MP Thabethe)

AND

ESTINA PTY (LTD)

(hereinafter referred to as "Estina" represented by
Mr Kamal Vasram, Managing Director),
jointly referred to as the "Parties"

WHEREAS the Department has given notice, in as far as it may be necessary, to Estina of cancellation of the Agreements concluded between the Parties on 05 July 2012 and 24 August 2012, respectively; and

WHEREAS the Parties wish to agree on the effects of the dissolution of the relationship;

NOW THEREFORE it is agreed as follows:

1. OBLIGATIONS OF THE DEPARTMENT

1.1 The Department acknowledges that Estina has delivered services up to the date of termination for which services Estina has not been paid. The amounts due in respect of such services are set out in Annexure A to this Agreement.

1.2 In consideration for value for money received, the Department undertakes to make payment to Estina in the amount of R106 252 652-00, which amount shall be paid as follows:

- R30 million on or before 30 September 2014; and
- R76 252 652-00 on or before 30 June 2015.

These payments will be subject to the availability of funds and should insufficient funds be available, the Department reserves the right to schedule the R76 252 652-00 payment as follows:

- R30 million on or before 30 June 2015;
- R30 million on or before 30 September 2015; and
- R16 252 652-00 on or before 30 June 2016.

1.3 The Department shall continue to employ the employees, appointed by Estina in the project, whose names and remuneration appear in Annexure C hereto, from 01 August 2014 under the same terms and conditions of employment.

~~1.4 The Department shall take over the management of the~~
Project from the signature date and bear all the relevant expenses related to the day-to-day operations of the Project from the date of handover of the Project which shall be the date on which the funds from the sale of milk is first transferred to the Department's designated bank account as contemplated in Clause 2.1 (a)

2. OBLIGATIONS OF ESTINA PTY (LTD)

2.1 Following termination of the relationship between the Parties, Estina shall:

(a) Transfer all funds received from the sales of Milk and other dairy products from the date of this Agreement, without any deductions, except those related to the day-to-day operations of the project up to the date of actual transfer of funds, to the bank account of the Project to be designated by the Head of the Department, within 5 days of such designation.

(b) With immediate effect, hand over all project assets, referred to, but not limited to, those assets, in Annexure B hereto, including the farm Krynaauwslust 275.

(c) Transfer all documents, research reports and other intellectual property relating to the project to the Department.

(d) Assist the Department in changing the Work Permits of the Staff from India as may be required by the Immigration laws of South Africa.

(e) Ensure that everything necessary is done, including, but not limited to, the signing of all documents and giving such authority that may be necessary to give effect to the transfers referred to in paragraphs (a), (b), (c) and (d) above.

3. INDEMNITY

Estina hereby guarantees that there are no other obligations for which the Department may become liable, except those as set out in Annexure A hereto and Estina indemnifies and shall keep the Department indemnified at all times against any subsequent claim, which may arise and for which the Department may be liable.

4. SIGNATURES

SIGNED at BLOEMFONTEIN on this the 12th day of AUGUST 2014.



.....
Mr MP THABETHE
On behalf of the Department of Agriculture
& Rural Development

WITNESSES:

1.

SIGNED at BLOEMFONTEIN on this the 12th day of AUGUST 2014.



.....
Mr KAMAL VASRAM
On behalf of Estina Pty (Ltd)

WITNESSES:

1.



AS AT AUGUST 12, 2014

ANNEXURE - A

RECONCILIATION OF AMOUNTS DUE TO ESTINA FOR SERVICES DELIVERED TO DATE AS PER
CLAUSE 1.1 OF THIS MEMORANDUM OF AGREEMENT

| Proforma No. | Date | Amount |
|--------------------------------|---------------------|-------------------------|
| VDP001 | 29/02/13 | R 91 951 800 |
| VDP002 | 31/03/13 | R 27 600 000 |
| VDP003 | 30/04/13 | R 11 720 000 |
| VDP004 | 31/05/13 | R 22 152 000 |
| VDP005 | 30/06/13 | R 51 468 000 |
| VDP006 | 31/07/13 | R 15 900 000 |
| VDP007 | 31/10/13 | R 25 000 000 |
| TOTALS | | R 245 791 800 |
| Provision for VAT on purchases | | R34 410 852 |
| Incl. VAT | | R 280 202 652 |
| Less Paid | | R173 950 000 |
| Balance Due | | R 106 252 652 |

The above is a reconciliation of expenses submitted to the Department based on Confirmed Purchase Orders given to our sub-contractor responsible for executing the Project on a turn-key basis

ANNEXURE - B - AS AT AUGUST 12, 2014

1. CATTLE: 791 Nos.

2. WORKSHOP EQUIPMENT

| DESCRIPTION | QTY |
|------------------------|-----|
| HAMMER 500G | 1 |
| SPOTLIGHT ENERGIZER | 1 |
| SPANNER 19MM | 2 |
| LASHER FORK | 4 |
| SPANNER SET ALLEN 25 | 1 |
| SPANNERS- SIZE 1-36 | 1 |
| SOCKET SET | 1 |
| HEAVY DUTY VICE | 1 |
| TROLLEY JACK | 1 |
| PIK | 1 |
| SHOVEL | 4 |
| GRASS CUTTER | 1 |
| RAKE | 1 |
| SILAGE FORK | 4 |
| RING SPANNER | 23 |
| LAMP TORCH | 2 |
| AIR COMPRESSOR | 1 |
| 7 KVA GENERATOR | 1 |
| OPEN ENDED C SPANNER | 6 |
| SLB HAMMER | 1 |
| SOYA BEAN PLANTER | 8 |
| FLAT NOSE COMB PLIERS | 2 |
| WHEEL BARROW | 1 |
| 13mm METAL DRILL BIT | 1 |
| TIMBER FLAT BIT | 4 |
| SOCKET SLIDE "T" BAR | 1 |
| SOCKET EXTENSION BAR | 1 |
| HEAVY DUTY SOCKETS | 6 |
| BOBJUM SPANNER | 1 |
| VICE GRIP | 1 |
| WELDING HELMET | 1 |
| SQUARE | 1 |
| STEEL TOOL BOX | 1 |
| OIL GUN | 1 |
| INSECT CONTROL SPRAYER | 1 |

| | |
|---------------------|---|
| CHAIN SAW | 1 |
| BOW SAW | 1 |
| HONDA 160 GENERATOR | 1 |

3. TRACTORS & FARM VEHICLES

| DESCRIPTION | QTY |
|---------------------|-----|
| JOHN DEERE 110 KVA | 1 |
| JOHN DEERE 110KVA | 1 |
| TAFE 60 KVA | 1 |
| TAFE 60 KVA | 1 |
| TIPPER TRAILORS | 4 |
| CITROEN AIRCROSS | 1 |
| G.W.M BAKKIE | 1 |
| HYUNDAI BAKKIE | 1 |
| 2000LT WATER BOUZER | 1 |

4. REPRODUCTION EQUIPMENT

| DESCRIPTION | QTY |
|------------------------|-----|
| FLASK B2036 | 2 |
| FLASK | 1 |
| THAWING FLASK | 1 |
| AI BOX | 1 |
| MOBILE MILKING MACHINE | 1 |
| CALF FEEDING BUCKETS | 8 |
| CITO THAWING FLASK 12V | 1 |

ANNEXURE – B (Continued)

5. FARM IMPLEMENTS

| DESCRIPTION | QTY |
|--------------------------------|-----|
| JOHN DEERE PLANTER | 1 |
| KUHN SPREADER | 1 |
| ROVIC & LEERS CHISEL PLOUGH | 2 |
| ATASA SPRAYER | 1 |
| AXEL TRAILOR | 1 |
| KUHN DISC MOWER 800 | 1 |
| ROVIC & LEERS 8 ROW CULTIVATOR | 1 |
| TIPPER TRAILOR | 4 |
| ROVIC & LEERS HAY RAKE | 1 |
| KRONE F125 BALER | 1 |
| FRONT END LOADER | 1 |
| SINGLE ROW HARVESTER | 1 |
| SKW GENERATOR | 1 |
| FIRE FIGHTER | 1 |
| HYDRAULIC DISC HARROW | 1 |
| WATER TROUGH | 3 |
| BALE RING | 1 |
| TMR | 1 |
| FIRE FIGHTER TRAILOR | 1 |
| NECK CLAMP | 1 |
| FEED TROUGHS | 20 |
| BALE LOADER | 1 |
| INTER ROW CULTIVATOR | 1 |
| FLAT BED TRAILOR | 1 |
| BOXED TRAILOR | 1 |
| MAIZE MEAL FLOW | 1 |
| T.L.B | 1 |
| GRASS CUTTER | 1 |

ANNEXURE -- B (Continued)

6. OFFICE FURNITURE & COMPUTERS

| DESCRIPTION | QTY |
|------------------------------|-----|
| 2MTR ROSEWOOD DESK 3 PIECE | 1 |
| TANUR HIGHBACK BLACK LEATHER | 1 |
| TANUR VISITORS BLACK LEATHER | 2 |
| HAT STAND | 1 |
| VETTEL MIDBACK CHAIR | 6 |
| DIXI BURGANDY MOHOGONY RH | 1 |
| MUSTANG HIGHBACK CHAIR | 1 |
| SYSTEMS CUPBOARD ROLLER DOOR | 1 |
| 1500X900 SYSTEMS HINGE DOOR | 2 |
| DESKTOP COMPUTERS | 4 |
| LAPTOP COMPUTERS | 3 |
| XEROX PRINTERS | 1 |
| HP OFFICEJET 6100 PRINTER | 1 |

7. ELECTRICAL POWER SUB-STATION

8. DE-LAVAL 70 POINT MILKING PARLOR

9. DE-LAVAL 10-POINT MILKING PARLOR

10. RESERVOIR & PURIFICATION SYSTEM

ANNEXURE - B (Continued)

11. DAIRY PASTEURIZING EQUIPMENT

Milk Reception

| S.No. | Particulars | Unit | Qty |
|-------|---|------|-----|
| 1 | Raw milk storage tank capacity 10 KL, MOC SS-304 | Nos. | 3 |
| 2 | Weighing Balance with weighing bowl capacity 500 kg, MOC - SS-304 | Nos. | 1 |
| 3 | Dump tank 1000 Ltr with strainer | Nos. | 1 |
| 4 | Row milk pumps 10 KLPB, SS 304 with 3/4 HP motor | Nos. | 1 |
| 5 | In line filter SS-304 | Nos. | 1 |
| 6 | Row milk chiller 10 KLPB | Nos. | 1 |
| 7 | Milk Unloading Pump capacity 10 KLPB | Nos. | 1 |
| 9 | Double Inline Filter | Nos. | 1 |
| 13 | Tanker Unloading SS wire braded hose Pipe | Nos. | 3 |

MILK PROCESSING & PACKING SECTION

| S.No. | Particulars | Unit | Qty |
|-------|--|------|-----|
| 1 | Pasteurized milk pumps 5 KLPB, SS 304 with 2 HP motor | Nos | 4 |
| 2 | Milk Pasteurizer Capacity 5000 LTR/ HR | Nos | 1 |
| 3 | Milk clarifier cum Cream Separator(Manual Cleaning) | Nos | 1 |
| 4 | Double head Pouch packing machine capacity 80 pouch/ min | Nos | 1 |
| 5 | Crate conveyor Gravity type | Nos | 3 |
| 7 | Milk Storage tank 5000 Ltr with agitator | Nos | 3 |
| 9 | Horizontal Milk tank 3 KL | Nos | 3 |
| 10 | LEAKY POUCH TANK 1000 LTR | Nos | 1 |
| 11 | SS TABLE WITH SMS UNION FOR PACKING MACHINE | Nos | 1 |

ANNEXURE – B (Continued)

BUTTER & GHEE SECTION

| S.No. | Particulars | Unit | Qty |
|-------|--|------|-----|
| 1 | CREAM BALANCE TANK SS-304 ,Cap- 100 Ltr | Nos | 1 |
| 2 | Cream Transfer Pump , 500 Ltr/hr, Motor 0.5 hp | Nos | 1 |
| 3 | Cream chiller, Cap. 500 lph | Nos | 1 |
| 4 | Insulated Cream Storage tank with agitator, Capacity -1350 LTr | Nos | 3 |
| 5 | Butter churn, Cap. 1000 lts. | Nos | 1 |
| 6 | Butter trolley- 300 Kg handling capacity | Nos | 3 |
| 7 | Triple Jacket Butter Melting vat Cap. 500 | Nos | 1 |
| 8 | Ghee kettle (triple jacket) -500 LTR | Nos | 1 |
| 9 | Ghee balance tank-100 LTr with filter | Nos | 1 |
| 10 | Ghee Transfer pump, Motor Cap .5 hp | Nos | 1 |
| 11 | Ghee settling tank cap. 500 lts-SS-304 | Nos | 1 |
| 12 | Ghee filling tank cap. 1000 lts with strainer | Nos | 1 |
| 14 | Tin Sealing machine | Nos | 1 |

UTILITIES

| S.No. | Particulars | Unit | Qty |
|-------|---|------|-----|
| 1 | Ammonia Refrigeration Plant(40 TR x2), consist with condenser , receiver , Ice bank tank , chilled water circulation pump etc with a capacity to handle cream chiller and cream ripening vats requirement. (Milk & Ghee) with 50 HP Motors. | SET | 1 |
| 2 | Steam boiler with soft ner, Capacity 1500 kg/hr, Coal fired . | Set | 1 |
| 3 | Air compressor 20 cfm – Non lubricated | SET | 1 |
| 4 | Water treatment plant - MGF/ ACF | Set | 1 |
| 5 | Bore well* | Nos | 2 |
| 7 | Misc handling equipment like crate trolley*. | Nos. | 10 |
| 9 | Process piping* | Lot | 1 |
| 10 | Utility piping * | Lot | 1 |

ANNEXURE - B (Continued)

12. LIST OF BUILDINGS AS AT AUG 12, 2014

| SUB-HEADING | Description |
|----------------|-----------------------------|
| Dairy Building | 70 Point Rotary Parlor |
| Dairy Building | Pasteurizing Plant Building |
| Dairy Building | No. 1 Cow Housing |
| Dairy Building | No. 2 Cow Housing |
| Dairy Building | Heifer Pens |
| Dairy Building | Calving & calf Rearing Pens |
| Dairy Building | 10 Point Parlor |

| | |
|-------------------|---------------|
| Cattle Feed Plant | Feeding Store |
|-------------------|---------------|

| | |
|----------------------|----------------------------|
| Ancillary Dairy Bldg | Guardhouse & Security Gate |
| Ancillary Dairy Bldg | Gravel Access Road |
| Ancillary Dairy Bldg | Tractor Shed |
| Ancillary Dairy Bldg | Workshop |

13. MANURE & WASTE REMOVAL EQUIPMENT

| SUB-HEADING | Description |
|----------------|------------------------|
| Manure & Waste | 10,4KL Mobile Tanker |
| Manure & Waste | PICHON Compact Loader |
| Manure & Waste | Roto Guido Manure Pump |

ANNEXURE - C

| List of employees at Estina Vrede: August 12, 2014 | | | | |
|--|-------------------------------|---------------|------------|-----------------|
| No. | Full name | ID number | Salary | Date of joining |
| <u>Dairy & Farm Management</u> | | | | |
| 1 | Mr. Chandrama Prasad (CEO) | E8653817 | R 65 000 | 2012/09/06 |
| 2 | Quintin Isaac Andries | 8503225056089 | R 25 000 | 2014/08/01 |
| 3 | Mr. Sugreev Yadav | K7264425 | R 15 000 | 2013/07/01 |
| <u>Office Administrators</u> | | | | |
| 1 | Mrs. Theresa Rothman | 8105220118086 | R 4 000.00 | 2012/11/26 |
| 2 | Mrs. Priscilla Van Rooyen | 9009090080088 | R 3 500.00 | 2013/06/26 |
| <u>Regular Labour: Agriculture</u> | | | | |
| 1 | Samuel Henry M Dhlamini | 6405015327088 | R 2 500.00 | 2014/05/26 |
| 2 | Abraham Buti Mboyiza | 6107255646082 | R 2 500.00 | 2014/05/26 |
| 3 | Feti Roovers Motaung | 8010295412085 | R 2 500.00 | 2014/05/26 |
| 4 | Mzwandile Solomon Tshabangu | 8901165390080 | R 2 500.00 | 2014/05/26 |
| 5 | Joshua Boy Tshabangu | 8111175342085 | R 2 500.00 | 2014/05/26 |
| <u>Regular labour: Veterinary/Livestock</u> | | | | |
| 1 | Majaji Dlamini | 7101018628080 | R 2 500.00 | 2014/05/26 |
| 2 | Andries Motlalepula Khanye | 7002185338083 | R 2 500.00 | 2014/05/26 |
| 3 | Richard Motlalepule Khanye | 8906246040083 | R 2 500.00 | 2014/05/26 |
| 4 | Oupa Obooi Atiso Khanye | 8406105926084 | R 2 500.00 | 2014/05/26 |
| 5 | Jacob Khumalo | 6712045307083 | R 2 500.00 | 2013/11/26 |
| 6 | William Jabulani Malinga | 6909035536081 | R 2 500.00 | 2014/05/26 |
| 7 | Mbuti Albert Mkhwebane | 9109096330089 | R 2 500.00 | 2014/04/26 |
| 8 | Alfred Moloi | 8512056576081 | R 2 500.00 | 2014/05/26 |
| 9 | Sam Teboho Mphuti | 8507106206085 | R 2 500.00 | 2014/05/26 |
| 10 | James Mdabi Msiya | 6505165498080 | R 2 500.00 | 2014/05/26 |
| 11 | Bafana Michael Radebe | 8701105315084 | R 2 500.00 | 2014/05/26 |
| 12 | Lucky Amos Radebe | 8301018216089 | R 2 500.00 | 2014/05/26 |
| 13 | Simon Bongani Shabangu | 8809205553080 | R 2 500.00 | 2014/05/26 |
| 14 | Siphiwe Soyamba | 8610115714089 | R 2 500.00 | 2014/05/26 |
| 15 | Johannes Mfanafuthi Tsabalala | 8808087112080 | R 2 500.00 | 2015/05/26 |
| 16 | Esue Tshabangu | 8012166412087 | R 2 500.00 | 2014/05/26 |
| 17 | Shadrack Tshangapansi | 8505275916088 | R 2 500.00 | 2014/05/26 |
| 18 | Joseph Vusimuzi Tsotetsi | 9006196059081 | R 2 500.00 | 2014/05/26 |

ANNEXURE – C (Continued)

| List of employees at Estina Vrede: August 12, 2014 (Continued) | | | | |
|--|--------------------------------|---------------|------------|-----------------|
| No. | Full name | ID number | Salary | Date of joining |
| | Others | | | |
| 1 | Topsy Nkutha (Cleaner) | 7906081086085 | R 2 500.00 | 2012/12/18 |
| 2 | Sindiswa Anah Mkhwebane (Cook) | 8607220824084 | R 2 500.00 | 2014/06/26 |
| 3 | Lehlolonolo Johannes Motaung | 8008235247082 | R 2 500.00 | 2013/03/31 |
| | Security | | | |
| 1 | Sunny Cecil Motloun | 8001125488080 | R 2 500.00 | 2014/05/26 |
| 2 | Abramson Oscar Thuso Makubu | 8008305754082 | R 2 500.00 | 2014/05/26 |
| 3 | Emmanuel Mojalefa Motloun | 8804095026080 | R 2 000.00 | 2014/03/26 |
| 4 | Sibusiso Treasure Tshabalala | 8207236037084 | R 2 000.00 | 2014/03/26 |
| | 70 Point Parlour | | | |
| 1 | Ms. Lindiwe Martha Tshabalala | 8907030322083 | R 2 500.00 | 2014/04/26 |
| | Drivers | | | |
| 1 | Paul Sibusiso Twala | 8309306033082 | R 3 000.00 | 2013/11/21 |
| 2 | Simanga Zacharia Sibeko | 7108265381081 | R 3 000.00 | 2014/06/26 |
| 3 | Jimmy Bongani Ngwenya | 8203015446083 | R 2 500.00 | 2014/05/26 |



Annexure “RJ16”



Enq: MP Thabathe
Tel: 051 861 8309/10
Ref: Legislature Question Paper on Veld Fires _MEC_2014-15

Dear B. F. Mothupi
Table Assistant
Free State Legislature

**RE: FREE STATE LEGISLATURE: QUESTION PAPER: WEDNESDAY, 04 MARCH 2015
[No 1 – 2015] SECOND SESSION, FIFTH LEGISLATURE**

Question 2.1 What do the terms of the contract pertaining to the Vrede Dairy Project between the Provincial Government and ESTINA prescribe regarding the cancellation of the contract?

