



# **EXHIBIT U 43**

**PRISHOTHMAN  
GOVENDER**



**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 STATE CAPTURE  
HELD AT JOHANNESBURG

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AFFIDAVIT OF MR PRISHOTHMAN GOVENDER

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I, the undersigned,

PRISHOTHMAN GOVENDER

Do hereby make oath and say that:

1. I am an adult male currently residing at 896 Thornvalley Estate, Stoneridge Drive, Greenstone Hill, Johannesburg, Province of Gauteng.
2. The facts and allegations herein deposed to are within my personal knowledge, true and correct unless the contrary is indicated from the context thereof, in which event I truly believe same to be true and correct.
3. Where I rely on information conveyed to me by others or information appearing from documentation, I verily belief same to be true and correct.
4. Where I rely on legal submissions, I do so on the advice of my legal representative, which advice I verily believe to be true and correct.



**PURPOSE AND BACKGROUND**

5. On or about the 22<sup>nd</sup> February 2021, I had received a correspondence from the Executive Assistant to the Secretary of the above Commission, alleging that I may have participated in and/or that I have knowledge of various matters by virtue of my role as General Manager: Capital Assurance and Integration at Eskom Holdings SOC Ltd (hereinafter referred to as "Eskom"). Please see attached hereto a copy of the said correspondence, for ease of reference marked Annexure "A"

5.1 On or about the 22<sup>nd</sup> February 2021, my attorneys of record replied to the abovementioned correspondence, requesting an extension to provide an answer as to whether we shall be furnishing the Commission with an affidavit, affirmed declaration or a statement. Please see attached hereto a copy of the said correspondence dated the 22<sup>nd</sup> February 2021, for ease of reference marked Annexure "B". We were subsequently provided with such an extension. Please see attached hereto a copy of the electronic mail dated the 23<sup>rd</sup> February 2021, for ease of reference marked Annexure "C".

5.2 On or about the 1<sup>st</sup> March 2021, my attorneys of record sent a correspondence to the Commission confirming that I shall furnish the Commission with an affidavit, affirmed declaration or statement on or before the 30<sup>th</sup> April 2021. Please see attached hereto a copy of the said correspondence dated 01<sup>st</sup> March 2021, for ease of reference marked Annexure "D".

5.3 My attorneys of record did not receive any response, up until the 05<sup>th</sup> May 2021, when they received an electronic mail from the Commission following up on the status of my response. Please see attached hereto a copy the said electronic mail, for ease of reference marked Annexure "E".

5.4 On or about the 07<sup>th</sup> May 2021, my attorneys of record had replied to the Commission, advising that despite requesting an urgent reply to our letter dated the 01<sup>st</sup> March 2021, we haven't received any reply, and hence drew the inference that the Commission no longer requires same. Please see attached hereto a copy of the said letter, for ease of reference marked Annexure "F".

5.5 I then subsequently provided the Commission with a statement on or about the 14<sup>th</sup> May 2021. I pause to mention that I am employed in a foreign country, with very limited infrastructure and during this time, I had already returned to my duties at work.



- 5.6 On or about the 25<sup>th</sup> May 2021, my attorneys of record received an electronic mail from the Commission, stating that my comments do not constitute evidence that can be placed before the Chairperson (of the Commission), and that I must file an affidavit by Friday the 28<sup>th</sup> May 2021. Please see attached hereto a copy of the said electronic mail for ease of reference marked Annexure "G". On or about the 27<sup>th</sup> May 2021, my attorneys of record then sent a correspondence to the Commission, advising them that I am in a foreign country and unable to provide an affidavit, and that under considerable inconvenience I shall have to return to South Africa and submit an affidavit by the 14<sup>th</sup> June 2021. Please see attached hereto for ease of reference the said letter, for ease of reference marked Annexure "H".
- 5.7 On or about the 28<sup>th</sup> May 2021, my attorneys of record received a reply from the Commission, granting such an extension. Please see attached hereto for ease of reference the said letter from the Commission, for ease of reference marked Annexure "I".
6. On or about the 08<sup>th</sup> June 2021, my attorneys of record had received a summons from the Commission for me to appear as a witness on Monday, 21<sup>st</sup> June 2021. It is imperative for me to mention that I had returned to South Africa, purely for the purposes of assisting the Commission with an affidavit, and as indicated to the Commission in Annexure "H". I had little choice but to return to South Africa to complete this task, notwithstanding the fact that this affidavit needs to be attested by me, but also due to the fact that I am employed in the Republic of Liberia, an impoverished country that has very limited Information Technology infrastructure (WiFi and/or internet capabilities), which made it increasingly difficult to properly consult with my legal representatives. Not only have I done so under considerable difficulty and expense, but this has placed me in a very precarious and negative situation with my employer. I am unable to appear as a witness on the above date as I have to travel back to work as soon as I have attested to this affidavit. On such short notice it is near impossible for me to appear, and I am also advised by my Counsel that he is not available to attend on the above date.
7. I now deal with the contents of my statement *ad seriatim*.



**GENERAL AND BACKGROUND INFORMATION**

8. I have a Bachelor of Science degree in Mechanical Engineering, which I have obtained from the University of Witwatersrand (WITS). I have also completed my Masters in Business Leadership from the University of South Africa (UNISA). I have also obtained certification in the Accelerated Development Programme from London Business School.

**Different positions occupied at Eskom, including processes and individuals involved in the appointment.**

9. After graduating from Wits University, I joined Eskom in January 1999 and was appointed as an Engineer in Training (EIT) at Arnot Power Station. After completing the EIT programme I was promoted to System Engineer.
10. Following a recruitment process in 2001, I joined Eskom Technology Services International (headed by Mr Jan Oberholzer), which formed part of the Eskom Enterprises Subsidiary. During this time I was seconded to an international electricity utility to develop engineering and project management skills in the construction of gas turbine power plants.
11. Upon my return from the secondment in 2005, I was placed in the Capital Expansion Department (headed by Mr Peter O'Connor) of newly formed Eskom Enterprises Division (headed by Mr Brian Dames). During this time I worked on the construction of two gas turbines power plants in Cape Town and Mossel Bay, as a project co-ordinator reporting to Mr Roderick Beckman (Project Manager).
12. At the end of 2006, I was appointed as a Senior Advisor Project Development in the Project Development Department (headed by Mr Freddie Meyer and then Mr Braam Conradie) of the Enterprises Division (headed by Mr Brian Dames). During the period 2006 and 2008, I was promoted to Chief Advisor, Senior Manager and finally General





Manager of the Project Development Department of the Enterprises Division. All the promotions took place in accordance with Eskom's recruitment processes.

13. In 2010 the Enterprises Division changed to the Group Capital Division (headed by the then Financial Director and Group Executive for Group Capital, Mr Paul O'Flaherty) and between 2010 and mid 2014 my duties as General Manager Project Development expanded to include the Capital Efficiency, Enterprise Programme Management Office and Real Estate function.
14. As part of a retention initiative in mid-2014, approved by the then Board HR sub-committee, my role was redefined as Programme Director (still at the General Manager man grade), similarly the General Managers of the Medupi and Kusile projects became Project Directors.
15. In November/December 2014, over and above my role and Programme Director, I was requested by my then line Manager in Group Capital Mr Dan Morakane to assist Mr Matshela Koko in the commodity sourcing area of the Group Technology and Commercial. My primary responsibility was to ensure the necessary diesel deliveries to the gas turbine power plants in Cape Town and Mossel Bay. Not having any prior experience in Commercial I relied heavily upon the Senior Managers in Commodity Sourcing for support and advise me in the role.
16. I continued in my dual role of Programme Director Group Capital and Acting General Manager of Commodity Sourcing until the beginning of August 2015. At this point I requested that I be released from the position of Acting General Manager Commodity Sourcing. I requested the release because, I was, required to lead the negotiations with Mckinsey on the MSA "Top Engineers Programme", over and above my normal Programme Director responsibilities.
17. I continued in my role as Programme Director Group Capital Division until August/September 2016 and which point I was appointed, on a (horizontal) level transfer basis in terms of man grade, as the General Manager for Group Capital Integration and Assurance reporting to the then Chief Financial Officer Mr Anoj Singh (hereinafter referred to as "Singh"). Despite the appointment being on a (horizontal) level transfer basis, I was required to undergo a formal recruitment process. Please see attached hereto, an electronic mail from executive recruitment dated the 18<sup>th</sup> July 2016



, as well as an appointment letter from Eskom dated the 26 August 2016, for ease of reference marked Annexures **EN1** and **EN2**, respectively).