Answer:2.1 Clause 11 of the Agreement: Termination of the Agreement clearly stipulates that:

11.1 The Parties shall have the right to terminate the Agreement without prejudice to any of its other rights upon the occurrence of any of the following acts:

11.1.1 On breach of this Agreement as stipulated in clause 10: **Breach of the Agreement:**

In the event of a breach by any one party of any of the terms and conditions of this Agreement and in the event that the said party fails to remedy such breach within ten (10) working days after receiving written notice from any other party to do so, the other party shall, without prejudice to any other rights that they may have, be entitled to exercise all or any of the following rights:

10.1 To terminate this Agreement with immediate effect without prejudice to any other rights it may have;

10.2 To suspend further payments to the defaulting party.

11.1.2 On commencement of any action for the dissolution and/or liquidation of any one of the

OFFICE OF THE MEC
Private bag x01, Glen 9300
Main Building, Ground Floor, Room 105,
CNR Giellie and Joubert Streets, Glen
Tel: 051 861 8400 Fax 051 861 8451

Parties, except for purpose of an amalgamation or restructuring approved in advance by the other Parties;

11.1.3 If any one party receives a court order to be placed under judicial management or to commence liquidation procedures that is not withdrawn or struck out within 5 (five) working days;

11.1.4 If a party informs the other Parties in writing that it is incapable of completing the project as described;

11.1.5 If it can be established that any one of the Parties acted dishonestly.

11.1 Upon the termination of this Agreement, the Parties agree to co-operate to conclude an orderly termination of their relationship.

11.2 Completion, suspension or termination of the Agreement shall not prejudice or affect the accrued rights or liabilities of the Parties.

2.2 On what date was the contract cancelled?

Answer 2.2) The DEPARTMENT cancelled the Agreements with ESTINA (Pty) Ltd on the 13 August 2014

2.3 Whether any claims were made by ESTINA against the Provincial Government regarding the cancellation of this contract; if so, (a) what is the nature of the claim, (b) the amount?

Answer 2.3) No claim was made by ESTINA since the cancellation of the contract.

2.4 Whether the department intends to pay any amounts relating to this claim; if not, why not, if so, how much?

Answer 2.4) No claim was made by ESTINA since the cancellation of the contract.

Question 6: Mr R Jankielsohn

6. Mr R Jankielsohn asks the MEC responsible for Agriculture, Ms. SM. Miamileli

6.1. Question: Whether the disciplinary action was instituted against Senior Officials, as recommended in a report following investigations by the Office of the Accountant General in the department of National Treasury into the appointment of Estina as a partner in the Vrede Dairy project, if not, why not, if so, what are the relevant details?

Answer (6.1): No disciplinary action was instituted.

066. Question: 1) Whether, with regard to Estina being appointed as both the (i) service provider and (ii) partner in the Vrede Dairy Project, any supply chain management procedures were followed with the appointment, if not, (a), who appointed Estina, and (b) on what grounds, if so, what are the relevant details?

Answer 1: Yes, Supply Chain Management procedures were followed through the approval of the deviation by the accounting officer as prescribed in the treasury regulations.

2) Is the Vrede Dairy Project a (i) Public Private Partnership or a (ii) sole service provider?

Answer 2) No, it is a Community Project.

3) Whether Estina made any financial contributions to the project, if not, why not, if so, (a) what amounts, (b) on what dates were payments made and (c), in terms of what were the payments made?

Answer 3) Estina was to make contributions into the second phase which is dairy value-chain processing plant. However the contract was terminated before the completion of phase 2 of the project.

4) Why were two contracts with Estina signed by the Head of the Department?

Answer 4) Only one agreement was signed with Estina.

067. Questions 1) Whether, with regards to the department's invested funds into the Vrede Dairy Project, was budget available for the project when the agreement with Estina was signed, if not, why not, if so, (a) how much money was made available and (b), how much money has been invested in the project up date?

Answer 1) Yes, an initial budget was made available by the department and latter upgraded to a Mega Project, (a) an initial amount of R6,000,000 was budgeted for Vrede Dairy, (b) a total of R 183,950 ,000.00 has been invested so far at the Vrede Dairy Project.

2) Whether the national government has ceased investment in the project, if so, what were reasons given for this?

Answer 2) Yes, due to National Treasury investigations.

3) Whether the department made any payment to Estina, if so, how much money was paid?

Answer 3) Payments were only made for the implementation of the Vrede Dairy project development.

4) Whether these payments were made based on any deliverable, if so, what were the deliverables, if not, on what basis were payments made?


Answer 4) Dairy farm perimeter fence constructed, 2 x dairy parlours were developed (1 milking parlour 18 animals at one time and the second milking parlour 70 cows at the go), 800 dairy and the

milk processing facility and cows were purchased. Machineries and implements were also purchased for the establishment of the pastures, office equipments and farming equipments.

068. Question: 1) What criteria was used to identify the local beneficiaries for participating in the Vrede Dairy Project?

Answer: 1) A criteria used were based and focused on the following; focused on those people who demonstrated as having experience in working in dairies farms, those who were engaged in dairy farming business before, and those who are currently in the dairy farming businesses. The beneficiaries that were prioritized are coming from nearby farming areas such as Vrede, Memel and Warden,

Yours Sincerely,



Me S M Mlamleli

Acting MEC Agriculture and Rural Development

Date: 28/04/2015.

Annexure “RJ17”

PROGRESS REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION IN RESPECT OF THE IMPLEMENTATION OF THE VREDE DAIRY PROJECT BY THE FREE STATE DEPARTMENT OF AGRICULTURE

1. THE COMPLAINTS

- 1.1 On 12 September 2013 the Public Protector received a complaint from the Free State Democratic Alliance.
- 1.2 They allege that an agreement between Estina/Paras (the Private Company) and the Free State Department of Agriculture (the Department) in respect of the Vrede Dairy Project is subject to a confidentiality clause.
- 1.3 They further allege that the private company will invest R228 million for a shareholding of 49% and Government will contribute R342 million for a shareholding of 51%.
- 1.4 It is further alleged that the private company contribute only 40% of the funds needed for a 49% share.
- 1.5 It is further alleged that 400 pregnant cows were procured and that the Department invested R30 million the previous financial year and will invest R84 million in this financial year.
- 1.6 The Head of the Department was requested to respond to the above allegations on 16 September 2014.
- 1.7 On 28 March 2014 the Public Protector received a further complaint from the Free State Democratic Alliance on the Vrede Dairy Project.
- 1.8 The again raised the issue of allocation of shares and alleged that Estina does not have to contribute unless necessary but that they also benefit from the supply of goods and services from the contributions made by the provincial government.

1.9 They alleged that the prices of payments for goods and services were inflated and queried specifically the following:

- 1.9.1 Construction of silage bunker R5,000,000
- 1.9.2 2Km gravel road: R1,200,000
- 1.9.3 Security guard gate and house: R2,600,000
- 1.9.4 Cattle Feed Plant: R7,350,000
- 1.9.5 Milking parlour and processing plant: R30,050,000
- 1.9.6 Tools and farming equipment: R2,513,000
- 1.9.7 Administrative etc. costs R12,000,000
- 1.9.8 Irrigation, pasteurizer, dairy equipment; R37,779,613
- 1.9.9 Dairy cows 351: R6,212,000

1.10 They also raised the issue of environmental requirements in that indiscriminate ploughing and ignoring of wetlands are taking place.

1.11 They further allege that between 50 and 100 cattle have died since being purchased and request an investigation into the cause of the deaths.

2. ISSUES IDENTIFIED AFTER RECEIPT OF THE SECOND COMPLAINT

2.1 Whether the acceptance of the proposal by ESTINA adhered to the prescripts of the Constitution, Public Finance Management Act and other Treasury Regulations in respect of unsolicited bids.

2.2 Whether the project is classified as a Public Private Partnership. Determine whether or not the Treasury prescripts in respect of Public Private Partnerships were adhered to.

2.3 Determine whether or not the Department implement appropriated monitoring and management procedures for the following:

- 2.3.1 Financial reporting;
- 2.3.2 Performance reporting in terms of the agreement;

2.3.3 Budget evaluation; and

2.3.4 Expenditure – value for money.

2.4 Whether or not the Capital injection by ESTINA was received by the Department.

2.5 Whether or not the implementation of phase 1 was concluded.

3. RESPONSE FROM THE DEPARTMENT

3.1 On 21 March 2014 the MEC of Free State Agriculture responded as follows on the questions asked in respect of the first complaint:

3.1.1 The total project cost is R570 million of which Estina/Paras will contribute R228 million (40% of total cost) and the Department will contribute R342 million.

3.1.2 The Department has secured 51% of the shareholding for 100 beneficiaries Estina/Paras will obtain 49% of the shareholding and will provide services and professional fees. Management and administration costs of the project amounts for the difference of 9% shares awarded to the Private Company.

3.1.3 The Department will contribute the R342 million in yearly R114 million contributions over a period of 3 years and the R30 and R84 million is the contribution for the year.

3.1.4 The confidentiality clause is included to protect the department against disclosure of confidential information like design plans, structural layout plans, financial matters. The clause is couched in general language to protect instances which were not foreseeable at the time of conclusion of the contract.

4. ACCOUNTING GENERAL INVESTIGATION REPORT

- 4.1 Information received and confirmed by the Accounting General that he investigated the Vrede Dairy project and included the procurement process and all financial matters.
- 4.2 On 24 March 2014 the Acting Accounting General informed that the provisional report was submitted to the Premier of the Free State for Comment. He was requested for a copy of the executive summary. He referred us to the Director General of National Treasury.
- 4.3 A letter was submitted to the Director General Treasury on 19 May 2014 requesting a copy of the Accountant General's report.

5. WRITTEN RESPONSE IN LEGISLATURE TO DEMOCRATIC ALLIANCE QUESTIONS

- 5.1 In a written response of MEC of Agriculture to Questions about the Project in the Legislature she responded as follows on 13 November 2013:
- 5.2 The first payment of R114 million was paid in R 30 and R 84 million during 2012. She gave a breakdown of expenditure as follows:
- 5.2.1 Planting input: R319,290;
 - 5.2.2 Labour Cost: R1,309,097;
 - 5.2.3 Silage Bunker: R5 million;
 - 5.2.4 Gravel Road: R1,2 million;
 - 5.2.5 Cattle Shed: R500,000;
 - 5.2.6 Security Gate and House: R2,600,000;
 - 5.2.7 Veterinary Laboratory: R300,000;
 - 5.2.8 Cattle Feed Plant; R7,350,000;
 - 5.2.9 Milking Parlour: R30,050,000 (72 point rotary including processing plant for 20,000 litres per day);

- 5.2.10 Purchase of Farm Equipment: R8,380,494;
- 5.2.11 Dairy Cows: R6,212,000;
- 5.2.12 Dairy Equipment, Pasteurizer, Irrigation Equipment: R37,779,613; and
- 5.2.13 Land Surveyor, Agriculturists, Accounting Fees, Office Equipment, Insurance, and Salaries and Wages: R12,000,000 (See response of MEC to PPSA)
- 5.2.14 These amounts totalled to R113,000,494.00.

6. PROJECT PROPOSAL OF ESTINA

- 6.1 A copy of a document was submitted to the Public Protector named: *PROJECT PROPOSAL: Vrede Integrated Dairy project: Proposed integration of Dairy and other elements of production and processing with the emphasis on value-addition and beneficiation, such as a range of processed dairy products.*
- 6.2 The document (8 pages in total) refers to PARAS and their history. The document further contains the proposals in respect of the viability of the projects in establishing the Vrede Dairy Project.
- 6.3 The document states that the project will require an initial fixed capital of R500 million to make it viable and projected turnover is R80 million with a net profit of R16 million. The project proposal also indicates employment opportunities as 600 employees.
- 6.4 According to the proposal the budget values are listed and indicate the initial R500 million needed which includes R40 million working capital. A phased approach is recommended indicating a project over 5 years.

7. AGRIBEE COMPANY FOR BENEFICIARIES

- 7.1 It was alleged that a company was registered for the project with the Private Company holding 49% shares and 100 beneficiaries holding 51% of the shares.

- 7.2 A CIPC search on Company called Mohoma Mabung Dairy Project indicated that the Company was registered on 3 October 2013 (usually date when CM 29 is recorded).
- 7.3 The Company Registration Number is 2013/189418/07. The CIPC site indicate one Director namely Kamal Vasram appointed on 11 October 2013
- 7.4 The address of the Company is listed as 111 Shimbali Sands, Naivasha Road, Sunninghill, Gauteng, 2192.
- 7.5 A letter was addressed to the registered address to request a copy of the shareholder register. Gauteng Office informed that the address is for a residential complex and the Head of the Department of Agriculture was requested to submit the shareholder register of the Company.
- 7.6 The Company documents were only submitted during late 2013 but the Department allocated funds for the 2012/2013 financial year.
- 8. FARM KRYNAAUWS LUST**
- 8.1 The Vrede Dairy Project is situated on the Farm Krynaauws Lust.
- 8.2 A title deed search at the Registrar of Deeds indicates that the farm where the project is farming namely Krynaauws Lust, Nr 275 Vrede RD is held under title deed number T43752/1893 in the name of Phumelela Local Municipality.
- 8.3 No endorsements such as a 99 year lease awarded are registered on the title deed.

9. EVALUATION OF THE CONTRACT CONCLUDED BETWEEN ESTINA AND THE DEPARTMENT

- 9.1 A copy of the contract concluded between ESTINA and the Free State Department of Agriculture was obtained. The Contract was concluded on 5 July 2012.
- 9.2 ESTINA is obligated in the contract to conclude Phase 1 of the project. This is described in Annexure A to the contract and the following must be concluded:
 - 9.2.1 Land Acquisition;
 - 9.2.2 Environmental Impact Assessment;
 - 9.2.3 Feasibility Study;
 - 9.2.4 Water Reticulation;
 - 9.2.5 Electricity Connection;
 - 9.2.6 Include identified beneficiaries in AGRIBEE entity; and
 - 9.2.7 Set up AGRIBEE entity and clarify roles of stakeholders (Department, AGRIBEE and ESTINA).
- 9.3 In terms of the contract a project plan in line with ESTINA proposals which must have milestones and timelines for phase 2 as approved by Department must be submitted by ESTINA to the Department.
- 9.4 In terms of Clause 6.2 ESTINA must determine the dates for capital injection by ESTINA. The Capital injection of ESTINA is stated in the contract as R228 million.
- 9.5 The contract describes phase 2 of the project as "setting up and management of Dairy" and phase 3 of the project as "setting up and management of processing plant."
- 9.5 ESTINA is obliged in terms of clause 6.12 to carry out all its obligation in line with the Department's policies, procedures, protocols and directives.

- 9.6 In terms of clause 7.3 of the contract the Department will identify the beneficiaries of the project. The Department must further consider and approve milestones for phase 2 and 3 (clause 7.4)
- 9.7 Clause 8.1.1 states that ESTINA warrants that it is a partner to PARRAS (India).
- 9.8 The contract determines that the Department will implement appropriate monitoring and management procedures (clause 9.1).
- 9.9 In terms of clause 9.3 ESTINA must submit on a monthly basis financial reports and on quarterly basis performance report must be submitted.
- 9.10 In terms of clause 13.1 an amount of R30 million to execute phase 1 is allocated to the project.
- 9.11 In terms of clause 13.4 ESTINA must prepare a budget to be approved by Department and budgets should be revised and updated on a quarterly basis and submitted for approval to the Department.
- 9.12 Clause 13.5 prescribes that ESTINA to submit all invoices to Department together with reports in line with Project plan to be paid by the Department within 30 days.
- 10 CONTRACT CANCELLATION AND TRANSFER OF PROJECT TO FREE STATE DEVELOPMENT CORPORATION**

ERIKA CILLIERS

16 April 2014

Annexure “RJ18”



Cabinet Reference No:

FREE STATE EXECUTIVE COUNCIL MEMORANDUM:

VREDE INTEGRATED DAIRY PROJECT

**SUBJECT: PROPOSED REVIEW OF VREDE INTEGRATED DAIRY PROJECT AND
TERMINATION OF CONTRACT IN VIEW OF OTHER ELEMENTS OF
PRODUCTION, PROCESSING AND BENEFICIATION.**

1. PURPOSE

The purpose of this letter is to request the Free State Executive Council for the consideration of a request by the Department of Agriculture and Rural Development to review the Vrede Integrated Dairy Project and to terminate the agreement with Estina (PTY) LTD.

2. BACKGROUND

The Department had in the current financial year allocated R114 million for the implementation of the Vrede Integrated Dairy Project. In terms of the agreement the project will be funded over a period of three year with yearly amount of R114 million. The project is in its second year will be completed in the 2014/15 financial year. The R114 million funding in the current financial year for this project was allocated from two source of funding as follows: R60 million from the equitable share and R54 million from the CASP conditional grant. To date R84 million has been spent on this project constituted of R60 million equitable share and R24 million CASP.

The National Department of Agriculture, Forestry and Fisheries has decided not to continue funding the project and in the current year with-held R30 million from CASP allocation due to the investigation that National Treasury is conducting on the project emanating from the media enquiry. The intention of DAFF was to with-hold the entire CASP Grant but has subsequently agreed to with-hold only R30 million allocated to the project.

The with-holding of this amount has impacted negatively to the project, and may even attract the escalation costs. A lot of assets has already being bought and brought on site, including animals that are calving, which needed the milking facilities to be ready.