18. In August/September 2017, I was suspended by the then Acting Group Chief Executive Mr Johnny Dladla, for my role in Mckinsey MSA transaction, however, following an external and extensive legal review of the Mckinsey MSA, that confirmed no wrong doing whatsoever on my part, I was requested to return to work in January 2018.
19. In January 2018, a new Acting Chief Executive was appointed, Mr Phakamane Hadebe. He had called a meeting with me which turned out to be a one-way ultimatum to resign or, in his words, "a guaranteed dismissal". I did indicate no wrongdoing was found on my part, but it was reiterated to me that he shall ensure my dismissal. I was left with no other choice but to resign at that point as it was clear to me that I was not accepted by the newly appointed Acting Chief Executive. For fear of being unemployed due to the stigma attached to a dismissed employee, I was left with no other choice but to resign. I pause to mention that during my tenure at Eskom I have never had a disciplinary hearing against, neither have I been called to attend any disciplinary hearings after it was found that there was no wrong doing on my part.

#### **MCKINSEY MSA (CONTRACT NUMBER 4600060989)**

20. My assigned duties with this contract began in or around May/June 2015.
- 20.1 As mentioned above, I occupied a full time role of Programme Director (Group Capital Division, as well as, the Acting General Manager Commodity Sourcing (circumstances of acting arrangement described above).
- 20.2 My direct line manager and reporting authority in terms of the role of Acting General Manager of Commodity Sourcing was Mr. Edwin Mabelane (Acting Group Executive for Commercial and Technology). Mr Mabelane was acting in the afore mentioned role after the suspension of Mr Koko that took place early in 2015.
- 20.3 In about June 2015, I was also asked by my direct line manager in Group Capital, Mr Abram Masango, who was the Acting Group Executive Group Capital, to assist with the implementation of the "Top Engineers Programme"



and to work together with Mr Mabelane in respect of the tasks that were required.

- 20.4 Though I was not involved at the time of it's inception in 2013, Mr Mabelane advised me in June 2015, that the "Top Engineers Programme" began in 2013. The programme that was implemented by McKinsey on a sole source basis. He also advised me that there were further approvals associated with the continuation of the programme in 2014, however the programme could not proceed due to funding challenges that were being experienced.
- 20.5 In May/June 2015, Mr Mabalane presented me with a memorandum, approved by the Acting CEO, Mr Brian Molefe (on page 5 of the memorandum) for the continuation of the programme with Mckinsey on a "self-funding basis". Please see attached hereto the Memorandum as discussed above for ease of reference marked Annexure "EN3".
- 20.6 Mr Mabalane had advised me that he had engaged the then CFO Ms Veleti to obtain the necessary Internal Consulting Unit approvals for the sole source engagement with Mckinsey.
- 20.7 The above memo presented to me by Mr Mabelane, was used to support the preparation of the submissions to EXCOPs and the Board Tender Committee. These documents were prepared by Ms Ntombizodwa Mokoatle (Senior Manager Commodity Sourcing) and her team. The rationale for the sole source engagement of Mckinsey was provided by Dunn Mukosa who managed the Top Engineers Programme in the Group Technology and Commercial Division. Ms Mokoatle continued to support me as the commercial lead for the negotiation process with Mckinsey.
- 20.8 After the EXCO and Board approvals which is contained in the "Round Robin Resolution" dated the 06<sup>th</sup> July 2015 and attached hereto for ease of reference marked Annexure "EN4". Negotiations continued between July and September 2015. At the start of negotiating period I stopped Acting as the GM for Commodity Sourcing for reasons explained in paragraph 1.1.8 above. During the negotiation process I was supported by stream leads from various functions in the organisation, top engineers, internal audit and internal legal. I was also required to report back to Mr Koko and Mr Mabelane during the negotiation process, which I duly attended to.



- 20.9 The Board Tender Committee approved the conclusion of a contract on a self-funding "risk basis" in October 2015. The delegation of authority for the implementation of the contract was subsequently given to the Group Executive Technology and Commercial Division. Please see attached hereto the Approved Minutes of the Board Tender Committee meeting held on the 21<sup>st</sup> October 2015 for ease of reference marked Annexure "EN5".
- 20.10 Although it was contemplated and discussed during the first steering committee that took place on 9 February 2016, that I would be given partial delegation of the authority for the contract, this was never put into place. The delegation of authority remained with Mr Mabelane, who by then occupied the role of CPO. As project manager, I provided a co-ordination role for the activities associated with the implementation of the MSA. During this time I was supported in the project management office by Ms Mary Anne Hendricks, Two Top Engineers and a dedicated person from McKinsey, Ms Bernadine Soriano.
- 20.11 Between October 2015 and December 2015, there were various interactions with internal and external legal counsel on whether the "risk based payment mechanism" for contracting Consultants were allowable in terms of National Treasury rules. Eskom had received conflicting legal opinions in this regard.
- 20.12 In December 2015, Mr Mabelane issued McKinsey with an Acceptance Letter subject to the "risk based payment basis" applicability for the full contract duration. Please see attached hereto the acceptance letter dated the 17<sup>th</sup> December 2015 for ease of reference marked Annexure EN6.
- 20.13 In early February 2016, Mr Dave Gorrie Senior Manager Commercial and Mr Charles Kalima Acting General Manager of Commodity Sourcing met with Mr Solly Tshitangano of the National Treasury. Mr Dave Gorrie has effected an electronic mail to Mr Tshitangano on or about the 04<sup>th</sup> February 2016 enquiring as to whether Practise Note 3 of 2003 (which deals with risk based payment basis) is still valid and effective, and later that day received a electronic mail from Mr Tshitangano, confirming that the aforesaid Practise Note is still valid. Please see attached hereto for ease of reference the trail of electronic mails between Mr Gorrie and Mr Tshitangano for ease of reference marked Annexure EN7.



- 20.14 After receiving the aforementioned electronic mail (**EN7**) from Mr Tshitangano the procurement team, lead by Mr Mabelane, was satisfied that the contract with Mckinsey could proceed on a "risk fee" basis.
- 20.15 The contract for Mckinsey MSA took the form of a "Service Level Agreement" (SLA) as advised by Eskom internal legal at the time. The SLA was developed through interactions between Eskom Legal and McKinsey legal during the negotiation process that took place between July 2015 and October 2015. Various work packages associated with the SLA were also developed during this time. As the SLA was not signed at the time of the first steering committee on 9 February 2016, Mr Mabelane requested me to send him the contract documents. I did so on 12 February 2016 - please see attached electronic mail confirming same, for ease of reference marked Annexure **EN8**. I cannot recall when Mr Mabelane eventually signed the SLA.
- 20.16 At the end of March 2016, McKinsey formally wrote to Mr Singh, stating that McKinsey could no longer proceed with the Trillian as the BBBEE partner. Despite the above McKinsey and Trillian continued to work together and jointly participated in the various steering committees till about August 2016.
- 20.17 During the third steering committee that took place on 7<sup>th</sup> June 2016, in a closed session, a decision was made by the steering committee to cancel the Mckinsey MSA risk based process. This gave rise to the Board Tender Committee submission dated the 09<sup>th</sup> June 2016 attached hereto and marked Annexure **EN9**.
- 20.18 Mr Mabelane advised me that he formally notified Mckinsey of the cancellation decision on 16<sup>th</sup> June 2016.
- 20.19 During the period 20<sup>th</sup> June to 28<sup>th</sup> June 2016, Mr Mabelane wrote to Mckinsey in an attempt to try and re-imburse the consultants on a cost basis rather than a risk fee basis. Mckinsey rejected the offer. Please see attached hereto correspondences between Mr Mabalane and McKinsey for ease of reference marked Annexures **EN10**, **EN11**, **EN12** and **EN13**.
- 20.20 At the fourth steering committee that took place on 15<sup>th</sup> July 2016, a formal decision was made to perform a true up of the approvals associated with the Wave Tool (auditable programme governance tool) as of the same date. It was



also agreed at the steering committee that consultants would remain on the ground until a proper handover was done.

- 20.21 At the fifth and final steering committee that took place on 4<sup>th</sup> August 2016, the consultants provided an update on the finalisation of all the work streams. Both Mckinsey and Trillian also raised the issue that no payments were made to them to date, despite agreed down payments. It was also agreed that the Board Tender Committee would be approached to seek approval for a progress payment until the full settlement process was concluded.
- 20.22 On 8 August 2016 the BTC approved, an already negotiated settlement value of R1.8bn, interim payments to the consultants up to R800m, a transition period of 6 months during which the consultants will be reimbursed on a rates basis and if the full risk premium is not paid to the consultants in the 6 months transition the balance will be redeemable after a 3 year period. The Group Chief Executive, Chief Financial Officer and Group Executive for Generation were authorised to negotiate more favourable terms to the settlement process. Please see attached hereto the executive summary dated the 08<sup>th</sup> August 2016 for ease of refence marked Annexure **EN14**.
- 20.23 On 13 December 2016, the BTC approved a mandate to negotiate and conclude the remaining portion of the settlement up to R849m and a further payment to the BBBEE partner Trillian to finalise payments up to August 2016. The Acting Group Chief Executive, the Chief Financial Offer and the Chief Procurement Officer were authorised to negotiate and conclude the settlement process with McKinsey Please see attached hereto the executive summary of the Submission to the Board Tender Committee for the 13<sup>th</sup> December 2016 marked Annexure **EN15**.
- 20.23 The settlement process included an internal audit review, legal review and an external review of the payments made that was requested by the CFO.
- 20.24 On 8 February 2017 the BTC noted and supported a full settlement value of R460m for the MSA. Please see attached hereto the Extract from the Eskom Board Tender Committee meeting held on the 08<sup>th</sup> February 2017 for ease of reference marked Annexure **EN16**.
- 20.25 Payments were made in accordance with the WAVE tool approvals by various stream leads across the organisation, subsequent Steering Committee

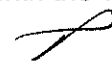


approvals, external review of payments made and Board Tender Committee approvals.

- 20.26 After acquiring the necessary approvals from the BTC, Mr Mabelane requested that the invoices be supported by myself and in the case of the finance stream supported by Ms Maya Bhana (GM in the Office of the CFO). Mr Mabelane then approved the invoices and forwarded them to the commercial team for processing and payment. All payments for the MSA were allocated to the CFO's cost centre 111000.

#### **MY ROLE IN MARSH (OLIVER WYMAN) – REVIEW OF MSA**

21. At or around the end of August 2016, Mr Singh requested that an independent review of the MSA be done. In discussions with Mr Singh it was suggested that Oliver Wyman (MARSH) would be considered as a potential service provider.
22. I thereafter sought approval from Mr Mabelane for independent review. Mr Mabelane advised that the independent review was allowed in terms of the contract with McKinsey. He further asked me to work with the procurement team to put in place a procurement process to acquire the services of Oliver Wyman on a sole source basis. He also requested me to get a proposal from Oliver Wyman to assess if they had the capability to perform the review. Mr Dave Gorrie (Senior Manager Procurement) was to assist me with the process.
23. I then requested Ms Hendricks to request a proposal from Oliver Wyman for the independent review.
24. Mr. Gorrie subsequently advised against the single source procurement of Oliver Wyman. He also advised that the procurement process for the review of the MSA should follow the Strategic Business Management Panel process. All of the necessary panel approval documents were prepared and submitted by Ms Hendricks as part of the process.
25. Oliver Wyman was appointed in and around the second week of November 2016. My role together with the support of Ms Hendricks was to assist in the provision of the necessary documentation and co-ordination activities associated with the review process. Oliver Wyman also, as part of the review process, engaged with the various Eskom MSA stream leads to perform their analysis.





26. Oliver Wyman produced two reports; a preliminary report dated 9 December 2016 and a final report dated 15 December 2016.
27. As stated previously, the Board Tender Committee approved a mandate to negotiate the remaining portion of the settlement associated with the MSA, on 13 December 2016. Mr Mabelane and I agreed that a modification to the existing contract with Oliver Wyman would be put in place should we require further support during the settlement negotiations process with McKinsey. The approval of the modification of the contract followed the Strategic and Business Management Panel process.
28. To my knowledge the additional services outlined in the modification were not utilised by Eskom.

#### **MY INTERACTION WITH INTERNAL LEGAL AND INTERNAL AUDIT ON THE REVIEW OF THE MSA**

29. The internal audit review process, initiated by Mr Singh, began in early November 2016. My team was requested to provide the necessary documentation associated with the contract.
30. The audit report was prepared and submitted to Mr Singh on 12 December 2016 by Mr Molefi Nkhabu (Senior General Manager Internal Audit). Please see attached draft audit report which was later made final, marked for ease of reference as Annexure **EN17**.
31. Regarding the legal review of the MSA, Mr Singh requested Ms Suzanne Daniels (Acting Head of Legal and Company Secretary) to do the review. I do not know when Mr Singh requested the legal review.
32. My interaction with Ms Daniels, began on 5 December 2016. I was requested to send Ms Daniels the letters from McKinsey and Trillian claiming risk based fees reference. Please see attached electronic mail dated the 05<sup>th</sup> December 2016 for ease of reference marked Annexure **EN18**.
33. I was requested by Mr Mabelane and Mr Singh to prepare the BTC submission for 13 December 2013. On 9 December 2016, I sent Ms Daniels the draft BTC submission for legal input. I also attached the Preliminary Oliver Wyman Report. Please see attached electronic mail for ease of reference marked Annexure **EN19**.

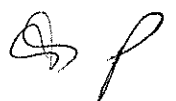




34. On 12 December 2016, I received back the Board submission documentation that was edited by Ms Daniels in relation to the legal input. Please see attached hereto electronic mail from Ms Daniels as well as the attached executive summary of the submission to the Board Tender Committee dated the 13<sup>th</sup> December 2016, for ease of reference marked Annexures **EN20** and **EN21**, respectively.
35. As the team was progressing towards concluding a settlement agreement with McKinsey, Oliver Wyman prepared and sent to me some settlement principles for consideration. I forwarded these principles to Ms Daniels on 6 February 2017 for her review. In her replying email Ms Daniels mentioned that Mr Rishaban Moodley from CDH would make contact with me regarding the settlement agreement with McKinsey. Please see attached trailing electronic mails in respect of the aforementioned for ease of reference marked Annexure **"EN22"**.
36. Mr Moodley made contact with me for the first time on 7 February 2017. He mentioned to me that Ms Daniels had requested him to assist in drawing up of the settlement agreement. Mr Moodley also requested some documentation relating to the project. This documentation was provided to him by Ms Hendricks.
37. On 15 February 2017, Mr Moodley sent me a draft letter and settlement agreement in which Ms Daniels was also copied. Please see attached hereto a copy of the electronic mail from Mr Moodley, as well as the draft letter and settlement agreement, for ease of reference marked Annexures **EN24** and **EN25**, respectively. As per the email, Mr Moodley also made mention of a memorandum. Not knowing what purpose of the memorandum was, I replied to Mr Moodley, copied to Ms Daniels, and sought advice whether the memorandum he made mention of would prevent Eskom from signing the settlement agreement with McKinsey. I did not receive a formal response from Mr Moodley. Please see attached hereto my aforesaid replying electronic mail to Mr Moodley for ease of reference marked Annexure **EN26**.
38. After receiving the draft settlement agreement from Mr Moodley on 15 February 2017, I forwarded the agreement to the head of internal audit Mr Molefi Nkhabu for review as per the recommendation of review of the MSA completed by internal audit on 12 December 2016. Please see attached hereto a copy of my electronic mail to Mr Nkhabu requesting his review and whether same has met his requirements, for ease of reference marked Annexure **EN27**.



39. The draft settlement agreement, sent to me and copied to Ms Daniels by Mr Moodley on 15 February 2017, included two questions relating to the two suspensive conditions on the MSA contract, I discussed the suspensive conditions with Mr Mabelane and he advised me that his view was that the suspensive conditions were met. I provided the same feedback to Mr Moodley. Mr Moodley then revised the settlement agreement and forwarded it to me and copied to Ms Daniels. Please see attached hereto the electronic mail from Mr Moodley together with the attached amendments for ease of reference marked Annexures **EN28** and **EN29**, respectively.
40. On 16 February, I received an email from Mr Nkhabu (internal audit) confirming that they are comfortable with the letter, however, with regard to the agreement, Mr Nkhabu's feedback recommended the following; "We however think the part coloured yellow about the audit tool and the steercom should be deleted because it has become redundant". Please see attached hereto electronic mail for ease of reference marked **EN30**.
41. Mr Mabelane and Dr Weiss signed the settlement agreement on the morning of 17 February 2017. Later that afternoon, both Ms Daniels and myself received a memorandum from Mr Moodley, relating to the MSA. I raised the issue with Mr Mabelane. Both Mr Mabelane and I then raised the issue of the memorandum with Mr Singh on Monday 20 February 2017. Mr Singh undertook to raise the issue with Ms Daniels. Please see attached hereto the electronic mail from Mr Moodley, as well as the attached memorandum for ease of reference marked Annexures **EN31** and **EN32**.
42. On Tuesday 21 February 2021, Mr Singh, Mr Mabelane and Ms Daniels attended an EXCO and Board meeting in Cape Town. I received a call from Mr Mabelane to draft a memorandum from himself to the Interim GCEO Mr Koko summarising all the activities that were undertaken to conclude the MSA with McKinsey. The memorandum was also forwarded to Ms Daniels for her to review. Please see attached hereto electronic mail to Ms Daniels, together with the aforementioned memorandum (requesting her review), for ease of reference marked Annexures **EN33** and **EN34**, respectively.