CONFIDENTIAL

3. DISCUSSION

In view of the dairy project that is being established by the Department at Vrede, the department has committed to pay the total contribution of R342 million over a period of three year in tranches of R114 million/year. The contribution was done in three payments of R30 million in 2012/13 and R84 million in 2013/14 which is equal to the first tranche of R114 million. A further payment of R30 million was done by the department in 2013/14 as a portion of the R114 second tranche leaving a shortfall of R84 million. The Vrede Dairy project was initiated on the 5th of July 2012 and is envisaged to be completed by July 2014.

In line with the Agri-BEE business norms stipulated by Government, it proposed that a new Special Purpose vehicle (SPV) be created in which the Free State Development Corporation (FDC) will hold a 49% share while the remaining 51% shares will remain with the selected Grant recipients. (were recipients)

FDC indicated they are not aware of beneficiaries

- FDC and DARD will provide the required capital injection as well as the technical know-how, which will be provided by FDC.
- It is envisaged that this integrated agri-business project will become a centre of excellence for the entire Free State and even the neighbouring Provinces.
- Eventually this Project will provide On-site, in-service practical agricultural training for aspirant farmers to equip them for the profitable operation and management of their own DARD projects, albeit:
 - Primary production of livestock and agricultural produce, or
 - Value-adding and beneficiation to livestock and agricultural produce
- Basic business, financial and management skills training and in-service application
- Cooperative processing, value-adding and beneficiation of livestock and agricultural produce
- Cooperative marketing facilities into the major consumer markets of South and Southern Africa for all milk projects in the Free State thus creating the necessary critical mass and economies of scale which will unlock additional financial benefit for project participants

CONFIDENTIAL

4. CONCLUSION

The review is necessitated by the decision of DAFF to stop the department from using the conditional grant on this project which resulted in a serious funding shortfall, creating a financial crisis for the project and that the department will not be able to meet the obligations of the contract.

The department would further want to bring to the attention of the Executive council the following issues:

- the next financial year is the final and completion year for the project, however due to the second year shortfall funding of R84 million, the project will not be completed
- the next financial year will also experience a shortfall funding of R84 million due to the withdrawal of CASP funding for the project, and although an advance was made available for this purpose, it has escalated the problem to the following financial year
- the results of the above is that the available funding for this project in the next financial year is only R30 million,
- the total of all this shortfalls amount to R168 million, which makes it impossible to be completed, and if is extended to two more years, the cost would have escalated, which will create more problems
- the contract allows that, if government experiences financial problems, it can terminate the contract without penalty.

It is therefore against this background that the department took a decision to review the project and to allocate the 49% shareholding to the FDC and that the department continue to allocate funding to the project until its completion.

5. RECOMMENDATIONS

It is recommended that the Executive Council;

- a) Considers and approves the review of the Vrede Integrated Dairy Project to allocate the 49% shareholding to FDC.
- b) Supports the department to terminate the contract with ESTINA (PTY) LTD without penalty.

CONFIDENTIAL

SUBMITTED BY

Ms MG Qabathe
MEC for AGRICULTURE AND RURAL DEVELOPMENT

DATE: _____

NOTED AND APPROVED by EXCO:

EXECUTIVE COUNCIL

DATE: _____

TO: The Secretary: Free State Executive Council

Please place an appropriate item on the agenda of the Executive Council and distribute copies of this Memorandum to the respective Members of the Executive Council for consideration.

Mr. E.S. Magashule
Free State Premier

Date

DRAFT PROPOSED EXCO RESOLUTION

CABINET MEETING _____ RESOLUTION NO. _____/2014

SUBJECT:

CONFIDENTIAL

**PROPOSED REVIEW OF VREDE INTEGRATED DAIRY PROJECT AND
TERMINATION OF CONTRACT IN VIEW OF OTHER ELEMENTS OF
PRODUCTION, PROCESSING AND BENEFICIATION.**

(File No. /2014)

(Department of Agriculture)

- 1) Considers and approves the review of the Vrede Integrated Dairy Project to allocate the 49% shareholding to FDC.
- 2) Supports the department to terminate the contract with ESTINA (PTY) LTD without penalty.

SECRETARY: EXECUTIVE COUNCIL

DATE

PREMIER: FREE STATE PROVINCE

DATE

CONFIDENTIAL

Annexure “RJ19”

67 Hon. R Jankielsohn (DA) asks the Hon. Premier: Ms. NS Ntombela.

67.1 In view of the request by the Department of Agriculture submitted to the Executive Council of the Free State in 2014 by the former MEC for Agriculture, Ms Mamiki Qabathe, in which a review of the Vrede Dairy Project and the allocation of 49% shareholding to the FDC as well as the termination of the contract with ESTINA (PTY) LTD without penalty, please supply a complete copy of this proposal by the MEC as well as the resolution as approved by the EXCO and signed by the Premier?

RESPONSE

67.1 The documents, referred to in this question, have been seized by the HAWKS when the search- and seizure warrant was executed on 26 January 2018. These documents are now possible exhibits in a criminal case and the content thereof cannot be disclosed, since the Secretary of the Executive Council is a State witness in the criminal case. These documents are now within the custody of the National Prosecuting Authority.

Annexure “RJ20”

**SPEECH DELIVERED BY ROY JANKIELSOHN MPL FREE
STATE LEGISLATURE
BUDGET DEBATE: OFFICE OF THE PREMIER**

8 July 2014

Speaker, the Free State invests increasing amounts of money in the office of the premier every year. This office has failed in its task of building the capacity and competencies of our provincial government. Honourable Magashule and his Operation Hlasela have not improved the lives or livelihood of our people over the last five years. Our people are poorer and more dependent than they have ever been since 1994.

Operation Hlasela was meant to "attack historic social ills and fast track service delivery to the people".

Speaker, let us look at Hlasela in more detail.

The delivery of health care services in the province have collapsed under Hlasela. The Premier must immediately replace MEC Maloakane who continues to abuse his position to benefit himself or his cronies in every instance that he has been given authority.

In 2013, members of the NCOP expressed their concerns over various failed projects. There was specific criticism towards the Operation Hlasela flagship, the Dyatalawa Agri-Village Project between Harrismith and Kestell. This R150 million project has been burdened with controversial cattle deals and questions over nepotism with contracts.

A certain Mr Moloi was not only responsible for purchasing the sick cattle that had to be replaced at Diyatalawa, but his company, Kamsherai, also received a R250 000 monthly contract from the provincial government for the following:

- Providing planning support for Operation Hlasela.
- Liaison with other departments on project requirements for Operation Hlasela.
- Monitoring and providing support in overall planning and implementation of Hlasela projects completion.
- Providing advice in consultation with other stakeholders on possible solutions to projects bottlenecks.
- Providing monthly quarterly and annual reports to the department on individual project performance whenever required to do so.

This company was awarded this lucrative contract illegally whilst according to the former MEC: "paper work was to be finalized later". The lucrative contract commenced on 2 November 2009 and was to run until April 2014.

The Vrede Dairy Project is another project that only benefited a company called ESTINA and their friends in the provincial government. By cancelling the contract, ESTINA appears to

have milked the taxpayers and is now allowed to walk away without any penalties. The inflation of prices of goods and services provided to the project as well as possible irregularities with the appointment of ESTINA are common knowledge.

At the Maluti Dairy Project the cattle were sold under the auspices of the former mayor of the Maluti-a Phofung municipality and all that is left is a ruin. This former mayor, Dr Mzangwa, has now been appointed into a senior position in the Department of Health.

The VKB chicken project that was opened by President Zuma himself has beneficiaries that include a Mafube councillor, a sister of Honourable MEC Ntombela, and another politically connected individual.

The Xariep Fish hatchery was launched with much fanfare and to date no fish have hatched from this project.

In 2011, R263 million for housing was re-allocated away from the Free State Provincial Government that could have built 4000 houses. Controversy over Hlasela housing projects include shoddy work that requires the destruction and rebuilding of houses, the disappearance of millions of rands worth of building material, the selling of RDP houses and stands by councillors, and the lack of sewerage, water and electricity infrastructure for such projects across the province.

Then we also have the 23 controversial roads contracts that have left our roads infrastructure crippled.

At the same time allegations of corruption surround municipal property deals, rental agreements with the provincial government, and the notorious Letlaka communications contracts. I have named and shamed these individuals previously in this legislature.

Speaker, these are but a few of the controversies surrounding what sounded like a good methodology, namely Hlasela. The result of Hlasela is that the Free State now has the poorest and most dependent population in the country.

Hlasela was merely a smokescreen to centralise power, bypass tender procedures, award controversial contracts, and make the Honourable Magashule look like Father Christmas while he dispersed patronage and created dependency.

Annexure “RJ21”

Un-edited copy

Reply - Office of the PremierFREE STATE LEGISLATURE

COPIES : MEMBER : TRANSLATORS : FILE : DATA :
PRESS

Date: 08 July 2014

Reporter: DG Motjakotja Take: 09

The hon PREMIER: Thank you, hon Speaker. For empowerment of the youth, we have succeeded in re-skilling unemployed youth to become library assistants in the Mafube Local Municipality. We have trained 90 learners in Information Technology. And, in partnership with the Universal Services and Access Agency of South Africa (USAASA), we have established an IT Centre in Cornelia... ..not Kerstell, but Harrismith.

We intend to place 800 FET students in the public and private sector for 18 months of experiential training. We will do this thing in two weeks time.

If the hon Member, Mr Jankielsohn, does not appreciate that, it will be because he is not black, and does not come from poverty. They have robbed our fathers and out people of the land. They have taken all their farms! And, I am happy that we are going to have claims until 2019.

He knows, as it was said by the hon MEC, Ms Ntombela, earlier during one of the debates here, that the farm which the hon Member, Mr Jankielsoh stole... We must investigate how he got his farm. [Interjections] [Inaudible] I think we must bring that to an end. I know that he has stolen that farm. That farm was stolen by his forefathers, and they are still there!

All Government departments will take graduates for internship... [Interjection]

Mr R JANKIELSOHN: I do not even know where... [Inaudible]

Hon PREMIER: You see, when he hides thing he says that they are his wife's. [Laughter] All Government departments will take graduates on internship programmes of 12 months. On July 2014 we are launching the Free State Human Resource and Development Council.

And, I just want to say to the hon Member, Ms Tshabalala: The NDP - there was an open transparent process. It is not a document of the ANC. It is a document of the people of South Africa. This National Development Plan has been taken from one length of the country... There was thorough consultation, just like what happened during the Constitution making process. The same process was followed.

That is why it is supported by everybody. Even when the EFF was still part of us, they made inputs to the NDP. Now, they disown it, after stabling a new party called the Economic Freedom Fighters. The NDP is a living document. If you have gone to school you will understand what is meant by 'a living document'.

A 'living document' means that 'this document can be improved where there areas supposed to be changes'. The document is going to guide South Africa until 2030. That is what we call 'visionary leadership'. What else do you want from the ANC? It is happening for the first time in the history of the ANC, to have a long-term plan. It is after a very long time. It did not even happen during apartheid times.

It also did not happen during the times of other presidents. President Jacob Zuma identified the need to have a Planning Commission. This is the outcome of that realisation of long-term planning. And, I think the Government is on the right track. However, I think we will work with the hon Member to deal with other issues, including the issues of land.

However, you know, with the issue of land, we are nationbuilders. We are not going to reverse and want to revenge. The hon Member, Mr Jankielsohn, can provoke us, but we will not be side-stepped. We will focus and lead the people of South Africa correctly. [Applause]

We are not going to put him in jail for having killed people in Namibia and in South Africa during the eighties, because he was a soldier. And, I can tell you, I know of how many people he has killed. [Applause] I know him even when he was a soldier. I was a freedom fighter, and I was there during the struggle against apartheid. You never knew me, but I knew you as one little man... [Interjections] [Inaudible] [Laughter] [Applause] ...who killed and murdered, ruthlessly, our people.

You have not appeared before the Truth Commission. And, maybe, there should be time, because we have reconciled with the past. We have forgiven you for all the wrongs you have done, and there is nothing wrong in doing that, because we are not dealing with you, but dealing with the 'system' which has... That is how they brought you up.

HON MEMBER: Yes!

Hon PREMIER: Hon Member, Mr Jankielsohn, you do not have... Through you, hon Speaker, hon Member, Mr Jankielsohn, does not respect any person who is black.

HON MEMBER: Yes!

HON PREMIER: Go and ask his domestic worker. The domestic worker there will tell you how is being handled by the hon Member, Mr Jankielsohn.

HON MEMBER: She is a slave!

HON PREMIER: They are still treating our people like slaves!

HON MEMBER: Yes!

HON PREMIER: But, they want their votes!

Mr R JANKIELSOHN: You are lying.

HON PREMIER: This is a real story. It is a real story. Go and check where they sleep.

Mr R JANKIELSOHN: You are a liar.

HON PREMIER: Hon Member, Mr Jankielsohn, does not care about our people, but during elections they want their votes. Hon Member, Mr Jankielson, through you, hon Speaker, the people of Tweespruit, Welkom, Virginia, Viljoenskroon, and Batho (in Bloemfontein) are so happy about the two rooms we have destroyed. Go and see where they are staying! [Applause] You will not

appreciate it because you have oppressed other people! You were one of the oppressors. What did we gain from you? Nothing!

HON MEMBER: Yes, he must go to those communities!

HON PREMIER: You must go to those communities - to Vrede or anywhere. For as long as our people are happy, I can tell you... You can make a lot of noise or do anything, go to hell and heaven... [Applause] ...we will stay focused. Hon Speaker, this hon Member will never de-focus us! We will serve our people with loyalty and honesty! And, for as long as they are happy, we do not care about those racists who are still thinking that this are still the times of '*Baas Nel*' and '*Baas Jan*', '*klein miesies*' and '*klein baas*'!

Because, that is the mentality of the hon Member, Mr Jankielsohn. That time is gone! You will never see it, and my children will never call you '*Baas*'. They will never ever! And, I am teaching them everyday that "look here my boy, you must never call somebody '*baas*' and '*miesies*' because of the colour of their skin", because they are all human beings! And I can assure the hon Member, Mr Jankielsohn, that his attitude will never make us change.

I do not know, because the DA these days put people in parliament. There is this woman who calls herself Van Damme (sic).

HON MEMBER: Van Damme (sic).

HON PREMIER: She is there in Parliament, and she is from Swaziland. She has claimed to be a South African.

HON MEMBER: Fraudulent ID!

HON PREMIER: A fraudulent ID, and the DA does not do anything about it. [Applause] And I wonder whether hon Member, Mr Jankielsohn, is a South African. [Laughter] I am starting to wonder seriously whether he was born in this country. Because I have always tried to... 'Jankielsohn', where does he come from? [Laughter] So, all of these things, hon Member, Mr Komphela, through you, hon Speaker, I think we must try and investigate the origin of the hon Member, Mr Jankielsohn!

Where does he come from? Who is he? How did he arrive here? Because he wants Government's work to go to his friends. I have told you about this so many times, when he brought his friends, his 'white friends', to government. He said "please employ this one". And, I said: "Look here, I do not take mandates, and no *baas* tells me what to do. I am the *baas* here". [Laughter] And I want hon Member, Mr Jankielsohn, to know that I am the *baas* of this Province! [Applause]

It does not matter how high he jumps, I am the one in charge, and the ANC is in charge. The ANC will be in charge until he dies! [Applause]

Mr R JANKIELSOHN: [Inaudible]

HON PREMIER: Until he dies! The ANC will still be in charge! It is not a dream, it is the real thing. The '*baaskaap*' days are gone. The hon Member must listen. He must go and see the fish hatchery. There a millions of rands spent by the Chinese there. He must listen. This is a national project, and there is a country to country relationship. You do not just wake up one day and you give people a licence and then they have a fish which is actually not South African, and its going to [Inaudible] every fish in the river.

You must know, you have gone to school. I do not know how the University of the Free State took you and placed you there! I thought you were a learned person! Has this 'white education' domesticated you? [Inaudible] There is no way you can have brain when 'white education' has domesticated you and indoctrinated a lot of black people who have joined the DA. Simple indoctrination!

So, we must forgive such human beings. Ours is to groom and nurture, and show the hon Member, Mr Jankielsohn, a non-racial future. You will remain here in this country. We accept you! We are not pushing you into the sea.

[Interjections] [Inaudible] We will not push you into the sea. We have not taken back what you have stolen from our people. We have not taken it back! We have forgiven you, and we will continue to forgive you because...

Sesotho:

...hothwe "o ba tshwarele hobane ha ba tsebe seo ba se etsang".

English:

You do not know what you are doing.

The SPEAKER: Half a minute.

HON PREMIER: You know, this hon Member, hon Speaker... I have letters that he wrote to the *Free State Times*, telling them what to do and what to say. I have those letters.

Mr R JANKIELSOHN: Bring them.

HON PREMIER: No, I will not bring them to you. You are not my 'baas'! Who are you anyway? I have those letters. That is how the DA has been operating. Look at the journalists who are in parliament who are members of the DA. And

they keep on telling us about 'independent' media! Look at the people who are working for the NPA.

Ms M G QABATHE (MEC): Yes! They are members!

HON PREMIER: They are there! They are working and then give DA information. They have papers which report every month to America, and they get information from Jankielsohn in the Free State. And they think we are stupid, because we are black.

Mr R JANKIELSOHN: It must be the CIA's.

HON PREMIER: You are a product of the CIA yourself. You are! In fact, those are your employers. Our people are happy! We are building roads in the townships. They are happy! The people in QwaQwa are happy! The people where you come from are happy. The poor whites which you have dumped, the ones which the DA does not want to be associated with, they are happy. We will look after them and do things for them. [Applause] They are happy about the ANC.

We are the future, and we will deliver even to those who have not voted for us.
[Interjection]

The SPEAKER: Hon Premier.

HON PREMIER: Total of 500 whites are at universities today. They are getting bursaries from this government, because we are bulding a non-racial...
[Interjection]

The SPEAKER: Hon Premier.

HON PREMIER: They are happy, and they will remain happy. So you can shout to the loudest, we will never change. We will stay focused. You can go to whatever place... Dromedaris and Reiger can take you back to the days of Jan Van Rieebeck... [Interjection]

The SPEAKER: Hon Premier.

HON PREMIER: Where you come from.

The SPEAKER: Hon Premier.

HON PREMIER: Dromedaris... You came by Dromedaris into this Province.
[Laughter]

ADJOURNMENT OF THE LEGISLATURE

The **SPEAKER**: Hon Premier, I am afraid your time is up. Hon Members, the reply by the hon Premier concludes the debate on Vote 1 - Office of the Premier.

The House shall adjourn until tomorrow, Wednesday, 09 July 2014 at 09:00 in the morning. The House shall follow the same routine as today and conclude its business in the evening.

And, tomorrow, hon Members, please take your high-blood pressure tablets.
[Laughter] Let us all start on a very good note. The House is adjourned.

THE HOUSE ADJOURNED AT 19:19

UNTIL WEDNESDAY, 09 JULY 2014

AT 09:00,

FOURTH RAADSAAL

Annexure “RJ22”



Hon M. Qabathe MPL
Speaker: Free State Legislature

1 July 2015

Hon Speaker

Re: MEC M. Zwane's failure to adhere to Speaker's ruling of 17 June 2015

During the sitting of 17 June 2015 the MEC for Agriculture and Rural Development, Hon M. Zwane, indicated that he was not prepared to answer a question that was published in the IQP as question two on 6 August 2014. This question was eventually placed on the order paper for oral reply on the sitting that was scheduled for 11 June 2015. The rules indicate that outstanding questions should have been on the order paper for oral reply last year already.