43. On the morning of 22 February 2017, Ms Hendricks collected from Ms Daniels office a signed copy of the minutes of BTC of 8 February 2017 and a signed copy of the memorandum marked as Annexure **EN34** above. The memorandum was delivered to Mr Mabelane who then took it for signature to Mr Koko. As advised by Mr Mabalane, Mr Koko did not sign the memorandum as his view (Mr Koko) was that the Board Tender Committee had already approved the payment as per the settlement agreement.

**MCKINSEY FIXED FEE CONTRACT (4600059002)**

44. During September 2015 Eskom was in the final stages of completing the negotiation process with McKinsey for the MSA, this included the preparation of Board Tender Committee submissions that we made in October 2015.

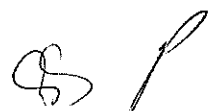
45. On 3 September 2015 Mckinsey forwarded me a letter addressed to Mr Matshela Koko (Group Executive Group Technology and Commercial). They explained that the work needed to be urgently completed to finalise the corporate plan that included the setting of KPIs in line with the new Eskom Design and to Cost Strategy. McKinsey further explained that proposal is based on fixed fees and could not fit under the risk based fee MSA. Please see attached hereto a copy of the electronic mail as well as the letter dated the 1<sup>st</sup> August 2015, for ease of reference marked Annexures **EN35** and **EN36**, respectively.

46. I then contacted Mr Koko who advised me that a contract needs to be put in place and that I should work with the procurement team, led by Mr Charles Kalima (Acting GM Commodity Sourcing), to prepare the necessary documentations for approval. Mr Kalima assigned Ms Tshiamo Makoloane (Procurement Specialist) to the procurement process. I forwarded the proposal to Ms Makoloane on 4 September 2015. I assigned Mr Bruno Corriea, one of the Top Engineers assigned to the Mckinsey MSA negotiation process, to assist Ms Makoloane in the preparation of the documentation for approval. Ms Makoloane also requested me to register a purchase requisition on SAP to initiate the procurement process.

47. After completion of the preparation of the necessary documents, Mr Kalima asked me to sign off as the Project Manager. Mr Kalima also mentioned to me that Mr Koko will be taking the documents to the Board for approval.

A handwritten signature in black ink, appearing to be 'SP' or similar initials, located at the bottom right of the page.

48. I do not know when in September 2015 the Board approved the mandate to negotiate and conclude for this contract as I was not invited to the meeting. Negotiations, arranged by Ms Makoloane, were held with Mckinsey and the letter of acceptance was signed by Mr Koko and Dr Alexander Weiss on 29 September 2015. Please see attached hereto Acceptance Letter for ease of reference marked Annexure **EN37**.
49. On 27 November 2015 I received an email from Mr Vikas Sagar of Mckinsey, in which Dr Weiss, Dr Eric Wood and Mr Koko, were also copied, providing the details of the BBBEE Partner, Trillian, after I had requested them to do so. Please see attached electronic mail for ease of reference marked Annexure **EN38**.
50. On 9 February 2016, I received another email from Mr Vikas Sagar, in which Dr Weiss and Dr Wood were copied, with the following content "In line with the contractual arrangement agreed in our MSA and per Trillian's request, we attach the authorisation to pay Trillian directly". The attachment related to direct payment to Trillian for this contract 4600059002. Please see attached hereto a copy of the above electronic mail dated the 09<sup>th</sup> February 2016, as well as the letter dated the 09<sup>th</sup> February 2016, for ease of reference marked Annexures **EN39** and **EN40**, respectively.
51. Mckinsey invoices were processed by Ms Hendricks for payment in February 2016, after acquiring the necessary sign-offs to confirm that the work was completed. For the business case aspects, Ms Hendricks received confirmations from Mr Doug Dewey (Finance Manager Medupi Project and Ms Nhlanhla Kraai (Finance Manager Kusile Project). For the finance related work Ms Hendricks received confirmations from Ms Maya Bhana (GM in the office of the CFO). I do not have in my possession all of the documentary evidence relating to the approvals but have attached what I could find on record (**EN41, EN42, EN43, EN44, EN45** and **EN46**)
52. On 19 February 2016, Mr Kalima and I received an email from Mr Mabelane, that he received from Ms Bhana, relating to the payment of the Trillian invoice. I explained to Mr Mabelane that firstly the invoice related to contract 4600059002 Mckinsey Fixed Fee contract and not the MSA, and that secondly I did not receive confirmation from McKinsey of the work done, in line with the authorisation to pay.
53. On 18 March 2016, I received an email from Lorenz Jungling from McKinsey, with the attached Trillian invoice, saying he will review the invoice the next day. Please see attached electronic mail from Mr Jungling, as well as the invoice-cover letter from Trillian for ease of reference marked Annexures **EN47** and **EN48**.



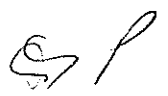
54. At the beginning April 2016, Mr Mabelane after discussions with Mr Koko and Mr Singh, followed up with me as to whether the invoice for Trillian had been paid. I explained to him that Mckinsey had still not given written approval, and hence I could not forward the invoice for payment. Mr Mabelane advised that he would approve the invoice as per his discussions with Mr Koko and Mr Singh. I also raised the issues of direct payment to a subcontractor without a contract, after which, Mr Mabelane assured me that it was allowed and had been done in the past at Eskom. He asked me to support the invoice as the Project Manager. Mr Mabelane also asked me to send a letter (PG4) to Mr Muvenda Khomola (Eskom Vendor Management) in line with paragraph 50 above, for the registration of Trillian as a vendor. The payment of the invoice was then processed by the procurement team.

#### DELOITTE

55. As Programme Director in Group Capital, one of the functions that I was accountable for was Capital Efficiency. During the preparation of the Corporate Plan at the end of 2015, this function interacted with the finance department headed by Mr Singh at the time. During this interaction Mr Singh indicated that he wanted to transform this function into a GCIA Function. My team and I began working on what this function would need to eventually transform into. As mentioned previously, at the time my office was supported by Ms Hendricks, two top engineers and Ms Soriano (a dedicated resource from McKinsey). We began work on the GCIA function in Feb/March 2016. Please see attached hereto as copy of the electronic mail from Ms Soriano dated the 18<sup>th</sup> March 2016 for ease of reference marked Annexure **EN49**.

56. I pause to mention that the GCIA function design that we were instructed to work with, was compared with that which was implemented by Transnet. (**EN50** and **EN51**)

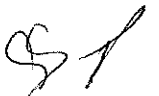
57. At the end of 2015 and the beginning of 2016, Deloitte was conducting Executive Lab sessions with General Managers across the organisation. One of my colleagues, Mr Peter Sebola, from Group Capital was also invited to a session. Please see attached hereto a copy of the electronic mail inviting me to participate in the interview, for ease of reference marked Annexure **EN52**.



58. I received an introduction email for the executive lab and subsequently a preparation email from Mr Izak Du Plessis from Deloitte, who invited me to meet with him and Mr Shamal Sivasanker. The lab took place on 20 April 2016. Please see attached hereto a copy of the electronic mails from Mr Du Plessis for ease of reference marked Annexures **EN53** and **EN54**.
59. As part of the preparation for the lab I had to submit a description of my overall portfolio, this was the intention of the email sent to Mr Sivasanker on 13 April 2016. Over and above our latest thinking on the GCIA function, the presentation attached to the email also provided information relating to the other functions I was accountable for at the time.
60. In April/May 2016, Mr Singh the CFO was in the process of finalising the new Group Finance structure. The GCIA function was going to be a new function that would be reporting to the CFO. Deloitte was assisting Mr Singh in finalising the various job profiles for the Group Finance structure. I was requested to work with Deloitte to finalise the GCIA job profile.
61. Shortly after the Executive Lab session, Mr Sivasanker advised me that Mr Singh had requested Deloitte to assist with establishing the GCIA function in Group Finance and to provide a proposal to this end. The intent of the email sent to me by Mr Sivasanker on 15 June 2016 was to provide a list of initiatives that Deloitte was engaging Mr Singh on and that the list included the GCIA function set up. I provided some input into finalising the proposal due to my experience in managing the Capital Efficiency function in the Group Capital division. Activities on establishing the GCIA function only began after the task order was awarded to Deloitte.
62. In August 2016, Mr Singh, requested Ms Maya Bhana and myself to compile professional services consulting motivations for scopes of work that eventually resulted in Deloitte being awarded task orders for SM002 and SM004. It was agreed that some information from the unsolicited proposals sent by Deloitte would be used to compile the motivations as Ms Bhana and I did not have a full understanding of the scope of work required for each package. To my knowledge at the time Deloitte had begun work already, at risk, on the RMO that eventually formed part of SM004. This was also well known in the rest of the organisation as Deloitte had a significant presence in Eskom by that stage.



63. The motivations mentioned in paragraph 62 above was sent to Mr Mohamed Khan (Acting General Manager Corporate Finance) for approval. Mr Khan was also the Chairperson of the "Management Consulting Panel Control Committee" at the time. He was supported by Mr Dave Gorrie (Senior Manager Procurement). The associated scopes of work then followed the panel committee procurement process that was administered by Mr Gorrie. The tender evaluation for SM002 and SM004 was conducted by Mr Sanjith Rampath and Mr Ngoaka Huma respectively. I did not participate in the procurement process. After receiving the evaluation results sent to me from Ms Bhana and Mr Huma I forwarded them to the "Panel Control Committee" for approval. (EN55 and EN56)
64. Sometime in the middle of September 2016, Mr Mabelane (Chief Procurement Officer), requested me to assist in Chairing the "Management Consulting Panel Control Committee". I engaged Mr Gorrie and Mr Khan to that end. Mr Gorrie sent me the terms of reference of the committee that was already in existence at the time and was Chaired by Mr Khan (EN57 and EN58). Mr Gorrie also mentioned to me that the Committee had awarded two task orders already i.e. SM000 and SM001. I was formally appointed as Chairperson of the committee sometime in the middle of October 2016.
65. The Panel Committee took a decision during the meeting of 29 September 2016 to appoint Deloitte for task orders SM002 and SM004.
66. Whilst finalising the task orders for Deloitte, Mr Gorrie, on 4 October 2016, raised with me the issue of the Deloitte rates that was not in line with the National Treasury prescribed rates. He also explained to me that Deloitte had committed not to be outside the National Treasury Rates and that Nokwanda Gambushe from the procurement department was engaging Deloitte in this regard. (EN59 and EN60). We agreed that the rates issue with Deloitte should be finalised before signing of the task order.
67. Deloitte submitted an invoice for the work completed to date, on 06<sup>th</sup> October 2016. Ms Hendricks began processing the invoice for payment. The invoice was sent to Mr Huma for approval as the work performed was in his area. Ms Hendricks also informed me that the finance department requested additional information relating to the payment of the invoice. Ms Hendricks engaged Deloitte to acquire this information.





68. In anticipation of a Section 34 Determination from the Ministry of Energy where Eskom would be designated to be the procuring agent for the Nuclear Programme, Eskom set up an Exco level steering committee, towards the end of September 2016, to advance various project development and procurement preparation activities. Deloitte was to assist in the development of the business case aspects due to their prior involvement with the Department of Energy on the same topic (**EN64**, **EN65** and **EN66**). McKinsey was to assist with the programme management office for the various work streams. The project development department (Daryl Govender and Loyiso Tyabashe) worked with Deloitte to advance the business case aspects. A modification for task order SM002 with Deloitte was put in place to cater for this work.

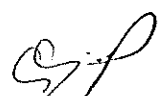
#### **FAS PANEL**

69. The submission of the approval documents to the EXCO Procurement Committee required that an end user be specified on the documents. Due to my new role in the finance department at that stage, I was designated by Mr Singh as the end user. I did not participate in the procurement process that led to the approval process including the process to set up a panel C.

#### **KPMG TASK ORDER**

70. Mr Mabelane requested me to assist in the compiling of the motivation to the Management Consulting Panel Control Committee for the implementation of the Procurement and Supply Chain Management Operating Model. I requested the necessary template from Mr Gorrie, and he subsequently provided same to me on 2 August 2016. Please see attached electronic mail to Mr Gorrie, as well as the template that he provided me with, for ease of reference marked Annexures **EN67** & **EN68**, respectively.

71. The motivation had to indicate that the request was initiated in Group Finance as the Commercial Division, managed by Mr Mabalane as the CPO, reported into the Group Finance structure.





72. In relation to the PCC minutes of 7 September 2016 and the Motivations compiled for the Finance Operation, Capital Scrubbing and Results Management Office packages, Mr Gorrie indicated to me that the end user could recommend preferred suppliers, as per the panel process, for the scopes of work. Furthermore the SBM Panel had to have existed by 7 September 2016 due to the set of minutes that were generated referred to in Annexure 4 of the Commission's letter dated the 28<sup>th</sup> May 2021.
73. In relation to the PCC Evaluation Award report dated 15 November 2016, I was required to ratify the decision taken by the Panel Committee members (Dave Gorrie, Mohamed Khan, Mary Anne Hendriks, Hanno Oostenbrink, Lulu Njaza, Ishmael Modiko and Nokwanda Gambushe) on the same date. Please see attached minutes of meeting (MCPCC) for 14 November 2016, for ease of reference marked Annexure "EN69".
74. The rejection of the evaluation report compiled on 23 November 2016, was in line with the Panel Committee decision taken on 28 November 2016. See attached minutes of meeting for 28 November 2016. Please see attached minutes of meeting (MCPCC) for 14 November 2016, for ease of reference marked Annexure "EN70"
75. The final decision to award the work to KPMG was made at the committee on 12 December 2016. I was not in attendance for this meeting so the meeting was either chaired either by Mr. Khan or Mr. Gorrie. Please see attached hereto a copy of the minutes of the meeting (MCPCC) dated the 12<sup>th</sup> December 2016, for ease of reference marked Annexure "EN71"

#### **SBM PANEL**

76. With regards to the EXCO Triple Adjudication to appoint Africa Wide Consulting, Mr Mabelane requested me to compile the necessary documentation for the approval process. The template for the triple adjudication approval process was provided to me by Mr. Gorrie. Africa wide consulting was appointed to support the Eskom commercial team to process a number of transactions that was required to be approved, for the delivery of the corporate plan, through the SBM and Financial Advisory panels.
77. As mentioned previously in my affidavit, I stopped Acting as the GM for Commodity Sourcing in August 2015. Mr Gorrie thereafter reported to Mr Charles Kalima who replaced me as the Acting GM for Commodity Sourcing. As such I did not play a role

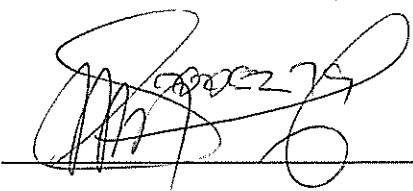


in the SBM Panel evaluation or approval process. I furthermore do not recall giving Mr. Gorrie an instruction to re-evaluate any suppliers as such an instruction could have only come from his line manager, Mr. Kalima or the Chief Procurement Officer Mr. Mabelane.

78. In relation to the modification of the value for the SBM panel, a number of transactions relating to the delivery of the corporate plan and the transfer of the scope of work that was initially undertaken through the Mckinsey MSA had to be processed by the SBM Panel. Mr Mabelane had instructed the procurement team to initiate the approval process for the increase in the budget of the SBM panel that would have to be approved by the BTC and National Treasury. I was requested by Mr Mabelane and Mr Singh to only provide the motivation for the increase in the budget that was subsequently included in the approval documentation to the BTC.

  
DEPONENT

THUS SIGNED AND SWORN TO before me at MIDRAND on this the 15<sup>th</sup> day of JUNE 2021 by the deponent who acknowledges that he/she knows and understands the contents of this affidavit; that it is the truth to the best of his/her knowledge and belief and that he/she has no objection to taking the prescribed oath and regards the same as binding on his/her conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.