During the sitting of 17 June the MEC indicated that the question had been replied to, and as such he was not prepared to offer a reply. I indicated that we had not received a reply and requested that a ruling is made that it is replied to by the end of business on Friday, 19 June. The Speaker then made a formal ruling that all outstanding questions on the order paper should be replied to and submitted to the office of the Secretary of the Legislature by the end of business on Monday, 22 June. The fact that the MEC indicated that he had a prepared reply implies that he could submit it immediately.

Inquiries within the administration have indicated that not only was no reply submitted by the MEC in terms of the ruling, but that he had blatantly ignored the ruling of the Speaker. This implies that the MEC deliberately misled the House and is subsequently in contempt of the Speaker's ruling.

With this in mind I request the following from the Speaker:

1. That the MEC is instructed to submit the reply immediately.
2. That the matter of his misleading the House be referred to the Ethics Committee for investigation.
3. That the matter of his contempt of a formal ruling of the Speaker in the House be referred to the Ethics Committee for investigation.
4. That the Speaker will ensure that measures are put in place that protect the rights of MPL's to receive replies to questions in terms of the Standing Rules and Orders.
5. That the Speaker will implement measures that ensure that the constitutional mandate of the Legislature, which is to ensure accountability and oversight over the Executive, are put in place.

FREEDOM. FAIRNESS. OPPORTUNITY.

Your favourable consideration of the above will be appreciated.
Yours truly,

A handwritten signature in dark ink, appearing to read 'Jankielsohn', with a long, sweeping horizontal stroke extending to the right.

Roy Jankielsohn MPL
Leader of the Opposition

Annexure “RJ23”

REPORT OF THE AUDITOR GENERAL Report of the auditor-general to the Free State Legislature on vote no. 11: Department of Agriculture and Rural Development 2017/18 Financial Year

Page 123

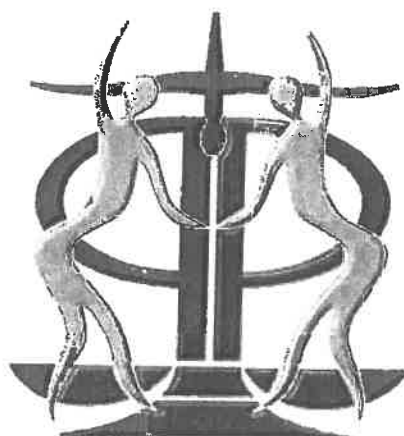
Service delivery

13. During the 2012-13 financial year, the department established a dairy farm to the contract value of R570 000 000, which was to be contributed by two parties (department contributing R342 000 000 and Estina (Pty) Ltd contributing R228 000 000). During the contract period, the department spent R143 950 000. It is not known how much Estina (Pty) Ltd contributed. The purpose of the project was to create opportunities for the emerging milk producing farmers in the Phumelela local municipal area (Vrede) and the anticipated business model was to source milk from surrounding dairy farmers and community members. The department had identified approximately 100 emerging farmers as beneficiaries, but at the date of this report it had not been handed over to these beneficiaries. The contract with Estina (Pty) Ltd was cancelled in August 2014 and payments amounting to R106 252 652 were made to Estina (Pty) Ltd for outstanding orders.

14. The department is currently funding the farm through a management contract with the Free State Development Corporation (FDC). Payments transferred to the FDC for the operations of the farm amounted to R20 million in 2017-18 and R51,2 million in prior years.

Annexure “RJ24”

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1) OF
THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO: 31 of 2017/18

ISBN: 978-1-928366-53-9

***"Allegations of maladministration against the Free State Department of Agriculture –
Vrede Integrated Dairy Project"***

**REPORT ON AN INVESTIGATION INTO COMPLAINTS OF MALADMINISTRATION
AGAINST THE FREE STATE DEPARTMENT OF AGRICULTURE IN RESPECT OF NON-
ADHERENCE TO TREASURY PRESCRIPTS AND LACK OF FINANCIAL CONTROL IN
THE ADMINISTRATION OF THE VREDE INTEGRATED DAIRY PROJECT**



Report of the Public Protector February 2018

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Executive Summary

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 8(1) of the Public Protector Act, 1994.
- (ii) The report relates to an investigation into the alleged maladministration by the Free State Department of Agriculture and Rural Development (the Department) in that it did not adhere to treasury prescripts and lack of financial control in the administration of the Vrede Dairy Project (the Project).
- (iii) The Complainant is Mr R Jankielsohn (the Complainant) a member of the Free State Provincial Legislature representing the Democratic Alliance. Mr Jankielsohn submitted a complaint alleging maladministration after visiting the Vrede Dairy Farm and received answers to questions posed in the Free State Legislature which were not satisfactorily answered according to him.
- (iv) In the main, the complaint dated 12 September 2013 provides:
 - (a) That the Portfolio Committee on Agriculture and Rural Development in the Free State Legislature, around September 2013, heard from the Head of Department, Mr M P Thabete, that an agreement between the province and the private sector partners ESTINA/PARAS in the Vrede Dairy Project was subject to a confidentiality clause;
 - (b) That in terms of the agreement the Indian company "PARAS" and their South African Partner "ESTINA" would receive a 49% share with a R228 million investment in the R570 million project, while the 100 local beneficiaries would jointly receive 51% shares through a government investment of R342 million. This implied that ESTINA/PARAS would obtain a 49% share with an investment of only 40% of the projected cost of the project. Government would thus be



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- investing R144 million more in the project than their private sector partners without the beneficiaries receiving the proportionate number of shares;
- (c) The project planned to milk 500 cows and produce 40 000 litres of milk per day that would be processed by a factory built by ESTINA/PARAS. The Department had invested R30 million in the project the previous year on designs, an Environmental Impact Assessment, planting of fodder, etc. On the year the complaint was lodged, an amount of R84 million was to be invested in the infrastructure, machinery and cattle. The Department had indicated that 400 pregnant cattle had already been purchased for the project; and
 - (d) That the Public Protector had to investigate the issues in an attempt to ensure transparency in the project as well as an equitable share in the project for the local 100 beneficiaries based on the government investment.
- (v) On 28 March 2014, the Public Protector received a further complaint from the Complainant on the Project. The Complainant made the same allegations as those received on 12 September 2013. The second complaint was:
- (a) That it had come to light that ESTINA would only contribute if necessary and that they were also benefiting from the supply of goods and services from the contributions from the provincial government;
 - (b) That the R342 million was also subject to hugely inflated costs, some of which included among others the construction of a silage bunker for R5 000 000.00; a 2km gravel access road for R1 200 000.00; a security gate and guard house for R2 6000 000.00; a cattle feed pant for R7 350 000.00; a milking parlour and mild processing plant for R30 050 000.00; tools such as spanners, shovels, grinders, air compressors, etc. for R2 513 000.00; administrative, legal, accounting and other consulting fees for R12 000 000.00; irrigation equipment, pasteurizer and dairy equipment for R37 779 613.00 and 351 dairy cows for R6 212 000.00;



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- (c) That the Free State government had paid R2 838 000.00 more for the 351 dairy cows than was necessary. There also appeared to be no official record of such transactions within the breed society that kept stud books of such cattle. Even though the value of the cattle bought was questionable, the DA had made enquiries about the best possible market prices for stud cattle with the Free State Friesland Breed Society. The market prices for prime cattle were indicated in the following table:

| Types of Heifers Purchased | Number Purchased | Market price of Friesland/Holstein Stud Heifers | Total Costs |
|----------------------------|------------------|---|--------------------|
| Pregnant Heifers | 62 | R15 000 per heifer | R930 000 |
| Breeding Cows | 57 | R16 000 per cow | R912 000 |
| Calves 12 months + | 70 | R8 000 per heifer | R560 000 |
| Heifers 9-12 months | 77 | R6 000 per heifer | R462 000 |
| Heifers 6-9 months | 85 | R4 000 to R6 000 per heifer | R510 000 (maximum) |
| TOTAL | | | R3 374 000 |

- (d) That at the time, the national Department of Agriculture had supplied the provincial government with R40 466 231 worth of equipment that included tractors and most of the other related equipment for planting and maintaining crops. Purchasing additional tractors and equipment for the project wasn't necessary and jointly cost the project an additional R5 867 494.00;
- (e) That the top range rotary milking machines with electronic sensors cost about R55 000.00 per point. The machines for the 82 points should not have cost more than about R4.5 million. They were included as part of the R30 050 000.00 price tag that included the milk processing plant;



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- (f) That it appeared the payments for goods and services were in some, if not all, instances highly inflated. It was also not known who the suppliers of the various goods and services were, and whether the suppliers, implementing agents, or officials were responsible for the inflated prices;
 - (g) That the agreement with ESTINA included a clause that the service provider would be "responsible to ensure that they comply with environmental requirements" had already been breached since complaints of indiscriminate ploughing of natural fields and wetlands had been received. This could not be done without the necessary environmental procedures being followed; and
 - (h) That various reports indicated that up to between 50 and 100 cattle had died since being purchased. There was obviously a serious problem with these cattle and this was costing taxpayers a great deal of money. It was not known what the cause of the deaths was, or what the costs of this was. Furthermore that some carcasses had also been dumped next to a stream that ran into the catchment area for water for the town of Vrede/Ezenzeleni. These had just been covered with gravel and still posed a risk when it rained.
- (vi) On 10 May 2016, after the issues in the investigation were identified by the Public Protector, the Complainant further submitted the following:
- (a) That the appointment of ESTINA as partner in the project did not follow the necessary state procurement processes;
 - (b) ESTINA misrepresented itself as being in partnership with a large dairy company in India, namely PARAS, by marketing itself in presentations as "Estina/Paras. This could not have been overlooked by those who approved the project since logic dictates that Paras would be part of such a presentation or at least be requested to commit in writing to being part of the project;



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- (c) The contract was approved by the legal department in the Office of the Premier, as confirmed by the CFO in interviews. The contract clearly benefits ESTINA at the cost of the state, taxpayers, and beneficiaries;
- (d) The fact that ESTINA was both a partner and implementing agent was highly irregular. ESTINA subsequently received up to R183 million for the construction of infrastructure and purchasing of cattle for the project. It appeared that costs of some of the items were inflated and that the processing plant that was paid for was dysfunctional;
- (e) The fact that ESTINA would receive 49% share in the project with only a 40% contribution was irregular and robs the taxpayers and beneficiaries of a 9% share;
- (f) ESTINA was allowed to abscond from the project without any accountability. The FDC have taken over their management role in this project;
- (g) The Mahoma Mobung part of the project, including bank accounts in this name, was unclear and appeared to be irregular;
- (h) The fact that the 80 beneficiaries had been sidelined, while they in fact should own 51% of the project, implied that they were used as pawns to justify the project after the DA requested the names from them. A meeting with some of them indicated that they were merely names on a piece of paper with no further information or involvement. They had a right to claim their 51% share;
- (i) The National Treasury investigation had revealed various irregularities with recommendations of disciplinary procedures against both the HoD and CFO, which had been ignored by the provincial government and the Premier. The recommendations had to be implemented;
- (j) Questions in the Portfolio Committee on Economic Affairs that included agriculture in the Free State Legislature relating to the Vrede Dairy Project had



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been ignored. In fact the Chairperson of the committee would not allow any questions to the Department of Agriculture on the issue by the members of the legislature. The former MEC for the Agriculture and Rural Development, Mamiki Qabathe, refused to answer questions relating to the project in the committee;

- (k) While the FDC had taken over the management of the project, the Department of Agriculture and Rural Development continued to make monthly payments for running costs such as food into the project."
- (vii) On analysis of the complaint received in 2013 and 2014, the following issues were identified and investigated:
 - (a) Whether the Department improperly entered into a Public Private Partnership agreement for the implementation of the Vrede Dairy Project;
 - (b) Whether the Department failed to manage and monitor implementation of the terms of the agreement in relation to budget evaluation, expenditure control and performance by ESTINA;
 - (c) Whether or not prices for goods and services procured were inflated, specifically alleged expenses in respect of construction, processing equipment, procurement of cows and administration costs; and
- (viii) The following issues were not investigated due to capacity and financial constraints experienced by the Office of the Public Protector:
 - (a) The cause of the alleged deaths of the cattle. The photographs submitted in respect of the alleged deaths of the cattle indicated that the deaths did not occur recently. The Minister of Water Affairs intervened and issued instructions on the removal of the dead cows.



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- (b) Issues emanating from the complaint sent on 10 May 2016 as the issues pertaining to the investigation were already identified and an investigation was at an advance stage.
- (c) The issue of value for money obtained by the Government in terms of the agreement was investigated by National Treasury: Accountant General.
- (d) The recent newspaper articles on the emails reported, relating to the Gupta family, that surfaced around June 2017, referring to the Project were noted but do not form part of the scope of this investigation.
- (e) How the money transferred to ESTINA were spent by ESTINA, as the Directorate for Priority Crime is dealing with the issue.
- (f) The matter relating to beneficiaries who were intended to benefit from the project due to lack of information.
- (ix) The investigation process was conducted through meetings and interviews with the Complainant and relevant officials of the Department as well as inspection of all relevant documents and analysis and application of all relevant laws, policies and related prescripts.
- (x) Key laws and policies taken into account to determine if there had been maladministration by the Department and prejudice to the Complainant or South African Citizens were principally those imposing administrative standards that should have been complied with by the Department or its officials. Those are the following:
 - (a) Sections 195 and 217 of the Constitution create the basis for a public procurement framework aimed at ensuring equity, good governance and administration, fair dealing in the administrative context, enhancing protection



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of the individual against abuse of state power, promoting public participation in decision-making, and strengthening the notion that public officials are answerable and accountable to the public they are meant to serve.¹

- (b) There are certain requirements before a government can successfully use Public-Private-Partnerships (PPP) to procure public services infrastructure or services. A detailed legislative framework is in place through the Public Finance Management Act, 1 of 1999 (PFMA) and PFMA regulation 16 of the Treasury Regulation (Regulations).
- (c) Sections 38, 39 and 40 of the PFMA require Accounting Officers of departments to ensure that effective, efficient and transparent financial and risk management systems are in place.
- (xi) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:
 - (a) Regarding whether the Department of Agriculture improperly entered into a Public Private Partnership agreement for the implementation of the Vrede Dairy Project:
 - (aa) The allegation that the Department improperly entered into a Public Private Partnership agreement for the implementation of the Vrede Dairy project is not substantiated.
 - (bb) The Department did not enter into a PPP with ESTINA in the context of Treasury Regulation requirements.

¹ Devenish, Govender and Hulme *Administrative Law* 14-16



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Observations

(cc) The Public Protector in concurrence with the Accountant General's investigation observed the following procurement irregularities:-

- (1) That the HoD of the department did not follow the normal procurement process, as prescribed by the Constitution, PFMA and National Treasury Regulations;
- (2) That the payments to Estina were also not line with Treasury prescripts;
- (3) That the agreement between the Department and Estina seems to be invalid, due to non-compliance with the procurement process;
- (4) That despite the Accountant General's report, the department failed to comply with section 81 and 86 of the PFMA, which prescribed the process to be followed when there is allegations of financial misconduct;

(dd) The prescripts in respect of the procurement of the agreement were not adhered to.

(ee) The Accounting Officer of the Department proceeded after the recommendation of the Accountant General to pay a further R143, 950 million to ESTINA in respect of the Project.

(b) Regarding whether the Department failed to manage and monitor implementation of the terms of the agreement in relation to budget evaluation, expenditure control and performance by ESTINA:

(aa) The allegation that the Department failed to manage and monitor implementation of the terms of agreement is substantiated.



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- (bb) No documents and/or policies or measures were provided by the Department that proper financial control and risk management of the Project were in place. The Public Protector could find no evidence or indication that the Accounting Officer invoked the provisions of the agreement in respect of the control over the Project and this raises a serious concern. This concern was supported by the report of the Accountant General and the lack of effective, efficient and transparent systems of financial and risk management and internal control amounts to gross negligence and maladministration.
 - (cc) No supporting evidence in the form of actual invoices/receipts was submitted to substantiate the expenditure as claimed in the financial statements submitted, except for nine (9) invoices for procurement of cattle.
 - (dd) The evidence outlined earlier points to gross irregularities in ensuring the effective and efficient performance of the agreement and resulted in maladministration.
 - (ee) From the above it is clear that this amounts to gross negligence and also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6 of the Public Protector Act.
- (c) Whether the prices for goods and services procured were inflated, specifically alleged expenses in respect of construction, processing equipment, procurement of cows and administration costs:
- (aa) The allegation that the prices for goods and services procured were inflated, specifically expenses in respect of construction, processing equipment,



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procurement of cows and administration costs is difficult to determine. This is due to the following:

1. ESTINA did not follow public procurement processes when procuring the services of the service providers in the project;
2. Due to the lack of resources and financial constraints, the Public Protector was unable to conduct a comprehensive investigation in order to determine the fair market value for good and services procured; and
3. The Public Protector was not provided with all the invoices and proof of payments for the goods and services procured by Estina on behalf of the Department.

(xi) REMEDIAL ACTION

The appropriate remedial action the Public Protector takes in pursuit of section 182(1)(c) of the Constitution, with the view of addressing systemic procurement management deficiencies in the Department and the irregular expenditure incurred, is the following:

- (a) The Premier of the Free State Province must**
- (aa)** Initiate and institute disciplinary action against all implicated officials involved in the Vrede Dairy Farm project.
 - (bb)** Submit the report regarding the remedial action in (aa) to the Public Protector after conclusion of the disciplinary action processes.
 - (cc)** Ensure that that he conducts a reconciliation of the number of cows initially procured and found during April 2017 as per his undertaking in the response to the section 7(9) notice.



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- (dd) Ensure that he submit an implementation plan within 30 days of the issuing of this report.
- (b) **The Head of the Free State Department of Agriculture must:**

 - (aa) Ensure that the officials in the Supply Chain Management Division and the Management of the Department are trained on the prescripts of the National and Provincial Treasuries in respect of procurement and specifically in respect of deviations;
 - (bb) Take corrective measures to prevent a recurrence of the failure in the management process referred to in this report;
 - (cc) Ensure that all Departmental staff involved in the implementation and execution of Projects are properly trained and capacitated to manage Projects assigned to them, for future projects; and
 - (dd) Develop and revise current policies for the implementation of internal control measures in line with Treasury prescripts and regulations.



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REPORT ON A SYSTEMIC INVESTIGATION INTO COMPLAINTS OF MALADMINISTRATION AGAINST THE Free State DEPARTMENT OF AGRICULTURE IN RESPECT OF NON-ADHERENCE TO TREASURY PRESCRIPTS AND LACK OF FINANCIAL CONTROL IN THE ADMINISTRATION OF THE VREDE INTEGRATED DAIRY PROJECT

1. INTRODUCTION

- 1.1. This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- 1.2. The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of my investigation:
 - 1.2.1. The Premier of the Free State Province, Mr ES Magashule;
 - 1.2.2. The Head of the Free State Department of Agriculture and Rural Development, Mr MP Thabethe;
 - 1.2.3. The Auditor General of South Africa;
 - 1.2.4. The Head of Directorate for Priority Crime Investigation; and
 - 1.2.5. The National Director of Public Prosecutions.
- 1.3. A copy of the report is also provided to Mr R Jankielsohn, Free State Provincial Legislature, Democratic Alliance (Complainant) and The Member of the Executive Council for the Free State Department of Agriculture and Rural Development, Mr O Khoabane to inform them about the outcome of my investigation.