  
COMMISSIONER OF OATHS

EX OFFICIO:

FULL NAMES: SAMSON MAREMOLA

PHYSICAL ADDRESS: OUR ORANGE AND SUNS DRIVE

DESIGNATION: WARRANT OFFICER



"A"



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

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19 February 2021  
Tracking Number: RPS08/0024/RH

Mr Prishothman Govender

Tel: 082 469 0467

Email: [prish.govender@gmail.com](mailto:prish.govender@gmail.com)

Dear Sir

**REQUEST FOR COMMENTS BY MR PRISHOTHMAN GOVENDER**

1. This letter is addressed to you in pursuance to the Commission's investigation into State Capture.
2. The Commission's investigation has revealed that you, **Mr Prishothman Govender**, may have participated in and/or have knowledge of various matters by virtue of your role as General Manager: Capital Assurance and Integration at Eskom Holdings SOC Ltd ("Eskom").
3. You are hereby requested to furnish the Commission, **on or before 16h00 on Thursday, 04 March 2021**, with an affidavit or affirmed declaration, in which you provide the Commission with full details of your version in regard to the above. The aforementioned should as a minimum, address, but not be limited, to the issues as set out in the "list of

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matters" document attached herein. The said list of matters document and its relevant supporting Annexes are attached as **Annexure "PG"** to be sent via WeTransfer link.

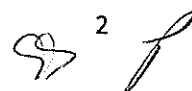
4. As a matter of general practice, the Commission offers assistance, free of charge, in the preparation of an affidavit or affirmed declaration to those who are called upon to submit evidence before it. However, potential witnesses, such as yourself, are at liberty to make use of your own legal representatives, in which event the Commission will not be liable for their legal costs.
5. You are requested to advise the Commission, **within three (3) calendar days of receipt** hereof whether you undertake to furnish the Commission with the affidavit, affirmed declaration or statement within the stipulated time. Your failure to do so will be construed by the Commission as an intention on your part not to furnish the required affidavit, affirmed declaration or statement.
6. Your co-operation will be highly appreciated.

Yours faithfully



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**Prof. Itumeleng Mosala**  
**Secretary**  
**Judicial Commission of Inquiry into Allegations**  
**of State Capture, Corruption and Fraud in the Public Sector including Organs of**  
**State**



**ANNEXURE PG**

Please see below a mere guideline of topics, which may be relevant to deal with in your affidavit or affirmed declaration. This should in no manner restrict you, as this is a mere guideline. Please feel free to deal with any additional matters you might feel that the Commission needs to be made aware of.

Where you refer to documents it will be most useful if these are included as annexures to your affidavit or affirmed declaration and are referenced as such. Please make use of the bundle of documents you were provided with and feel free to include any other documents that you wish to include as annexures in your affidavit or affirmed declaration.

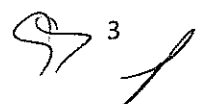
**General and Background Information**

1. Brief background about yourself including your academic qualifications;
2. Details of when you joined Eskom and the different positions you have occupied during your time at Eskom;
3. The processes and individuals involved in your appointment to the aforesaid positions; and
4. The circumstances leading to your departure/resignation from the employ of Eskom.

**Contract concluded between Eskom Holdings SOC Limited ("Eskom") and McKinsey & Company Africa (Pty) Ltd ("McKinsey & Co") on 4 May 2016 (with contract number - 4600059002)**

5. Your overall involvement in the conclusion of the abovementioned contract including:
  - 5.1. Circumstances in regard to your creation of a Purchase Requisition ("PR"), attached hereto as **Annexure PG1**, on the Eskom SAP system relating to the appointment of McKinsey & Co;
  - 5.2. Circumstances in regard to your signing of a sole source justification form, attached hereto as **Annexure PG2**, relating to the appointment of McKinsey & Co outside of a competitive bidding process;
  - 5.3. Circumstances in regard to your signing of a mandate to negotiate submission document, attached hereto as **Annexure PG3**, dated 7 September 2015, which requested a mandate *"to negotiate and conclude with McKinsey & Co for the procurement of professional strategic consulting services for ad-hoc support on*

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*urgent finance and strategy work, at a contract value not exceeding R98 770 024.08 excluding VAT, and travel and subsistence”;*

5.4. Information and details of how you satisfied yourself, as a procurement official, that all Eskom procurement processes and the prevailing procurement legislative prescripts were adhered to when you created, signed and/or compiled the aforesaid documents. In particular:

5.4.1. Was a proven in-depth market analysis conducted to justify the appointment of McKinsey & Co through a sole source mechanism and outside of a competitive bidding process?

5.4.2. Was approval sought and obtained, for the appointment of McKinsey & Co, from the Eskom Internal Consulting Unit?

5.4.3. With regards to the abovementioned mandate to negotiate submission, *i.e. Annexure PG3*, please provide the rationale that the said submission was addressed to the Eskom Board instead, in light of its value being less than R300 million, of a lower approval structure;

5.5. Circumstances and details in regard to you issuing a letter dated 8 April 2016, attached hereto as **Annexure PG4**, to Mr Muvenda Khomola (“Mr Khomola”) in which you instructed him to register, on an urgent basis, Trillian Management Consulting (Pty) Ltd (“TMC”) as an Eskom vendor and to make a direct payment to them (TMC):

5.5.1. What was the rationale for issuing the aforesaid letter?

5.5.2. Did Eskom have a contractual relationship with TMC in regard to the purpose of their registration, as an Eskom vendor, and direct payment as outlined in your aforesaid letter of 8 April 2016?

5.5.3. If so, please provide details and evidence of such a contractual relationship;

5.5.4. If not, please provide information with regards to the rationale that you issued the aforesaid letter.

5.5.5. Did any of the applicable Eskom policies and procedures allow for direct payments to be made to subcontractors?

5.5.6. Did TMC render any services in exchange for the payments you instructed Mr Khomola to advance to them?



- 5.5.7. Please provide information and details of how you satisfied yourself, when you issued the aforesaid letter of 8 April 2016, that all Eskom procurement processes and the prevailing procurement legislative prescripts were adhered to and that TMC complied with the Eskom set subcontracting conditions relating to the contract in question.
- 5.6. Information and details of your role, if any, in the processing of Goods Receipt Notes ("GRN") relating to McKinsey & Co's Purchase Orders in respect of the contract in question. If you were involved in the processing of the aforesaid GRNs:
- 5.6.1. Did you have any evidence of services being rendered by McKinsey & Co in exchange for the GRNs processed to their benefit ?;
- 5.6.2. How were Eskom procurement processes and the prevailing procurement legislative prescripts adhered to in regard to your processing and/or approval of the GRNs relating to McKinsey & Co's Purchase Orders?
- 5.7. Any further information you would like to share relating to the above.

**Contract concluded between Eskom and McKinsey & Co on 7 January 2016 (with contract number – 4600060989)**

6. Your overall involvement in the conclusion of the abovementioned contract including:
- 6.1. Circumstances in regard to your signing of a sole source justification form, attached hereto as **Annexure PG5**, relating to the appointment of McKinsey & Co outside of a competitive bidding process;
- 6.2. Circumstances in regard to your signing of an EXCO Procurement Sub-Committee ("EXCOPS") and Board Tender Committee ("BTC") procurement strategy submission, attached hereto as **Annexure PG6**, relating to the appointment of McKinsey & Co outside of a competitive bidding process;
- 6.3. Circumstances in regard to your signing of a mandate to negotiate submission document, attached hereto as **Annexure PG7**, dated 22 June 2015, which requested a mandate *"to negotiate and conclude with McKinsey & Co to develop the Top Engineers programme into a fully functioning consulting unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash"*;
- 6.4. Information and details of how you satisfied yourself, as a procurement official, that all Eskom procurement processes and the prevailing procurement legislative

prescripts were adhered to when you signed the aforesaid documents (i.e. **Annexures PG5, PG6 and PG7**). In particular:

- 6.4.1. Was a proven in-depth market analysis conducted to justify the appointment of McKinsey & Co through a sole source mechanism and outside of a competitive bidding process?
- 6.4.2. Was approval sought and obtained, for the appointment of McKinsey & Co, from the Eskom Internal Consulting Unit?
- 6.5. Whether or not you stated in the Steering Committee meeting of 9 February 2016, as indicated in paragraph 8, titled "*High Level MSA Overview*", of the minutes of the aforesaid meeting (refer to **Annexure PG8**), *inter alia*, that "*National Treasury approved confirmation of the Contract Methodology for the Risk Based Approach with the Chief Procurement Officers Office.*"
  - 6.5.1. If so, please provide the details and evidence of the aforesaid National Treasury approval;
  - 6.5.2. The details and rationale for your attendance of the Steering Committee meetings, post 9 February 2016, as indicated in the minutes thereof attached hereto collectively as **Annexure PG9**;
- 6.6. Information and details of your role, if any, in the processing and/or approval of invoices issued by either McKinsey & Co or TMC in respect of the contract in question. If you were involved in the processing and/or approval of the aforesaid invoices:
  - 6.6.1. Please provide the details of the specific invoices which you processed and/or approved;
  - 6.6.2. Did Eskom have a contractual relationship with TMC in regard to the invoices which you processed and/or approved?
  - 6.6.3. Did you have any evidence of services being rendered by either McKinsey & Co or TMC in exchange for the invoices which you processed and/or approved?
  - 6.6.4. How were Eskom procurement processes and the prevailing procurement legislative prescripts adhered to in regard to your processing and/or approval of the aforesaid invoices relating to McKinsey & Co and/or TMC?
- 6.7. Any further information you would like to share relating to the above.



**Contract, with contract number 4600061873, for the provision of strategic, business and management consulting and professional services for a period of three (3) years concluded between Eskom and Marsh (Pty) Ltd ("Marsh")**

7. Your overall involvement in the conclusion of the abovementioned contract including:

7.1. Whether or not you requested Mr Mary-Anne Hendricks ("Ms Hendricks") to solicit a proposal, to "review one of Eskom's key supplier contracts", from Oliver Wyman as indicated in the email, attached hereto as **Annexure PG10**, dated 22 September 2016. If so:

7.1.1. Did Eskom have any contractual relationship with Oliver Wyman in regard to the proposal you requested Ms Hendricks to solicit from them?

7.1.1.1. If so, please provide details and evidence of such a contractual relationship; and

7.1.1.2. If not, please provide the rationale for requesting Ms Hendricks to solicit a proposal from them.

7.2. When did Eskom make a decision, and what was your role in same, to appoint a service provider to undertake a forensic technical review of the contract, with contract 4600060989, which was concluded between Eskom and McKinsey & Co?

7.3. An overview of your overall involvement and role in the appointment of Marsh to undertake a forensic technical review of the contract, with contract 4600060989, which was concluded between Eskom and McKinsey & Co?

7.4. The rationale and an overview of your role in the modification, from R5 469 000.00 to R9 570 750.00, of the Marsh contract (Refer to **Annexure PG11**):

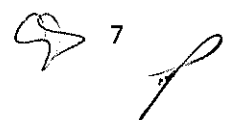
7.4.1. Information and details of how you satisfied yourself, as a procurement official, that all Eskom procurement processes and the prevailing procurement legislative prescripts were adhered to when signed approved the modification of Marsh contract.

7.5. Any further information you would like to share relating to the above.

**Deloitte**

8. On 13 April 2016 you forwarded an e-mail, earlier received from Bernadine Soriano of Mckinsey, to Shamal Sivasanker of Deloitte (Refer to **Annexure PG12**), with attached Group Capital Investment Assurance Operating Model (Refer to **Annexure PG13**):

7



- 8.1. Why was this e-mail with attached document forwarded to Shamal Sivasanker of Deloitte?
- 8.2. What services, if any, did you require from Deloitte in this regard?
9. On 21 April 2016 you sent an e-mail to Shamal Sivasanker (Refer to **Annexure PG14**) with attached job profile for the Head of Capital and Integration Assurance:
  - 9.1. Provide background and context to the e-mail correspondence and the job profile.
  - 9.2. Why was this Eskom job profile sent to an external service provider for review?
10. Relating to e-mail correspondence containing the Eskom Capital Group: Integration and Assurance proposal (Refer to **Annexure PG15 and PG16**) on 30 May 2016, and the revised proposal on 16 June 2016 (Refer to **Annexure PG17 and PG18**):
  - 10.1. Did you approve this unsolicited proposal from Deloitte? If approved, how did you satisfy yourself that a procurement process in terms of Eskom's Procurement and Supply Chain Policy that was fair, equitable, transparent, competitive and cost-effective was followed?
  - 10.2. What, if any, discussions took place with Deloitte prior to ensure that Eskom's need was sufficiently addressed by the unsolicited proposal?
  - 10.3. If any discussion took place prior to finalization of the unsolicited proposal, with which Deloitte representatives?
  - 10.4. How did you envisage Deloitte be paid for services rendered as per the unsolicited proposal?
  - 10.5. When did Deloitte start rendering services relating to this unsolicited proposal?
11. With specific reference to the e-mail dated 15 June 2016 sent from Shamal Sivasanker to yourself, with subject *Eskom Initiatives* (Refer to **Annexure PG19**), and the spreadsheet attached to the e-mail (Refer to **Annexure PG20**):
  - 11.1. Provide context and information to each of the initiatives referred to.
  - 11.2. Confirm if all the tasks listed in the attachment were allocated to Deloitte, and if so when was the starting date for work performed by Deloitte for each task.
12. With reference to the Professional Consulting Services Motivation for *APPOINTMENT OF CONSULTANTS TO IMPROVE FINANCE BUSINESS PROCESSES AND CAPITAL INTEGRATION & ASSURANCE ESTABLISHMENT* (Refer to **Annexure PG21**):

- 12.1. What was your role in the drafting of the document;
  - 12.2. You were listed as a compiler of the motivation, who provided you with information used to compile the motivation;
  - 12.3. What was the source documents, if any, from which the contents were obtained; and
  - 12.4. For which tasks indicated in the motivation did Deloitte start rendering services prior to the drafting of the document?
13. On 8 September 2016 an e-mail was sent to potential service providers requesting proposals for the task order SM002 (Refer to **Annexure PG22**):
- 13.1. Were any tasks, which were based on unsolicited proposals received from Deloitte, included in this request?
  - 13.2. If so, on which tasks were Deloitte already in the process of rendering services?
14. Relating to the Deloitte invoices submitted via e-mail by Shamal Sivasanker to yourself on 13 September 2016 (Refer to **Annexure PG23**):
- 14.1. The invoices were rejected on 29 September 2016, what was the reason for rejection?
  - 14.2. How did you satisfy yourself that the work was performed and what actions did you take to inform Deloitte if the work was not done?
  - 14.3. Based on what approved Eskom process, if any, was the services rendered?
  - 14.4. What discussions or correspondence did you have with Shamal Sivasanker to discuss these invoices?
  - 14.5. Was Eskom liable to pay these invoices?
15. On 26 September 2016 Ngoaka Huma sent you the scoring results of the evaluation of proposals on SM004 via e-mail [Refer to **Annexure PG24**):
- 15.1. Ngoaka Huma noted that the McKinsey proposal was not evaluated, why was the McKinsey excluded for evaluation?
  - 15.2. Based on the fact that Deloitte was the only Panel A service provider who's proposal was evaluated, was a process that was fair, equitable, transparent, competitive and cost-effective followed?

- 15.3. What steps did you take to ensure that the McKinsey proposal was evaluated prior to awarding of the task order?
16. On 26 September 2016 Sanjith Rampath sent you the scoring results of the evaluation of proposals on SM004 via e-mail (Refer to **Annexure PG25**):
- 16.1. Why was the request not re-issued to include other Panel A service providers in the process?
- 16.2. Based on the fact that Deloitte was the only Panel A service provider who's proposal was evaluated, was a process that was fair, equitable, transparent, competitive and cost-effective followed?
- 16.3. Sanjith Rampath noted in his e-mail that Deloitte's proposed fee seemed excessive, what was your actions to ensure a cost-effective process were followed?
17. Relating to the minutes of the Management Consulting Control Panel for 29 September 2016 (Refer to **Annexure PG26**):
- 17.1. Both SM002 and SM004 were awarded to Deloitte, what was meant by the wording *Approve Deloitte as other suppliers seem to have inadequate resource loading*?
- 17.2. Was pricing of the Deloitte proposals, as required by the 90/10 scoring principle as set out in the Eskom Supply Chain Management policy and the PPPFA, taken into account prior to award?
- 17.3. For both task orders SM002 and SM004 the minutes fail to mention the Deloitte unsolicited proposals, why was the committee not informed of the unsolicited proposals received from Deloitte during April, May and June 2016?
- 17.4. For both task orders SM002 and SM004 the minutes fail to mention the Deloitte provided services prior to the meeting date, why was the committee not informed this work performed?
- 17.5. For both task orders SM002 and SM004 the minutes fail to mention the Deloitte invoices submitted on 13 September 2016, why was the committee not informed these invoices?
- 17.6. Did the unsolicited proposals, prior work conducted by Deloitte and the invoices issued by Deloitte on 13 September 2016 in any way influence the awarding of task orders SM002 and SM004 to Deloitte?