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- 1.4. The report relates an investigation into the alleged maladministration by the Free State Department of Agriculture and Rural Development (the Department) in that the Department did not adhere to Treasury Prescripts when the Vrede Integrated Dairy Project (Project) was implemented and the lack of financial control in the administration of the Project.

2. THE COMPLAINT

- 2.1. The Complainant submitted a complaint on 12 September 2013 with the following allegations of maladministration in respect of project:

- 2.1.1. That the Portfolio Committee on Agriculture and Rural Development in the Free State Legislature, around September 2013, heard from the Head of Department, Mr M P Thabete, that an agreement between the province and the private sector partners ESTINA/PARAS in the Vrede Dairy Project is subject to a confidentiality clause;
- 2.1.2. That in terms of the agreement the Indian company "ESTINA" and their South African Partner "PARAS" will receive a 49% share with a R228 million investment in the R570 million project, while the 100 local beneficiaries will jointly receive 51% shares through a government investment of R342 million. This implies that ESTINA/PARAS will obtain a 49% share with an investment of only 40% of the projected cost of the project. Government will thus be investigating R144 million more in the project than their private sector partners without the beneficiaries receiving the proportionate number of shares;
- 2.1.3. That the project plans to milk 500 cows and produced 40 000 litres of milk per day that will be processed by a factory built by ESTINA/PARAS. The Department invested R30 million in the project last year on designs, an Environmental Impact Assessment, planting of fodder, etc. This year an amount of R84 million is to be invested in the infrastructure, machinery and cattle. The Department indicated that 400 pregnant cattle had already been purchased for the project; and



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- 2.1.4. That the Public Protector investigate the issues in an attempt to ensure transparency in the project as well as an equitable share in the project for the local 100 beneficiaries based on the government investment.
- 2.2. On 28 March 2014, the Public Protector received a further complaint from the Complainant on the Project. The Complainant made the same allegations as the allegations received on 12 September 2013. The second complaint was:
- 2.2.1. That it has come to light that ESTINA would only contribute if necessary and that they are also benefiting from the supply of goods and services from the contributions from the provincial government;
- 2.2.2. That the R342 million is also subject to hugely inflated costs, some of these include among others including construction of a silage bunker for R5 000 000.00; a 2km gravel access road for R1 200 000.00; a security gate and guard house for R2 6000 000.00; a cattle feed pant for R7 350 000.00; a milking parlour and mild processing plant for R30 050 000.00; tools such as spanners, shovels, grinders, air compressors, etc. for R2 513 000.00; administrative, legal accounting and other consulting fees for R12 000 000.00; Irrigation equipment, pasteurizer and dairy equipment for R37 779 613.00 and 351 dairy cows for R6 212 000.00;
- 2.2.3. That the Free State government paid R2 838 000.00 more for the 351 dairy cows than was necessary. There also appears to be no official record of such transactions within the breed society that keep stud books of such cattle. Even though the value of the cattle bought is questionable, the DA made enquiries about the best possible market prices for stud cattle with the Free State Friesland Breed Society. The market prices for prime cattle are indicated in the following table:



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| Types of Heifers Purchased | Number Purchased | Market price of Friesland/Holstein Stud Heifers | Total Costs |
|----------------------------|------------------|---|--------------------|
| Pregnant Heifers | 62 | R15 000 per heifer | R930 000 |
| Breeding Cows | 57 | R16 000 per cow | R912 000 |
| Calves 12 months + | 70 | R8 000 per heifer | R560 000 |
| Heifers 9-12 months | 77 | R6 000 per heifer | R462 000 |
| Heifers 6-9 months | 85 | R4 000 to R6 000 per heifer | R510 000 (maximum) |
| TOTAL | | | R3 374 000 |

- 2.2.4. That recently the national Department of Agriculture supplied the provincial government with R40 466 231 worth of equipment that included tractors and most of the other related equipment for planting and maintaining crops. Purchasing additional tractors and equipment for this project wasn't necessary and jointly cost the project an additional R5 867 494.00;
- 2.2.5. That the top range rotary milking machines with electronic sensors cost about R55 000.00 per point. The machines for the 82 points should not have cost more than about R4.5 million. They are included as part of the R30 050 000.00 price tag that includes the milk processing plant;
- 2.2.6. That it appears that the payments for goods and services are in some, if not all, instances highly inflated. It is also not known who the suppliers of the various goods and services are, and whether the suppliers, implementing agents, or officials are responsible for the inflated prices;
- 2.2.7. That the agreement with ESTINA includes a clause that the service provider will be "responsible to ensure that they comply with environmental requirements" has already been breached since complaints have been received of indiscriminate



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ploughing of natural fields and wetlands. This cannot be done without the necessary environmental procedures being followed; and

2.2.8. That various reports indicate that up to between 50 and 100 cattle have died since being purchased. There is obviously a serious problem with these cattle and this is costing taxpayers a great deal of money. It is not known what the causes of the deaths are, or what the costs is of this. Furthermore that some carcasses have also been dumped next to a stream that runs into the catchment area for water for the town of Vrede/Ezenzeleni. These have just been covered with gravel and still pose a risk when it rains.

2.3. On 10 May 2016, after the issues in the investigation were identified by the Public Protector and investigation was at an advance stages, the Complainant further submitted the following:

2.3.1. That the appointment of ESTINA as partner in the project did not follow the necessary state procurement processes;

2.3.2. ESTINA misrepresented itself as being in partnership with a large dairy company in India, namely PARAS, by marketing itself in presentations as "ESTINA/PARAS. This could not have been overlooked by those who approved the project since logic dictates that Paras would be part of such a presentation or at least be requested to commit in writing to being part of the project;

2.3.3. The contract was approved by the legal department in the Office of the Premier, as confirmed by the CFO in interviews. The contract clearly benefits ESTINA at the cost of the state, taxpayers, and beneficiaries;

2.3.4. The fact that ESTINA was both a partner and implementing agent is highly irregular. ESTINA subsequently received up to R183 million for the construction of infrastructure and purchasing of cattle for the project. It appears that costs of



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some of the items were inflated and that the processing plant that was paid for is dysfunctional;

- 2.3.5. The fact that ESTINA would receive 49% share in the project with only a 40% contribution is irregular and robs the taxpayers and beneficiaries of a 9% share;
- 2.3.6. ESTINA was allowed to abscond from the project without any accountability. The FDC have taken over their management role in this project;
- 2.3.7. The Mahoma Mobung part of the project, including bank accounts in this name, is unclear and appears to be irregular;
- 2.3.8. The fact that the 80 beneficiaries have been sidelined, while they in fact should own 51% of the project, implies that they were used as pawns to justify the project after the DA requested the names from them. A meeting with some of them indicates that they are merely names on a piece of paper with no further information or involvement. They have a right to claim their 51% share;
- 2.3.9. The National Treasury investigation has revealed various irregularities with recommendations of disciplinary procedures against both the HoD and CFO, which has been ignored by the provincial government and the Premier. The recommendations should be implemented;
- 2.3.10. That questions in the Portfolio Committee on Economic Affairs, which includes agriculture in the Free State Legislature relating to the Vrede Dairy Project have been ignored. In fact the Chairperson of the committee will not allow any questions to the Department of Agriculture on the issue by the members of the legislature. The former MEC for the Agriculture and Rural Development, Mamiki Qabathe, refused to answer questions relating to the project in the committee; and



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- 2.3.11. That while the FDC have taken over the management of the project, the Department of Agriculture and Rural Development continue to make monthly payments for running costs such as food into the project."

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

- 3.2 Section 182(1) of the Constitution provides:

"The Public Protector has the power as regulated by national legislation-

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action."*

- 3.3 In the *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect.² The Constitutional Court further held that: *"When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored*

² [2018] ZACC 11; 2016 (3) SA 580 (CC) and 2016 (5) BCLR 618 (CC) at para [76].



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*without any legal consequences.*⁹³ the Chief Justice Mogoeng stated the following, when confirming the powers the public protector:

- 3.3.1 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);
- 3.3.2 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced. (para 67);
- 3.3.3 Taking appropriate remedial action is much more significant than making a mere endeavor to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint (para 68);
- 3.3.4 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow. (para 69) ;

⁹³

Supra at para [73].



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- 3.3.5 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to. (para 70);
- 3.3.6 the Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made. (para 71);
- 3.3.7 Implicit in the words "take action" is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that she necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence; (para 71(a));
- 3.3.8 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d));
- 3.3.9 "Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (para 71(e));



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- 3.4** In the matter of the *President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2017)*, the Court held as follows:
- 3.4.1** The Public Protector has power to take remedial action, which include instructing the President to exercise powers entrusted on them under the constitution if that is required to remedy the harm in question. (paragraph 82 of the judgment);
- 3.4.2** The Public Protector, in appropriate circumstances, have the power to direct the president to appoint a commission of enquiry and to direct the manner of its implementation. Any contrary interpretation will be unconstitutional as it will render the power to take remedial action meaningless or ineffective. (paragraph 85 and 152 of the judgment)
- 3.4.3** There is nothing in the Public Protector act or Ethics Act that prohibit the Public Protector from instructing another entity to conduct further investigation, as she is empowered by section 6(4) (c) (ii) of the Public Protector Act (paragraph 91 and 92 of the judgment)
- 3.4.4** Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers(paragraph 100 and 101 of the judgment):
- 3.4.4.1** Conduct an investigation;
 - 3.4.4.2** Report on that conduct; and
 - 3.4.4.3** To take remedial action.
- 3.4.5** The Public Protector is constitutionally empowered to take binding remedial action on the basis of preliminary findings or prima facie findings. (paragraph 104 of the judgment);



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- 3.4.6** The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court. (Paragraph 105 of the report). This was a finding on NEF judgment as well;
- 3.4.7** The fact that there is no firm findings on the wrong doing, this does not prohibit the Public Protector from taking remedial action. The Public Protector's observations constitute prima facie findings that point to serious misconduct (paragraph 107 and 108 of the Judgment);
- 3.4.8** Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action (paragraph 112 of the judgment);
- 3.5** Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.
- 3.6** The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.
- 3.7** Free State Department of Agriculture and Rural Development is an organ of state within the meaning of section 239 of the Constitution and its conduct amounts to conduct in state affairs, as a result the matter falls within the ambit of the Public Protector's mandate.
- 3.8** ESTINA (Pty) Ltd was appointed as an Implementing Agent of the Department and therefore performing public function and the department had a majority or controlling shares in the project.



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3.9 The agreement, which is the subject matter, between the Department and ESTINA (Pty) Ltd, was entered into in July 2012 and the complaint was lodged with the Office of the Public Protector on 12 September 2013.

3.10 The Public Protector has the necessary power and jurisdiction to investigate this matter

4. THE INVESTIGATION

4.1. Methodology

4.1.1. The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.2. The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.2. Approach to the investigation

4.2.1. Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

4.2.1.4 In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the maladministration or improper conduct?



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- 4.2.2. The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether or not the Department acted improperly in relation to adherence to Treasury Prescripts in respect of the implementation of the Project and whether adequate control was exercised over the Project in terms of legislative prescripts.
- 4.2.3. The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Department or organ of state to prevent maladministration and prejudice.
- 4.2.4. The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where a Complainant has suffered prejudice the idea is to place him or her as close as possible to where they would have been had the Department or organ of state complied with the regulatory framework setting the applicable standards for good administration.
- 4.3. On analysis of the complaint, the following were issues considered and investigated:
 - 4.3.1. Whether the Department improperly entered into a Public Private Partnership agreement for the implementation of the Vrede Dairy Project;
 - 4.3.2 Whether the Department failed to manage and monitor implementation of the terms of the agreement in relation to budget evaluation, expenditure control and performance by ESTINA;
 - 4.3.3 Whether the prices for goods and services procured were inflated, specifically alleged expenses in respect of construction, processing equipment, procurement of cows and administration costs; and



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4.3.5 The following issues were not investigated:

- 4.3.5.1 The cause of the alleged deaths of the cattle. The photographs submitted in respect of the alleged death of the cattle indicated that the deaths did not occur recently. The Minister of Water Affairs intervened and issued instructions on the removal of the dead cows.
- 4.3.5.2 Issues emanating from the complaint sent on 10 May 2016 as the issues pertaining to the investigation were already identified.
- 4.3.5.3 The issue of value for money obtained by the Government in terms of the agreement was investigated by National Treasury: Accountant General.
- 4.3.5.3 The recent newspaper articles on the emails reported, relating to the Gupta family, that surfaced around June 2017, referring to the Project were noted but do not form part of the scope of this investigation.
- 4.3.5.4 How the money transferred to ESTINA were spent by ESTINA, as the Directorate for Priority Crime is dealing with the issue.
- 4.3.5.5 The matter relating to beneficiaries who were intended to benefit from the project due was also not investigated due to lack of information.

4.4 The Key Sources of information

4.4.1 Documents

- 4.4.1.1 Undated – Vrede Integrated Dairy Agribusiness Project Proposal – Free State Department of Agriculture and Rural Development, PARAS and ESTINA;



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- 4.4.1.2 Undated – Beneficiary List for AGRI-BEE that contains 78 names of beneficiaries. ID number for 15 beneficiaries was not on the list and 62 copies of ID's of beneficiaries were submitted for verification;

- 4.4.1.3 Undated - Beneficiary Agreement signed by one beneficiary on behalf of the 78 beneficiaries;

- 4.4.1.4 22 March 2012 - Budget Vote Speech of the Free State Department of Agriculture and Rural Development tabled by the Honourable MJ Zwane, Member of the Executive Council for Free State Agriculture and Rural Development;

- 4.4.1.5 5 July 2012 – Agreement entered into and between The Free State Department of Agriculture and ESTINA (Pty) Ltd;

- 4.4.1.6 October 2012 - Vrede Dairy Project: Feasibility Study;

- 4.4.1.7 January 2013 - Report on the investigation into the Vrede Integrated Dairy Farm Project, National Treasury;

- 4.4.1.8 18 January 2013 - Notarial Lease Nr K000000024/201 - Lease for the farm Krynaauwslust Lust, 275 district Vrede, Free State (4439,5122 Hectares) Phumelela Municipality and Department of Rural Development and Agriculture: Cession and assignment signed on 14 December 2012 in terms that Municipality ceded and assigned all rights, title, interest and obligations to Department;

- 4.4.1.9 21 February 2013 - State of the Province Address by Honourable E.S. Magashule Premier of the Free State Province;



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- 4.4.1.10** 12 May 2013 - Authorisation register number of DETEA EMB/4,11(iii)(iv)(xi),22,23(ii)/12/65, Activity Location: Establishment of Dairy Farm near the town of Vrede in the Free State;
- 4.4.1.11** 30 June 2013 – Submission by ESTINA to Free State Department of Agriculture on the timelines and milestones for phases 2 and 3 of the Project;
- 4.4.1.12** 10 July 2013 - Report on Vrede Integrated Dairy Project dated 10 July 2013, drafter Member of the Executive Council, Free State Department of Agriculture and Rural Development addressed to the Chairperson, Portfolio Committee on Agriculture and Rural Development;
- 4.4.1.13** 29 July to 02 August 2013 - Report of the Portfolio Committee on Agriculture, Forestry and Fisheries on the Oversight Visit to the Free State Province;
- 4.4.1.14** 13 August 2013 - Free State and KwaZulu-Natal on 2012/13 budget performance: briefing by National and Provincial Treasuries: South African Parliament;
- 4.4.1.15** 8 October 2013 - Auditor-General on Key Challenges in Agriculture Department's Audit Report 2013: South African Parliament;
- 4.4.1.16** 13 November 2013 - Written response of Member of the Executive Council of Agriculture to Question in Free State Provincial Legislature;
- 4.4.1.17** 11 February 2014 - Third quarter 2013/14 expenditure: National Treasury, Provincial Treasuries of Gauteng & Free State briefings: South African Parliament;
- 4.4.1.18** 4 March 2014 - Department of Water Affairs: Letter addressed to ESTINA- approval and registration of the water use;



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- 4.4.1.19** 1 April 2014 - ESKOM electricity agreement with ESTINA;
- 4.4.1.20** 25 April 2014 - Letter of demand from ESTINA to the Free State Department of Agriculture referring to a letter dated 24 April 2014 cancelling agreement in terms of clause 15.3 of the Agreement. Clause 15.3 indicates that ESTINA shall be entitled to payment in full for the services delivered. The letter demands payment of R136, 252, 652.00;
- 4.4.1.21** 19 May 2014 – Submission to the Free State Executive Council to transfer the Vrede Integrated Dairy Project to the Free State Development Corporation by the Member of the Executive Council of the Free State Department of Agriculture and Rural Development;
- 4.4.1.22** 22 May 2014 – Letter from the Head of the Free State Department of Agriculture to the Chief Executive Officer of the Free State Development Corporation referring to Executive Council resolution 62/2012 dated 13 June 2012 to implement Project. The letter submits that after Executive Council revisited Project it was decided on 16 April 2014 that the Project must be transferred to the Free State Development Corporation;
- 4.4.1.23** 27 May 2014 - Free State Development Corporation Board Meeting minutes, Item 01/2014/80. The Board approves the take-over. The Company Secretary and Acting Chief Financial Officer instructed to conduct a high-level due diligence of the Project and table a report at the next Board meeting. The Board will then decide on an appropriate Project business model;
- 4.4.1.24.** April 2014 – Feasibility Study and Business Plan for ESTINA (Pty) Ltd for the farm Krynaauwslust;
- 4.4.1.25** Monthly Financial reports submitted by ESTINA to the Free State Department of Agriculture for the months of July 2012 up to and including February 2013, April



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2013 up to and including July 2013, September 2013 up to and including December 2013;

- 4.4.1.26 Cash Flow Projection of ESTINA for the Project – For the period August 2012 to September 2013;
- 4.4.1.27 Quarterly progress reports of the Project submitted by ESTINA to the Free State Department of Agriculture for the periods March 2013, June 2013 and September 2013;
- 4.4.1.28 26 November 2014 - General Report on the Audit outcomes of the Free State: PFMA 2013-14;
- 4.4.1.29 26 November 2014 – Media release by Auditor General – Free State PFMA 2013-14 audit outcome highlights;
- 4.4.1.30 23 April 2013 to 10 August 2014 – 9 invoices for the procurement of cattle from different suppliers obtained from the Department;
- 4.4.1.31 29 April 2013 and 22 August 2014 – Tax invoices from DeLaval for the procurement of 70 point milk machine with cooling tanks and 10 point milking machine and cooling tanks;
- 4.4.1.32 23 April 2013 and 6 June 2013 - Contracts for the equipment in 4.3.1.31 for Vrede Dairy Project between DeLaval and Vargafield (Pty) Ltd represented by Mr. Sanjay Grover in his capacity as Director of Vargafield;
- 4.4.1.33 9 May 2014 and 14 August 2014 – After sales service reports of DeLaval visits to Vrede Dairy Farm;
- 4.4.1.34 10 April 2017 – List of Employees at Vrede Dairy Project;



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- 4.4.1.35 10 April 2017 – Milking records for the Vrede Dairy Farm from 1 April 2016 to 31 March 2017;
- 4.4.1.36 19 April 2017 – Financial Statement for the Vrede Dairy Farm for the years September 2014 to March 2015, April 2015 to March 2016 and April 2016 to March 2017;
- 4.4.1.37 20 April 2017 – Company Report from CIPC on Vargafield (Pty) Ltd; and
- 4.4.1.38 12 August 2014 – Handover of Assets of the Vrede Dairy Project to the Free State Development Corporation.
- 4.4.2 Interviews conducted
 - 4.4.2.1 Meeting with Manager in the Head of the Free State Department of Agriculture and Rural Development on 17 September 2013;
 - 4.4.2.2 Meeting with the Chief Executive Corporate Services: Free State Development Corporation on 30 September 2014;
 - 4.4.2.3 Meeting with the Manager: Studbook, SA Holstein Breeders Association, March 2013;
 - 4.4.2.4 Meeting with Dr Masiteng: Free State Department of Agriculture on 13 April 2017;
 - 4.4.2.5 Meeting with the Manager: Studbook, SA Holstein Breeders Association on 19 April 2017; and
 - 4.4.2.6 Meeting with Mr S Moyo, Chief Financial Officer, Free State Development Corporation on 19 April 2017.



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4.4.3 Correspondence sent and received

- 4.4.3.1** 26 September 2013 – Email to Head of the Free State Department of Agriculture;
- 4.4.3.2** 1 March 2014 – Response from the Member of the Executive Council of the Free State Department of Agriculture and Rural Development;
- 4.4.3.3** 24 April 2014 – Email from National Treasury: Accountant General: Head of the Specialized Audit Services on the Accountant General report;
- 4.4.3.4.** 6 June 2014 – Letter to the Head of the Free State Department of Agriculture;
- 4.4.3.5** 11 July 2014 - Letter to the Head of the Free State Department of Agriculture – submission of documents requested;
- 4.4.3.6** 7 June 2017 – Notice in terms of section 7(9)(a) of the Public Protector Act, 1994 to the Premier of the Free State Province, the Member for the Executive Council: Free State Department of Agriculture and Rural Development and the Head of the Free State Department of Agriculture and Rural Development;
- 4.4.3.7** 13 July 2017 – Response to notice in terms of section 7(9)(a) of the Public Protector Act, 1994 from the Member for the Executive Council: Free State Department of Agriculture and Rural Development;
- 4.4.3.8** 14 July 2017 - Response to notice in terms of section 7(9)(a) of the Public Protector Act, 1994 from the Head of the Free State Department of Agriculture and Rural Development; and
- 4.4.3.9** 14 July 2017 - Response to notice in terms of section 7(9)(a) of the Public Protector Act, 1994 from the Premier of the Free State Province.



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4.4.4 Inspections *in loco* conducted

- 4.4.4.1 September 2014 – visit to the Vrede Dairy Project – access denied; and
- 4.4.4.2 10 April 2017 - visit to the Vrede Dairy Project with Free State Development Corporation and Free State Department of Agriculture.

4.4.5 Websites consulted/ electronic sources

- 4.4.5.1 www.cipc.co.za/: 16 April 2014 CIPC search on Company Mohoma Mabung Dairy Project and 20 April 2017 on Vargafield (Pty) Ltd;
- 4.4.5.2 www.gov.za/ 25 March 2014: Budget Votes Free State Department of Agriculture and Rural Development 2012/2013 and State of the Province Address by the Free State Premier on 21 February 2013;
- 4.4.5.3 http://archive-za.com/page/1678019/2013-03-20/http://www.ard.fs.gov.za/?page_id=1256: 25 March 2014 - Mohoma Mobung;
- 4.4.5.4 <http://www.saholstein.co.za/Shows-Results.htm>: 25 March 2014 – Sale prices of Holstein Breed Heifers;
- 4.4.5.5 <http://www.ppp.gov.za/Pages/Projectlist.aspx>: 25 March 2014 - PPP Projects approved, finalised and in preparation, registered in terms of Treasury Regulations; and
- 4.4.5.6 <http://www.agsa.co.za/Documents/Auditreports.aspx>: 27 November 2014 General Report on the Audit outcomes of the Free State: PFMA 2013-14.

4.4.6 Legislation and other prescripts

- 4.4.6.1 The Constitution of the Republic of South Africa, 1996;
- 4.4.6.2 The Public Finance Management Act, 1 of 1999;
- 4.4.6.3 Regulations in terms of the Public Finance Management Act, 2005;
- 4.4.6.4 National Treasury PPP Practice Note Nr 02 of 2004;



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- 4.4.6.5 National Treasury Practice Note Nr 11 of 2008/2009;
- 4.4.6.6 National Treasury Practice Note No 08 of 2007/08;
- 4.4.6.7 National Treasury: Departmental Guide Agency/Principal Activities, 2012/13; and
- 4.4.6.8 Government of the Republic of South Africa, General Procurement Guidelines, undated.

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

- 5.1 Whether the Department Improperly entered into a Public Private Partnership agreement for the Implementation of the Vrede Dairy Project in violation of treasury prescripts:**

Common Cause

- 5.1.1 The Free State Department of Agriculture entered into an agreement with ESTINA (Pty) Ltd on 05 July 2012. It is alleged that the agreement was entered into for the benefit of beneficiaries to be identified by the Department. In terms of the agreement ESTINA was required to inject a capital investment of R228 million. The money payable by the Department in terms of the agreement shall not exceed the amount of R342 million including VAT over the period of 3 years.**
- 5.1.2 In terms of the agreement, ESTINA was to ensure that the beneficiaries own 51% in the proposed AGRI-BEE company (Mohoma Mobung Dairy Project (Pty) Ltd) and the remaining 49% shares to belong to ESTINA.**
- 5.1.3 The agreement was entered into without following any procurement procedure as the Accountant General found that Mr Thabethe (the Accounting Officer) did not follow any supply chain management processes. The Accounting Officer signed an authorization to deviate from the prescribed legislation contrary to national treasury prescripts. The**



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Accounting General's investigation was triggered by an article published by the Mail & Guardian newspaper on 14 June 2013.

- 5.1.4 Mr Thabethe was clear in his interviews with the Accounting General, that he did not follow any supply chain management process. He signed an authorization to deviate from the prescribed procurement process because, in his opinion, he is authorized to deviate from the procurement process when he deems it appropriate. He signed the authority to deviate without believing it was necessary or relevant or required in this instance. Mr Thabethe was also not clear on the grounds that justified him deviating from the prescribed process, in his opinion it was sufficient that he had decided that a deviation from the prescribed process was appropriate.

Issues in dispute

- 5.1.5 The issues to be determined are whether the Department entered into a PPP agreement with ESTINA.
- 5.1.6 The initial impression created was that the agreement between the Department and ESTINA was a public private partnership. This impression was further amplified during the 2012 Budget Vote Speech of the Free State Department of Agriculture and Rural Development tabled by the Honourable MJ Zwane, MEC for Agriculture and Rural Development in which it was reported that:

"In line with the value adding approach, the Free State Provincial Government introduced Mohoma Mobung as the Provincial Growth and Development Strategy for the agriculture and rural development sector. It is a multi-year mega Public and Private Partnership business concept that deals with income generation through farming in the rural area of the province, the creation of on- and off-farm agri-business, value chain enterprises and Black Economic Empowerment. This overarching strategic intent is underscored by a dedication to make the long term more urgent. To give effect to our strategic intent as encapsulated in Mohoma



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Mobung for the financial year 2012/13 we allocated R131.8 million to Projects. With this investment we want to break the back of unemployment, poverty and food insecurity.

Honourable Speaker, the department has identified Thabo Mofutsanyane as a dairy hub and an amount of R17.0 million is allocated for this development. Vrede, QwaQwa and Ficksburg towns will benefit from this initiative. Production and processing plants will be established, and this will create 150 jobs within the value chain.⁴

- 5.1.7** During the 2013 State of the Province Address by Honourable E.S. Magashule Premier of the Free State province: 21 Feb 2013 the Premier remarked on the Project as follows:

"Vrede Dairy Project: The Department of Agriculture is establishing an Integrated Dairy Project at Vrede in the Eastern Free State under the Mohoma-Mobung initiative in partnership with the private sector.

The Project is unfolding in phases. This state of the art certified facility will be constructed with the initial processing capacity of 100,000 litres per day and an initial targeted milk intake of 40,000 litres per day. Products to be produced at the Vrede Dairy Project will include liquid milk, UHT milk, cheese and other products.⁵

- 5.1.8** Furthermore, on 20 June 2013 National Treasury addressed a letter to the Department raising concerns regarding the nature of the arrangement between the Department and ESTINA as having characteristics of a PPP, it appeared to be a PPP and therefore had to comply with Treasury Regulations.

⁴ 22 Mar 2012
⁵ 21 February 2013



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- 5.1.9 The Premier, the MEC and the HOD for the Department individually on 14 July 2017 submitted responses to the section 7(9) notices issued by the Public Protector on 7 June 2017.
- 5.1.10 The HOD responded that *"I am informed that the Premier in his response to the Notice dealt with the factual and legal issues contained in the Notice, and I consequently do not also wish to do so."*
- 5.1.11 The MEC responded that in terms of section 12(1)(b) of the Public Service Act *"the appointment and other career incidents of a Provincial Head of the Department shall be dealt with by the Premier...The Premier has not delegated the authority to initiate disciplinary processes to the MEC's."* The MEC further submitted that the disciplinary action against the Chief Financial Officer recommended by the Accountant General falls within the authority of the Head of the Department in terms of section 7(3)(b) of the Public Service Act.
- 5.1.12 The MEC further submitted that the report of the Accountant General has been noted and the only the first two and last recommendation relate to the Free State Provincial Government.
- 5.1.13 The Premier responded that the report of the Accountant General was submitted to his office on 24 February 2014.
- 5.1.14 The Premier submitted that *"the Executive Council of the Free State Provincial Government resolved on 3 March 2014 that the project should be taken over by the FDC in close collaboration with the Department of Agriculture & Rural Development and the Provincial Treasury. This resolution was confirmed by the Executive Council on 16 April 2014."*
- 5.1.15 The Premier further submitted that *"At the time when the Report was received and considered, we were already aware of the complaints which were lodged with*



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your office and we were of the view that it would be premature to consider any disciplinary action before the findings and recommended remedial action, following your investigation, were known. "

- 5.1.16 In respect of the Public Private Partnership (PPP) the Premier submits that it is incorrect that the Department improperly entered into a PPP. The Premier stated:

"If the provisions of the Contracts concluded between the Department and Estina are considered, it is abundantly clear that it does not remotely suggest that a PPP was established. The Agreement concluded on 5 June 2012 records on page 3 of 16 that the Department requires the provision of certain services and that Estina will perform these services as Implementing Agent. This is also confirmed by what is contained in paragraph 2 on page 5 of this Agreement. Apart from this, a partnership is specifically excluded in paragraph 13.2 on page 10. If the provisions of the Agreement concluded on 5 July 2012 are considered, paragraph 4 on page 6 evenly makes it clear that it is not a PPP and paragraph 19.13 also expressly excludes a partnership.....If the definition of a PPP in Treasury Regulation 16.1 is considered against the relationship between the Department and Estina, it is also quite clear that a PPP as defined in the Treasury Regulations was not established."

- 5.1.17 Paragraph 13.2 on page 11 of the Agreement submitted by the Department refers to payments. Paragraph 19.13 states:

"Nothing in this Agreement shall be construed as creating a partnership or a contract of employment between Estina and the Department. Save as expressly provided for in this Agreement, Estina will not be, or deemed to be, an agent of the Department and Estina shall not hold itself out as having authority or power to bind the Department in anyway."



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- 5.1.18 The Premier further submitted that the conclusion of the Accountant General that no Supply Chain Management (SCM) processes were followed is incorrect. The Premier submits that:

"The Report (of the Accountant General) indicates that an Accounting Officer may deviate from the prescribed process in only (our emphasis) three circumstances and then indicates at the first bullet that the first circumstance is when it is impractical to invite competitive bids because there is an emergency or urgent matter that needs to be resolved and secondly, that the service provider is a sole service provider. Thirdly, in instances of exceptional cases which is not relevant to this reply.

What is actually contained in paragraph 3.5.1 of the SCM Policy is significantly different. It provides that

'If in a specific case it is impractical to invite competitive bids e.g. in urgent or emergency cases or in case of a sole supplier, the goods or service may be procured in accordance with Treasury Regulation 16A6.4. The reasons for deviating from inviting competitive bids should be recorded and approved by the Accounting Officer.'

It is consequently clear that urgent or emergency cases or sole suppliers are mentioned as examples and not as exclusive instances when deviation may be considered."

- 5.1.19 The Accountant General states:

"The investigation has revealed that the Vrede project is neither a PPP nor a sole provider arrangement. Mr Thabethe was clear in his interviews that he did not follow any supply chain management process. He signed an authorisation to deviate from the prescribed procurement process because, in his opinion, he is



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authorised to deviate from the procurement process when he deems it appropriate. He signed the authority to deviate without believing it was necessary or relevant or required in this instance. Mr Thabethe was also not clear on the grounds that justified him deviating from the prescribed process, in his opinion it was sufficient that he had decided that a deviation from the prescribed process was appropriate."

- 5.1.20. The Public Protector is persuaded by the Accountant General's finding that the arrangement was neither a PPP nor a sole provider agreement.

Application of the relevant law

- 5.1.21 Section 217 of the Constitution provides that organs of state must procure for goods or services in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.
- 5.1.22 The Department was obliged to procure the services of ESTINA in accordance to a system that is fair, equitable, transparent, competitive and cost-effective.
- 5.1.23 Section 38(a) (i) of the PFMA provide that the accounting officer for a department must ensure that that department has and maintains effective, efficient and transparent systems of financial and risk management and internal control;
- 5.1.24 Section 38(a) (ii) and (iv) of the PFMA provides that the accounting officer for a department must ensure that that department has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
- 5.1.25 Section 38(a)(iv) of the PFMA provides that the accounting officer for a department must ensure that that department has and maintains a system for properly evaluating all major capital projects prior to a final decision on the project;



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- 5.1.26** Section 38(1)(b) place an obligation on the accounting officer for a Department to ensure the effective, efficient, economical and transparent use of the resources of the department.
- 5.1.27** Section 81(1)(a) of the PFMA provides that an accounting officer for a department commits an act of financial misconduct if that accounting officer wilfully or negligently fails to comply with a requirement of section 38 of the PFMA.
- 5.1.28** In terms of section 86 of the PFMA, an accounting officer is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting officer wilfully or in a grossly negligent way fails to comply with a provision of section 38 of the PFMA.
- 5.1.29** Treasury Regulation 16A6.4 determines that institutions procuring goods or services by means other than through competitive bids and where reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.
- 5.1.30** Furthermore, Practice Note 8 of the Treasury Regulations states that the accounting officer or authority must report and give reasons for the deviation to the relevant Treasury and the Auditor General all cases where goods and services above the value of R1million VAT inclusive were procured in terms of Regulation 16A6.4 within ten working days.
- 5.1.31** A PPP is defined in the PFMA Regulation 16 of the Treasury Regulation (Regulations) as a contract between a government institution and private party⁶, where:

⁶ Trevor A. Manuel, MP Minister of Finance October 2007



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- 5.1.31.1 The private party performs an institutional function and/or uses state property in terms of output specifications;
- 5.1.31.2 Substantial project risk (financial, technical, and operational) is transferred to the private party; and
- 5.1.31.3 The private party benefits through: unitary payments from government budgets and/or user fees.
- 5.1.31.4 Although at face value the contract between the Department and ESTINA meet the definitional requirements of a PPP, there are other inherent requirements which must be met. For instance, a PPP must be registered as such with the relevant treasury as per Regulations 16.3.1.a.
- 5.1.31.5 Only an Accounting Officer may enter into a PPP agreement on behalf of a department, and only with the prior written approval of the National Treasury. The Accounting Officer must prepare a feasibility analysis to determine whether a proposed PPP agreement is in the best interests of a department. It should, among other things, explain the strategic and operational benefits of the PPP agreement and assess how the agreement will assist in meeting the department's strategic objectives. The details of the processes to be followed are specified in regulation 16 of the Regulations.
- 5.1.32 National Treasury PPP Practice Note Nr 02 (Practice Note 2) states that the way a PPP is defined in the Regulations makes it clear that a PPP is not a simple outsourcing of functions where substantial financial, technical and operational risk is retained by the institution or a donation by a private party for a public good or the privatisation or divestiture of state assets and/or liabilities. PPP's may involve a degree of capital contribution by the institution to the initial costs of the Project.



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- 5.1.33 Practice Note 2 further states that the regulation sets out the PPP procurement steps that must be followed by institutions, and prescribes distinct treasury approvals that must be obtained in each phase.
- 5.1.34 In order for a PPP to be valid, the Accounting Officer must obtain prior approval from the relevant Treasury. In this case the accounting officer did not obtain prior approval from the relevant treasury.
- 5.1.35 Despite the fact that the arrangement entered to between the Department and ESTINA has elements of a PPP, the Public Protector is persuaded by the Accountant General's finding that the arrangement was not a PPP.

Conclusion

- 5.1.36. It is clear from the evidence that the arrangement between the Department and ESTINA was not a PPP as does not meet the requirements outlined above.
- 5.2 **Whether the Department failed to manage and monitor implementation of the terms of the agreement in relation to budget evaluation, expenditure control and performance by ESTINA:**

Common Cause

- 5.2.1 Clause 6 & 7 of the agreement deals with the obligation of the Department and ESTINA. In terms of clause 6.3 & 6.4 ESTINA is responsible for establishment of the AGRI-BEE Company and to ensure that the beneficiaries will own 51% thereof. ESTINA was further required to produce a capital injection of R228 000 000. The Department was required by Clause 7 to ensure that *inter alia* they make payment and to identify beneficiaries who will be members of the AGRI-BEE company.



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5.2.2 The AGRI-BEE Company was registered originally as Zayna Investments Pty Ltd (CIPC Registration Number 2012/037526/07) with Mr. Frans Oupa Mokoena as custodian of 51% shareholding. The name was later changed in to Mohoma Mobung Dairy Project (Pty) Ltd. (CIPC Registration Number 2013/189418/07) which was only incorporated on 11 October 2013; the only director registered in the entity was Mr. Vasram, who is the director of ESTINA (Pty) Ltd. None of the current beneficiaries are listed as directors of the AGRIBEE entity.

5.2.3 The Department submitted an undated list of 78 names of beneficiaries. The beneficiaries are members of the communities residing within the area of Vrede, Warden and neighboring farms. The list contains names, identity numbers (15 beneficiaries' identity numbers were not filled in on the list) and addresses for the beneficiaries. Only 62 copies of the beneficiary's identity documents were attached to the list.

5.2.4 In terms of clause 12 of the agreement between the Department and ESTINA, the agreement is subject to the provisions of the PFMA.

5.2.5 The Department was requested to submit documents relating to the implementation of appropriate monitoring and management procedures. The Department did not submit any documents to substantiate whether or not the measures were in place to monitor and manage the project. The Department submitted monthly financial statements drafted and submitted by ESTINA for the periods of August 2012 to February 2013, April to July 2013 and September to December 2013. The Department further submitted quarterly financial statements drafted and submitted by ESTINA for the periods of July 2012, March 2013 and September 2013 as well as a Cash flow report for August to September 2013. No supporting documentation was submitted to verify the correctness of the financial statements. Only two invoices were submitted as proof of payment in relation to the services rendered, relating to the Dairy Plant and the purchase of cattle. The actual proof of payments for goods and services procured was not submitted by the department.

NB
Implementing
Agents



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Implementing Agents

5.2.6 The Accountant General's report supported the finding of the Free State Auditor General that the Accounting Officer of the Department did not maintain appropriate measures to ensure that funds transferred to entities are utilized for their intended purposes. The Accountant General was not able to ascertain whether or not ESTINA has made any financial contribution towards this Project.

Issues in dispute

5.2.7 The Complainant submitted that in terms of the Proposal and Agreement, the department has no guarantees that ESTINA will meet its obligations to invest R228 million in addition to the R342 million allocated by the provincial government.

5.2.8 The Complainant further submitted that the contract indicates that ESTINA will only invest their money if necessary and that the whole project will be transferred to a private company registered as Mohoma Mobung Dairy Project with Mr. Kamal Vasram who has a background in IT as the sole director. The provincial government will receive no benefit from this.

5.2.9 The Complainant submitted that ESTINA was implementing the Project is using public money and profiting from government's R342 million contributions. In the 2012/2013 financial year alone, R114 million was given to ESTINA.

5.2.10 The Complainant submitted that ESTINA is acting as the partner, implementing agent, and supplier in this Project.

5.2.11 The Complainant submitted that the current private sector partner in the Project, ESTINA, appears to have no background in the dairy industry. When this project was initiated, it was indicated that an Indian company with experience in this industry, namely PARAS, would partner with ESTINA.



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5.2.12 The Department was requested to submit documents in respect of the capital injection by ESTINA as per clause 6.2 of the agreement that stated R228 million as its obligation. The Department did not submit any documents to substantiate whether or not the agreement was adhered to.

5.2.13 The Department was requested to indicate the measures in place to ensure adherence to the clause in the agreement.

5.2.14 The financial statements submitted were analysed. No supporting documentation were submitted in the form of bank statements to verify the correctness of the financial statements. However from the financial statements the analysis of the statements indicated that ESTINA made the following investments:

| Date of Transaction | Investment/ Withdrawal |
|-----------------------------------|------------------------|
| September 2012 | 250,000.00 |
| October 2012 | 3,750,000.00 |
| November 2012 | 850,000.00 |
| December 2012 | 250,000.00 |
| January 2013 | 650,000.00 |
| February 2013 | 223,0000.00 |
| April 2013 | 4,650,000.00 |
| May 2013 | 2,000,000.00 |
| June 2013 | 875,000.00 |
| July 2013 | 5,444,000.00 |
| August 2013 | 3,513,300.00 |
| September 2013 | 7,698,000.00 |
| October 2013 | 4,500,000.00 |
| November 2013 | 5,704,999.00 |
| TOTAL | 42,365,999.00 |
| December 2013 (Withdrawal ESTINA) | (21,200,000) |



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| | |
|--------------|-------------------|
| TOTAL | 21,165,999 |
|--------------|-------------------|

- 5.2.15 The Department was requested to submit copies of all invoices submitted by ESTINA to the Department with reports in line with the project plan and payment documentation for the invoices paid. The Department submitted documentation on 6 bulk payments made to ESTINA. The substantiating documentation attached to the payment authorisation included only the project proposal and agreement signed between ESTINA and the Department. The following payments by the Department to ESTINA were made:

| Nr | Authorisation Date | Payment Date | Amount |
|----|--------------------|------------------|------------------------|
| 1 | 11 June 2012 | 11 June 2012 | R30 000 000.00 |
| 2 | 16 April 2013 | 16 April 2013 | R34 950 000.00 |
| 3 | 25 April 2013 | 25 April 2013 | R30 000 000.00 |
| 4 | 29 April 2013 | 29 April 2013 | R19 050 000.00 |
| 5 | 10 December 2013 | 10 December 2013 | R29 950 000.00 |
| 6 | 21 July 2014 | 21 July 2014 | R30 000 000.00 |
| | TOTAL | | R173 950 000.00 |

- 5.2.16 During the visit by the Public Protector's Investigation team at the Vrede Dairy Project on 10 April 2017, the investigation team was informed by Mr Edmore Mapfumo, the farm Manager, that there were 540 cows which included 2 Bulls. On further inspection of the farm, the investigation team observed a milk tank which according to Mr Mapfumo has a capacity to hold 18 000 litres of milk. The investigation team further observed a milking parlour including a structure which allegedly cost around R33 million when it was installed.

- 5.2.17 Subsequent to this visit, the Department submitted invoices for the procurement of cattle. A total number of 627 cows and 2 bulls were procured additional to the 351 initially mentioned by the MEC in her response to the Public Protector. The Free State Development Corporation submitted the handover report between them and ESTINA indicating that only 791 cows were on the farm during the hand over in August 2014. This would include the two bulls procured

Total Bought 978 Cows⁴⁹
 FDC handover 791 Cows
 10 April 2017 2017 - 540 Cows 2 bulls



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thus a total of 789 cows (heifers and calves included) were on the farm during the hand over despite a total 978 cows being bought.

- 5.2.18 The agreement states that ESTINA must carry out its obligations in line with the Department's policies, procedures, protocols and directives. The Department was requested to submit proof of measures in place and executed to ensure adherence to the agreement as well as adherence to the Treasury requirement of value for money during procurement of state assets. No supporting evidence in any form was submitted by the Department.
- 5.2.19 The Premier, on 14 July 2017 responded to the section 7(9) notices issued by the Public Protector on 7 June 2017. The Premier indicated "...A reconciliation of the number of cows initially procured and found during April 2017 will be performed. The apparent lack of effective, efficient and transparent financial- and risk management systems as well as the alleged lack of systems and controls to manage and monitor implementation, will be investigated in order to determine possible financial misconduct."
- 5.2.20 From the above an inference can be drawn that no management and monitoring of the project in relation to budget, expenditure control and performance by the Department before the project was handed over to the FDC.

Application of the relevant law

- 5.2.21 Section 195 of the Constitution provides that the public administration must be governed by principles, which include a high standard of professional ethics, efficient, economic and effective use of resources, and the impartial provision of services.
- 5.2.22 Section 195 refers to elements of the principle of integrity which require that public officials should take cognisance of the values of society and its communities and



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not substitute their own value choices for those of the society; in other words, they should in all respects be publicly accountable for their actions.

- 5.2.23** Section 38(1)(a) and (b) of the Public Finance Management Act (PFMA) requires Accounting Officers of departments to ensure that effective, efficient and transparent financial and risk management systems are in place. Sections 38(1)(c)(iii) of the PFMA requires Accounting Officers to take appropriate steps to efficiently manage a department's capital.
- 5.2.24** Section 39 of the PFMA requires an Accounting Officer to ensure that expenditure of a department is in accordance with the vote of the department and the main divisions within the vote. Section 40(1)(a) requires that an Accounting Officer for a department must keep full and proper records of the financial affairs of the department.
- 5.2.25** In terms of section 81 of the PFMA an Accounting Officer of a Department commits an act of misconduct if he/she willfully or negligently fails to comply with sections 38, 39 and 40 of the PFMA. Section 86 of the PFMA determines that an offence is committed if an Accounting Officer willfully or in a grossly negligent way fails to comply with these provisions.
- 5.2.26** Treasury prescripts clearly require effective monitoring and actual reviewing of performance. No such documents and/or correspondence could be provided and the Public Protector could find no evidence or indication that a proper monitoring system was in place to evaluate the performance of the Project.

Conclusion

- 5.2.27** No supporting evidence in the form of actual invoices/receipts was submitted to substantiate the disbursements as claimed on the invoices submitted.



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- 5.2.28 The Financial Statements as submitted by the Department were analysed and converted to Accounting statements. It should be noted that the figures could not be verified as no documentation in respect of expenses were submitted. As indicated the payment vouchers of the Department did not contain any supporting documentation such as invoices, proof of purchase, etc.
- 5.2.29 No explanation from the Department was advanced regarding the disparities in the number of actual cows bought as well as those that were found on the farm during the handover to the Free State Development Corporation.
- 5.2.30 It is clear from the evidence provided that the Department failed to properly manage and monitor the implementation of the agreement in relation to budget evaluation, expenditure control and performance by ESTINA.
- 5.2.31 It is also clear that since the project was handed over to the FDC, the Public Protector has observed that there is a marked improvement in the management of the project.
- 5.2.32 Therefore the conduct of the Department was inconsistent with section 195 of the Constitution, and sections 38, 39, 40, 51 and 81 of the PFMA.
- 5.3 Whether the prices for goods and services procured were inflated, specifically alleged expenses in respect of construction, processing equipment, procurement of cows and administration costs:

Common Cause

- 5.3.1. ESTINA did not follow any procurement procedures when it acquires goods and services during the implementation of Vrede Dairy farm project.



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5.3.2 The Department submitted the following expenditure in terms of the Project agreement:

| Expenditure | Submitted by MEC Written response to questions in Free State Legislature |
|--|---|
| Planting input | 319,290.00 |
| Labour Cost | 1,309,097.00 |
| Silage Bunker | 5,000,000.00 |
| Gravel Road | 1,200,000.00 |
| Cattle Shed | 500,000.00 |
| Security Gate and House | 2,600,000.00 |
| Veterinary Laboratory | 300,000.00 |
| Cattle Feed Plant | 7,350,000.00 |
| Milking Parlour: 72 point rotary including processing plant for 20,000 litres per day | 30,050,000.00 |
| Purchase of Farm Equipment | 8,380,494.00 |
| Dairy Cows (351 animals consisting of 57 Breeding cows, 62 pregnant heifers, 70 heifers 12 months+, 77 heifers 9-12 months, 85 heifers 6-9 months | 6,212,000.00 |
| Dairy Equipment, Pasteurizer, Irrigation Equipment | 37,779,613.00 |
| Land Surveyor, Agriculturists, Accountant Fees, Office Equipment, Insurance, Salaries and Wages | 12,000,000.00 |
| TOTAL | 113,000,494.00 |

5.3.3 In his initial complaint, the Complainant relied on the aforementioned expenditure submitted by the MEC and submitted that funds allocated by the provincial government for various goods and services indicate that prices have been hugely inflated. Some of these include, among others construction of a silage bunker for R5 million, 2km gravel



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access road for R1,2 million, security gate and guard house for R2,6 million, cattle feed plant for R7,350 million, milking parlour and milk processing plant for R30,050 million and 351 dairy cows for R6,212 million.

Issues in dispute

5.3.4 The Complainant further indicated that an amount of roughly R12 million was spent on administrative, legal, account and other consulting fees.

5.3.5 The Complainant further submitted that the following cattle were purchased and indicated alleged prices according to market prices of the Holstein Friesland stud association:

| Types of Heifers Purchased | Number Purchased | Market price of Friesland/Holstein Stud Heifers | Total Cost |
|----------------------------|------------------|---|-------------------|
| Pregnant Heifers | 62 | R15,000 per heifer | 930,000 |
| Breeding Cows | 57 | R16,000 per cow | 912,000 |
| Calves 12 months+ | 70 | R8,000 per heifer | 560,000 |
| Heifers 9 – 12 months | 77 | R6,000 per heifer | 462,000 |
| Heifers 6 – 9 months | 85 | R4000 – R6000 per heifer | 510,000 (max) |
| TOTAL | | | R3,374,000 |

5.3.6 The Department was requested to submit documentation on measures in place to ensure acquisitions are in line with treasury prescripts relating to value for money but no documentation to substantiate any measures were submitted.

5.3.7 An analysis of the financial statements submitted by the Department reveals that the following consultancy fees were paid. No explanations were submitted for the services delivered.

| Date | Professional | Agriculture | Surveyor | Legal |
|----------------|--------------|-------------|----------|----------|
| September 2012 | | | | 1,500.00 |



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| | | | | |
|----------------|---------------------|-------------------|-------------------|------------------|
| October 2012 | 100,000.00 | 36,480.00 | 94,711.20 | 3,780.00 |
| November 2012 | 130,000.00 | 72,960.00 | 48,080.00 | 46,590.00 |
| December 2012 | 70,000.00 | 36,480.00 | | |
| January 2013 | 170,171.00 | | | |
| February 2013 | 95,122.27 | 32,745.36 | 22,386.38 | |
| April 2013 | 33,386.10 | 63,745.00 | | |
| May 2013 | 227,320.00 | 33,858.00 | | |
| June 2013 | | 48,800.54 | 57,000.00 | |
| July 2013 | 100,000.00 | | | |
| August 2013 | 210,854.41 | 54,042.00 | | |
| September 2013 | | 45,000.00 | 13,680.00 | |
| October 2013 | 60,000.00 | | | |
| November 2013 | 60,664.62 | | | |
| December 2013 | 65,000.00 | | | |
| TOTAL | 1,322,518.40 | 424,110.90 | 235,857.58 | 51,870.00 |

5.3.8 An analysis of the financial statements submitted by the Department reveals that the following assets were acquired:

| Date | Tractors | Equipments | Vehicles |
|---------------|--------------|--------------|------------|
| October 2012 | 2,359,800.00 | 51,3000.00 | |
| November 2012 | | 42,846.79 | |
| December 2012 | | 471,007.40 | |
| January 2013 | | 1,558,352.51 | |
| February 2013 | 411,540.00 | | |
| April 2013 | | 663,952.28 | |
| May 2013 | | 113,430.00 | 538,537.00 |
| June 2013 | | 35,883.47 | 172,436.11 |
| July 2013 | | 3,599.89 | |
| August 2013 | 112,860.00 | 16,847.77 | |



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| | | | |
|----------------|---------------------|---------------------|-------------------|
| September 2013 | | 694,959.63 | |
| October 2013 | | 436,745.87 | |
| November 2013 | | | |
| December 2013 | 17,978.29 | | |
| TOTAL | 2,902,178.29 | 4,550,625.61 | 710,973.11 |

- 5.3.9 According to the SA Holstein Breeders Association the prices of heifers older than 12 months average at R8000 per heifer, heifers between 9 and 12 months average at R6000 per heifer and heifers between 6 and 9 months average at R5000 per heifer.
- 5.3.10 The SA Holstein Breeders association indicated that currently the price for a breeding cow from the top 10% of the gene pool is approximately R18, 000.00 per cow.
- 5.3.11 According to the SA Holstein Breeders Association the pricing for milking parlours are calculated per milking point at a maximum of R100, 000.00 per milking-point at current value. A 72 point milking parlour should be a maximum price of R7, 2 million.
- 5.3.12 Invoices obtained from the Department on the additional purchase of animals were the following:

RECEIVED FROM DR MASITENG (FS AGRIC) AT GLEN ON 13 APRIL 2017

| BOUGHT FROM | BUYER | Number | Type | PER UNIT | TOTAL |
|--|--|---------------|--------------------|-----------------|--------------|
| MN Hermann, PO Box 688 HEILBRON | Vargafield (Pty) Ltd PO Box 349 VREDE | 40 | Heifers | 5000 | 228000 |
| MK-Investments PO Box 345 WINTERTON | Vargafield (Pty) Ltd PO Box 349 VREDE | 30 | Cows in milk | 16250 | 521550 |
| | | 57 | Heifers | 13250 | |
| Ellerslie Holsteins PO Box 111 WINTERTON (REGISTERED WITH STUDBOOK) | Vargafield (Pty) Ltd PO Box 349 VREDE | 47 | Pregnant Heifers | 12500 | 2634255 |
| | | 31 | Eight Month Heifer | 12000 | |
| | | 27 | Eight Month Heifer | 11500 | |
| | | 25 | 8 Month Halfer | 11000 | |



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| | | | | | |
|---|--|------------|------------------------------|-------|----------------|
| | | 2 | 9+ Heifer | 9000 | |
| LEZMIN 1997 CC JHE Barry PO Box 111 WINTERTON (REGISTERED WITH STUDBOOK) | Vargafield (Pty) Ltd PO Box 349 VREDE | 14 | 3-6 Month Heifer | 3500 | |
| | | 29 | 5-7 Month Heifer | 5000 | 612180 |
| | | 49 | 7-10 Month Heifer | 7000 | |
| | | 70 | Cows in milk | 16250 | |
| MK-Investments PO Box 345 WINTERTON | Vargafield (Pty) Ltd PO Box 349 VREDE | 6 | Cows to calf 8 days | 16250 | |
| | | 3 | Heifers to calf 10 days | 15250 | 1688960 |
| | | 11 | Pregnant Cows (4-8 W) | 15250 | |
| | | 9 | Pregnant Heifers (4-8 W) | 15250 | |
| MIN Hermann, PO Box 668 HEILBRON | Vargafield (Pty) Ltd PO Box 349 VREDE | 20 | Heifer | 9350 | 213180 |
| Mmabalan Trust PO Box 708 VREDE | Estina (Pty) Ltd PO Box 349 VREDE | 2 | Holstein Friesland Bulls | 20000 | 45600 |
| MK-Investments PO Box 345 WINTERTON | Vargafield (Pty) Ltd PO Box 349 VREDE | 60 | Cows in milk | 15250 | 1043100 |
| MK-Investments PO Box 345 WINTERTON | Vargafield (Pty) Ltd PO Box 349 VREDE | 30 | Cows 1st Lactation Moorivier | 15250 | |
| | | 50 | Cows Himeville | 15250 | 1738500 |
| | | 20 | Heifers to calf 10 days | 15250 | |
| | TOTAL NR | 629 | | | 8706325 |

5.3.13 The Holstein Studbook during a meeting on 19 April 2017 indicated that Ellerslie Holsteins and LEZMIN 1997 CC JHE Barry are registered breeders and that these are the only animals not overpriced. All the other sellers are unknown to the Studbook. It is further noted that the Buyer in all cases except one are Vargafield (Pty) Ltd.

5.3.14. The silage bunkers consist of four bunkers with diameters of 32m x 9m x 3m at the highest point. The Department reported that the cost to construct this was R5m.

5.3.15 The Department reported that the entrance gate and guard house consisting of two double walls approximately 13 meters long, a manual iron gate approximately 17 meters long and the guardhouse of 9 square meters cost R2.6m.



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- R32m discrepancy*
- 5.3.16 The Department reported that the Milking Parlour: 72 (should be 70) point rotary including processing plant for 20,000 litres per day were bought at a cost of R30,050m. A further approximately R37, 7m was spent on dairy equipment, pasteurizer, and irrigation equipment.
- 5.3.17 The original contracts and invoices were obtained from the supplier DeLaval. DeLaval informed the Public Protector that initially they negotiated with ESTINA. During the negotiations ESTINA informed them that their company's name was changed to Vargafield (Pty) Ltd.
- 5.3.18 A search done on the CIPC website indicated that both companies are still registered separately with the sole Director for ESTINA being Vasram Kamal and the sole Director for Vargafield being Sanjay Grover.
- 5.3.19 The invoices and contracts between DeLaval and Vargafield indicate the following:
- 5.3.19.1 A contract was concluded for the sale and installation of a 70 point milking system including a 6000lt cooling tank, an 18000lt tank and other equipment needed for the system to be fully operational. The total cost including VAT was R5,885,156.56. This included transport and the installation of the system. The contract was concluded with Vargafield on 23 April 2014 for the Project; and
- 5.3.19.2 A contract was also concluded on 6 June 2013 between DeLaval and Vargafield for the Project for procurement and installation of a 10pt stationary milking machine with a 6000lt cooling tank. The total cost including VAT was R1,035,078.37. This included transport and the installation of the system.



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5.3.20 **The Premier, on 14 July 2017 responded to the section 7(9) notices issued by the Public Protector on 7 June 2017 as follows:**

"We are, however, advised that, except from what is mentioned in paragraph 8.2.3.1 of the Notice regarding the cost of the milking parlour: 72-point rotary including processing plant for 2000 liters per day, the following items are included in the cost of this item, namely:

- (1) 70 point milking system including a 18000 liter tank*
- (2) the pasteurizing plant building*
- (3) heifer pens*
- (4) calving-and calf rearing pens*
- (5) the 10 point milking system*
- (6) a 6000 liter cooling tank*
- (7) an electrical power substation*
- (8) the dairy database software.*

Apart from the 70-point rotary parlour and 18000 liter tank mentioned above, the following were also included in the DeLaval milking system:

- (1) the usher gate to a DCC cell counter*
- (2) AFB auto food bath*
- (3) calf feeders*
- (4) calf pen mats.*

We are also advised that a Guesthouse, which was procured in the town of Vrede to accommodate individuals responsible for the implementation of the project, is included in the amount of R2, 6 million. It was necessary to buy this property, given the fact that there were no facilities in existence on the land in question at the commencement of the project. " The Premier further committed to an



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assessment of value for money to be performed by the Free State Provincial Treasury.

- 5.3.21 It is clear from the above that there were inflated prices in regard to acquisition of goods and services.

Application of the relevant law

- 5.3.22 In section 38(1)(a) and (b) of the Public Finance Management Act (PFMA) requires Accounting Officers of departments to ensure that effective, efficient and transparent financial and risk management systems are in place. Sections 38(1)(c)(iii) and 51(b)(iii) of the PFMA requires Accounting Officers to take appropriate steps to efficiently manage a department's capital.
- 5.3.23 Section 39 of the PFMA requires an Accounting Officer to ensure that expenditure of a department is in accordance with the vote of the department and the main divisions within the vote. Section 40(1)(a) requires that an Accounting Officer for a department must keep full and proper records of the financial affairs of the department.
- 5.3.24 In terms of section 81 of the PFMA an Accounting Officer of a department commits an act of misconduct if he/she wilfully or negligently fails to comply with sections 38, 39 and 40 of the PFMA. Section 86 of the PFMA determines that an offence is committed if an Accounting Officer wilfully or in a grossly negligent way fails to comply with these provisions.
- 5.3.25 The expenses for administration and professional fees were paid from the amounts paid by the Department to ESTINA despite the explanation from the Department that ESTINA received 9% more shares in relating to the contribution to be made due to the fact that they will supply the administration and professional services.



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Conclusion

- 5.3.26 Although we have evaluated the information regarding the expenditure incurred by ESTINA during the implementation of the project it was difficult for the Public Protector to make or draw an inference that prices of goods and services were inflated, due to the fact that there was no procurement process followed and the Public Protector could not test the markets to determine market value of goods and services procured without the necessary documents which proof the actual price for the goods and services procured.

5.3.21

6. FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:

- 6.1 Regarding whether the Department of Agriculture Improperly entered into a Public Private Partnership agreement for the implementation of the Vrede Dairy Project:

6.1.1 The allegation that the Department improperly entered into a Public Private Partnership agreement for the implementation of the Vrede Dairy project is not substantiated.

6.1.2 The Department did not enter into a PPP with ESTINA in the context of Treasury Regulation requirements.

6.1.3 Observations

- 6.1.4 The Public Protector in concurrence with the Accountant General's investigation observed the following procurement irregularities:-



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- 6.1.4.1 That the HoD of the department did not follow the normal procurement process, as prescribed by the Constitution, PFMA and National Treasury Regulations;
- 6.1.4.2 That the payments to Estina were also not line with Treasury prescripts;
- 6.1.4.3 That the agreement between the Department and Estina seems to be invalid, due to non-compliance with the procurement processes;
- 6.1.4.4 That despite the Accountant General's report, the department failed to comply with section 81 and 86 of the PFMA, which prescribed the process to be followed when there is allegations of financial misconduct;
- 6.1.5 The prescripts in respect of the procurement of the agreement were not adhered to;
- 6.1.6 The Accounting Officer of the Department proceeded after the recommendation of the Accountant General to pay a further R143, 950 million to ESTINA in respect of the Project.
- 6.2 Regarding whether the Department failed to manage and monitor implementation of the terms of the agreement in relation to budget evaluation, expenditure control and performance by ESTINA:
- 6.2.1 The allegation that the Department failed to manage and monitor implementation of the terms of agreement is substantiated.
- 6.2.2 No documents and/or policies or measures were provided by the Department that proper financial control and risk management of the Project were in place. The Public Protector could find no evidence or indication that the Accounting Officer invoked the provisions of the agreement in respect of the control over the Project and this raises serious concern. This concern was supported by the report of the Accountant General and the lack of effective, efficient and transparent systems



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of financial and risk management and internal control amounts to gross negligence and maladministration.

6.2.3 No supporting evidence in the form of actual invoices/receipts was submitted to substantiate the expenditure as claimed in the financial statements submitted except for 9 invoices for procurement of cattle.

6.2.4 The evidence outlined earlier points to gross irregularities in ensuring the effective and efficient performance of the agreement and resulted in maladministration.

6.2.5 From the above it is clear that this amounts to gross negligence and also constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6 of the Public Protector Act.

6.3 **Whether the prices for goods and services procured were inflated, specifically alleged expenses in respect of construction, processing equipment, procurement of cows and administration costs:**

6.3.1 The allegation that the prices for goods and services procured were inflated, specifically expenses in respect of construction, processing equipment, procurement of cows and administration costs is difficult to determine. This is due to the following:

6.3.1.1. ESTINA did not follow public procurement processes when procuring the services of the service providers in the project;

6.3.1.2. Due to the lack of resources and financial constraints, the Public Protector was unable to conduct a comprehensive investigation in order to determine the fair market value for good and services procured; and



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6.3.1.3. The Public Protector was not provided with all the invoices and proof of payments for the goods and services procured by Estina on behalf of the Department.

7. REMEDIAL ACTION

The appropriate remedial action the Public Protector takes in pursuit of section 182(1)(c) of the Constitution, with the view of addressing systemic procurement management deficiencies in the Department and the irregular expenditure incurred, is the following:

7.1 The Premier of the Free State Province must

7.1.1. Initiate and institute disciplinary action against all implicated officials involved in the Vrede Dairy Farm project;

7.1.2. Submit the report regarding the remedial action in 7.1.1. to the Public Protector after conclusion of the disciplinary action processes;

7.1.3. Ensure that he conducts a reconciliation of the number of cows initially procured and found during April 2017 as per his undertaking in the response to section 7(9) notice; and

7.1.4. Ensure that he submits an implementation plan within 30 days of the issuing of this report.

7.2. The Head of the Free State Department of Agriculture must:

7.2.1. Ensure that the officials of the Supply Chain Management Division and Management of the Department are trained on the prescripts of the National and Provincial Treasuries in respect of procurement and specifically in respect of deviations;



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*Implement
Agenda* → 7.2.2. Take corrective measures to prevent a recurrence of the failure in the management process referred to in this report;

7.2.3 Ensure that all Departmental staff involved in the implementation and execution of Projects are properly trained and capacitated to manage Projects assigned to them, for future projects; and

7.2.4. Develop and revise current policies for the implementation of internal control measures in line with Treasury prescripts and regulations.

8. MONITORING

8.1.1 The Premier and Head of the Department are required to acknowledge receipt of the Public Protector's report within 14 days of receipt thereof and take remedial action.

8.1.2 The Premier and Head of the Department must present an action plan on the implementation of the Public Protector's report within 30 days of receipt thereof,


ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 08/02/2018

Assisted by: Free State Provincial Office, PII

Annexure “RJ25”

VREDE DAIRY PROJECT: INVESTIGATION**File: 020443/13: Complainant: R Jankielsohn (Democratic Alliance)****3 JUNE 2013**

PROGRESS REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION IN RESPECT OF THE IMPLEMENTATION OF THE VREDE DAIRY PROJECT BY THE FREE STATE DEPARTMENT OF AGRICULTURE**1. THE COMPLAINTS**

- 1.1 On 12 September 2013 the Public Protector received a complaint from the Free State Democratic Alliance.
- 1.2 They allege that an agreement between Estina/Paras (the Private Company) and the Free State Department of Agriculture (the Department) in respect of the Vrede Dairy Project is subject to a confidentiality clause.
- 1.3 They further allege that the private company will invest R228 million for a shareholding of 49% and Government will contribute R342 million for a shareholding of 51%.
- 1.4 It is further alleged that the private company contribute only 40% of the funds needed for a 49% share.
- 1.5 It is further alleged that 400 pregnant cows were procured and that the Department invested R30 million the previous financial year and will invest R84 million in this financial year.
- 1.6 The Head of the Department was requested to respond to the above allegations on 16 September 2014.
- 1.7 On 28 March 2014 the Public Protector received a further complaint from the Free State Democratic Alliance on the Vrede Dairy Project.
- 1.8 The again raised the issue of allocation of shares and alleged that Estina does not have to contribute unless necessary but that they also benefit from the supply of goods and services from the contributions made by the provincial government.

- 1.9 They alleged that the prices of payments for goods and services were inflated and queried specifically the following:
 - 1.9.1 Construction of silage bunker R5,000,000
 - 1.9.2 2Km gravel road: R1,200,000
 - 1.9.3 Security guard gate and house: R2,600,000
 - 1.9.4 Cattle Feed Plant: R7,350,000
 - 1.9.5 Milking parlour and processing plant: R30,050,000
 - 1.9.6 Tools and farming equipment: R2,513,000
 - 1.9.7 Administrative etc. costs R12,000,000
 - 1.9.8 Irrigation, pasteurizer, dairy equipment; R37,779,613
 - 1.9.9 Dairy cows 351: R6,212,000
- 1.10 They also raised the issue of environmental requirements in that indiscriminate ploughing and ignoring of wetlands are taking place.
- 1.11 They further allege that between 50 and 100 cattle have died since being purchased and request an investigation into the cause of the deaths.
- 2. ISSUES IDENTIFIED AFTER RECEIPT OF THE SECOND COMPLAINT**
 - 2.1 Whether the acceptance of the proposal by ESTINA adhered to the prescripts of the Constitution, Public Finance Management Act and other Treasury Regulations in respect of unsolicited bids.
 - 2.2 Whether the project is classified as a Public Private Partnership. Determine whether or not the Treasury prescripts in respect of Public Private Partnerships were adhered to.
 - 2.3 Determine whether or not the Department implement appropriated monitoring and management procedures for the following:
 - 2.3.1 Financial reporting;
 - 2.3.2 Performance reporting in terms of the agreement;

- 2.3.3 Budget evaluation; and
- 2.3.4 Expenditure – value for money.
- 2.4 Whether or not the Capital injection by ESTINA was received by the Department.
- 2.5 Whether or not the implementation of phase 1 was concluded.

3. RESPONSE FROM THE DEPARTMENT

- 3.1 On 21 March 2014 the MEC of Free State Agriculture responded as follows on the questions asked in respect of the first complaint:
 - 3.1.1 The total project cost is R570 million of which Estina/Paras will contribute R228 million (40% of total cost) and the Department will contribute R342 million.
 - 3.1.2 The Department has secured 51% of the shareholding for 100 beneficiaries Estina/Paras will obtain 49% of the shareholding and will provide services and professional fees. Management and administration costs of the project amounts for the difference of 9% shares awarded to the Private Company.
 - 3.1.3 The Department will contribute the R342 million in yearly R114 million contributions over a period of 3 years and the R30 and R84 million is the contribution for the year.
 - 3.1.4 The confidentiality clause is included to protect the department against disclosure of confidential information like design plans, structural layout plans, financial matters. The clause is couched in general language to protect instances which were not foreseeable at the time of conclusion of the contract.

4. ACCOUNTING GENERAL INVESTIGATION REPORT

- 4.1 Information received and confirmed by the Accounting General that he investigated the Vrede Dairy project and included the procurement process and all financial matters.
- 4.2 On 24 March 2014 the Acting Accounting General informed that the provisional report was submitted to the Premier of the Free State for Comment. He was requested for a copy of the executive summary. He referred us to the Director General of National Treasury.
- 4.3 A letter was submitted to the Director General Treasury on 19 May 2014 requesting a copy of the Accountant General's report.

5. WRITTEN RESPONSE IN LEGISLATURE TO DEMOCRATIC ALLIANCE QUESTIONS

- 5.1 In a written response of MEC of Agriculture to Questions about the Project in the Legislature she responded as follows on 13 November 2013:
- 5.2 The first payment of R114 million was paid in R 30 and R 84 million during 2012. She gave a breakdown of expenditure as follows:
- 5.2.1 Planting input: R319,290;
 - 5.2.2 Labour Cost: R1,309,097;
 - 5.2.3 Silage Bunker: R5 million;
 - 5.2.4 Gravel Road: R1,2 million;
 - 5.2.5 Cattle Shed: R500,000;
 - 5.2.6 Security Gate and House: R2,600,000;
 - 5.2.7 Veterinary Laboratory: R300,000;
 - 5.2.8 Cattle Feed Plant; R7,350,000;
 - 5.2.9 Milking Parlour: R30,050,000 (72 point rotary including processing plant for 20,000 litres per day);

- 5.2.10 Purchase of Farm Equipment: R8,380,494;
- 5.2.11 Dairy Cows: R6,212,000;
- 5.2.12 Dairy Equipment, Pasteurizer, Irrigation Equipment: R37,779,613; and
- 5.2.13 Land Surveyor, Agriculturists, Accounting Fees, Office Equipment, Insurance, and Salaries and Wages: R12,000,000 (See response of MEC to PPSA)
- 5.2.14 These amounts totalled to R113,000,494.00.

6. PROJECT PROPOSAL OF ESTINA

- 6.1 A copy of a document was submitted to the Public Protector named: *PROJECT PROPOSAL: Vrede Integrated Dairy project: Proposed integration of Dairy and other elements of production and processing with the emphasis on value-addition and beneficiation, such as a range of processed dairy products.*
- 6.2 The document (8 pages in total) refers to PARAS and their history. The document further contains the proposals in respect of the viability of the projects in establishing the Vrede Dairy Project.
- 6.3 The document states that the project will require an initial fixed capital of R500 million to make it viable and projected turnover is R80 million with a net profit of R16 million. The project proposal also indicates employment opportunities as 600 employees.
- 6.4 According to the proposal the budget values are listed and indicate the initial R500 million needed which includes R40 million working capital. A phased approach is recommended indicating a project over 5 years.

7. AGRIBEE COMPANY FOR BENEFICIARIES

- 7.1 It was alleged that a company was registered for the project with the Private Company holding 49% shares and 100 beneficiaries holding 51% of the shares.

- 7.2 A CIPC search on Company called Mohoma Mabung Dairy Project indicated that the Company was registered on 3 October 2013 (usually date when CM 29 is recorded).
- 7.3 The Company Registration Number is 2013/189418/07. The CIPC site indicate one Director namely Kamal Vasram appointed on 11 October 2013
- 7.4 The address of the Company is listed as 111 Shimbali Sands, Naivasha Road, Sunninghill, Gauteng, 2192.
- 7.5 A letter was addressed to the registered address to request a copy of the shareholder register. Gauteng Office informed that the address is for a residential complex and the Head of the Department of Agriculture was requested to submit the shareholder register of the Company.
- 7.6 The Company documents were only submitted during late 2013 but the Department allocated funds for the 2012/2013 financial year.
- 8. FARM KRYNAAUWS LUST**
- 8.1 The Vrede Dairy Project is situated on the Farm Krynaauws Lust.
- 8.2 A title deed search at the Registrar of Deeds indicates that the farm where the project is farming namely Krynaauws Lust, Nr 275 Vrede RD is held under title deed number T43752/1893 in the name of Phumelela Local Municipality.
- 8.3 No endorsements such as a 99 year lease awarded are registered on the title deed.

9. **EVALUATION OF THE CONTRACT CONCLUDED BETWEEN ESTINA AND THE DEPARTMENT**
 - 9.1 A copy of the contract concluded between ESTINA and the Free State Department of Agriculture was obtained. The Contract was concluded on 5 July 2012.
 - 9.2 ESTINA is obligated in the contract to conclude Phase 1 of the project. This is described in Annexure A to the contract and the following must be concluded:
 - 9.2.1 Land Acquisition;
 - 9.2.2 Environmental Impact Assessment;
 - 9.2.3 Feasibility Study;
 - 9.2.4 Water Reticulation;
 - 9.2.5 Electricity Connection;
 - 9.2.6 Include identified beneficiaries in AGRIBEE entity; and
 - 9.2.7 Set up AGRIBEE entity and clarify roles of stakeholders (Department, AGRIBEE and ESTINA).
 - 9.3 In terms of the contract a project plan in line with ESTINA proposals which must have milestones and timelines for phase 2 as approved by Department must be submitted by ESTINA to the Department.
 - 9.4 In terms of Clause 6.2 ESTINA must determine the dates for capital injection by ESTINA. The Capital injection of ESTINA is stated in the contract as R228 million.
 - 9.5 The contract describes phase 2 of the project as "setting up and management of Dairy" and phase 3 of the project as "setting up and management of processing plant."
 - 9.5 ESTINA is obliged in terms of clause 6.12 to carry out all its obligation in line with the Department's policies, procedures, protocols and directives.

- 9.6 In terms of clause 7.3 of the contract the Department will identify the beneficiaries of the project. The Department must further consider and approve milestones for phase 2 and 3 (clause 7.4)
- 9.7 Clause 8.1.1 states that ESTINA warrants that it is a partner to PARRAS (India).
- 9.8 The contract determines that the Department will implement appropriate monitoring and management procedures (clause 9.1).
- 9.9 In terms of clause 9.3 ESTINA must submit on a monthly basis financial reports and on quarterly basis performance report must be submitted.
- 9.10 In terms of clause 13.1 an amount of R30 million to execute phase 1 is allocated to the project.
- 9.11 In terms of clause 13.4 ESTINA must prepare a budget to be approved by Department and budgets should be revised and updated on a quarterly basis and submitted for approval to the Department.
- 9.12 Clause 13.5 prescribes that ESTINA to submit all invoices to Department together with reports in line with Project plan to be paid by the Department within 30 days.
- 10 CONTRACT CANCELLATION AND TRANSFER OF PROJECT TO FREE STATE DEVELOPMENT CORPORATION**

ERIKA CILLIERS

16 April 2014