- 17.7. Was the process to award task order SM002 and SM004 fair, equitable, transparent, competitive and cost-effective?
- 17.8. Did you have any e-mail correspondence or telephonic discussions with Shamal Sivasanker on the day of award of task order SM002 and SM004 to Deloitte?
18. Relating to the e-mail from Dave Gorrie to yourself, dated 04 October 2016 (Refer to **Annexure PG27**):
- 18.1. Dave Gorrie informed you of the fact that Deloitte's rates charged was higher than the National Treasury prescribed rates, what action did you take to address this matter with Deloitte?
- 18.2. Did you on becoming aware of the exuberant rates charge by Deloitte, taking into account that you were informed of Deloitte's excessive fees by Sanjith Rampath on 26 September 2016, have a fiduciary duty to approach Deloitte and negotiate a rate reduction to the best interest of Eskom?
19. Relating to the Deloitte invoices submitted via e-mail by Shamal Sivasanker to yourself on 6 October 2016 (Refer to **Annexure PG28**):
- 19.1. What was the reason for not paying the Deloitte invoices?
- 19.2. What discussions or correspondence did you have with Shamal Sivasanker, if any, regarding the invoices received?
- 19.3. Was Eskom liable to pay these invoices received?
20. Relating to the Deloitte invoices submitted via e-mail by Shamal Sivasanker to yourself on 11 October 2016 (Refer to **Annexure PG29**):
- 20.1. What was the reason for not paying the Deloitte invoices?
- 20.2. What discussions or correspondence did you have with Shamal Sivasanker, if any, regarding the invoices received?
- 20.3. Was Eskom liable to pay these invoices received?
21. Relating to the Deloitte invoices submitted via e-mail by Shamal Sivasanker to yourself on 19 October 2016 (Refer to **Annexure PG30**):
- 21.1. Did you approve these invoices?
- 21.2. To your knowledge, who completed the goods receive note for services rendered on the SAP system?

- 21.3. What discussions or correspondence did you have with Shamal Sivasanker, if any, regarding the invoices received?
- 21.4. Were you aware of the fact that these invoices were paid on the same day?
- 21.5. Were you instructed to ensure that these invoices were paid on the same day, if so, who instructed you?
- 21.6. Based on the invoices the expected date of payment was 31 October 2016, were these invoices paid on the same date?
22. Relating to the invitation on 4 October 2016 to Shamal Sivasanker and Vikas Sagar with title Nuclear Structuring [Refer to **Annexure PG31**):
- 22.1. What was the intention of meeting with Deloitte and McKinsey representatives at the same meeting regarding nuclear structuring?
- 22.2. Did the meeting take place, if so what decisions were made?
- 22.3. Were official minutes kept of the meeting?
23. Regarding Shamal Sivasanker's requests for an engagement letter for nuclear work sent on 28 November 2016 (**Annexure PG32**) and on 15 December 2015 (**Annexure PG33**):
- 23.1. What was the scope of work Deloitte performed on the nuclear assignment?
- 23.2. What process was followed in awarding the tasks to Deloitte?
- 23.3. Who authorized Deloitte to start work on the nuclear assignment?
- 23.4. Why did Deloitte start work prior to official award following an Eskom process?
24. Regarding the Corporate Finance Motivation dated 30 January 2017 addressed to you (Refer to **Annexure PG34**):
- 24.1. Did you evaluate and approve this motivation?
- 24.2. Was any work performed on the Group IT RMO prior to you receiving this motivation?
- 24.3. Was National Treasury approval received for deviations larger than R15m (including VAT) or 15%?
- 24.4. What was the necessity, intention and effect of the single source motivation?
25. Regarding the SBM Panel Modification Request approved by you on 16 February 2017 (Refer to **Annexure PG35**):

- 25.1. Do you know who prepared this document and what information was presented to the preparer to compile the document?
- 25.2. Did this modification request relate to the work performed by Deloitte on the nuclear assignment as per **Annexure PG32** and **Annexure PG33**?
- 25.3. If so, why was work performed prior to award of the tasks?
- 25.4. Was a process followed that was fair, equitable, transparent, competitive and cost-effective in awarding the nuclear work?
- 25.5. Was National Treasury approval received for deviations larger than R15m (including VAT) or 15%?

**FAS Panel:**

- 26. Your overall involvement in the establishment of the Eskom FAS Panel, including:
  - 26.1. The circumstances and details relating to you supporting the Contract and Procurement Strategy for Financial Advisory Services, dated 01 February, 2017 and titled *"Procurement Rectification Strategy for the Provision of Financial Advisory Services on an "as and when required" basis for a period of Three (3) Years" (Refer to Annexure PG36);*
  - 26.2. The circumstances and details relating to you signing the *"Mandate to Negotiate and Conclude Panel C Contracts with Panel Members for the Provision of Financial Advisory Services on an as and when required basis for a Period of 3 (three) years" (Refer to Annexure PG37);*
  - 26.3. The circumstances and details of how you satisfied yourself, that all Eskom procurement procedures and the prevailing procurement legislative prescripts were adhered to when you supported and/or signed the abovementioned Strategy and Mandate to Negotiate, in particular:
    - 26.3.1. Increasing the value of the Panel budget from R300 million to R1.5 billion; and
    - 26.3.2. To establish Panel C, which included bidders who failed to meet the minimum technical threshold set by Eskom and would thus, as per the evaluation results, not have been technically compliant to meet Eskom's requirements.
- 27. Any further information you would like to share relating to the above.



OUR REF:  
G930/Mr Naicker

YOUR REF:  
RPS08/0024/RH

22<sup>nd</sup> FEBRUARY 2021

COMMISSION OF INQUIRY INTO STATE CAPTURE

EMAIL: [ShannonV@commissionsc.org.za](mailto:ShannonV@commissionsc.org.za)  
[BoipeloR@commissionsc.org.za](mailto:BoipeloR@commissionsc.org.za)

***"VIA ELECTRONIC MAIL"***

Dear Sir / Madam

**MATTER:**            **REQUEST FOR COMMENTS BY MR PRISHOTHMAN GOVENDER**

**OUR CLIENT:**       **MR PRISHOTHMAN GOVENDER**

We confirm we act on behalf of Mr Govender and refer to your correspondence dated the 19<sup>th</sup> of February 2021.



1. Our instructions are that our client has only had sight of the aforementioned correspondence on even date, due to the fact that it had found it's way into the "spam/junk" electronic mail folder. It is only after being sent a Whatsapp text message by your Shannon Van Vuuren that he had become aware of the correspondence, and subsequently forwarded same to our offices.
2. We have been instructed further that our client is out of town and hence proves some difficulty in our offices consulting with him properly. Furthermore, the intended counsel to be appointed is inundated with a matter in the Supreme Court of Appeal for the next 2 (two) days, and in light of the aforementioned, together with your required timeline in Paragraph 5 of your correspondence, we humbly request that our client be given an extension thereto to Monday the 1<sup>st</sup> of March 2021.
3. Such extension will afford our offices together with counsel, the opportunity to advise our client as to the magnitude and degree of the questions to be submitted in an affidavit, if any.
4. We anticipate your urgent reply thereto.
5. Our client/s right's, that of the writer hereof and our firm remain strictly reserved.

Yours faithfully

THIS LETTER IS NOT SIGNED AS IT IS SENT ELECTRONICALLY

**Elogran Naicker**

**ELOGRAN NAICKER ATTORNEYS**

Monday, June 14, 2021 at 12:40:34 South Africa Standard Time



**Subject:** RE: Request for Information // Mr Prish Govender  
**Date:** Tuesday, 23 February 2021 at 17:20:34 South Africa Standard Time  
**From:** Shannon S. Van Vuuren  
**To:** Elogran Naicker  
**CC:** Boipelo B. Ratshikana, Rohan R. Hiles, Secretary  
**Attachments:** image001.jpg, image002.jpg

11 C 11

Dear Elogran Naicker

Your request for an extension is granted.

We look forward to hearing from you on 01 March 2021.

Kind regards,  
Shannon

**From:** Shannon S. Van Vuuren  
**Sent:** Monday, 22 February 2021 18:26  
**To:** 'Elogran Naicker' <law@enattorneys.co.za>  
**Cc:** Boipelo B. Ratshikana <BoipeloR@commissionsc.org.za>; Rohan R. Hiles <RohanH@commissionsc.org.za>  
**Subject:** RE: Request for Information // Mr Prish Govender

Dear Elogran Naicker

We acknowledge receipt hereof.

Your letter has been brought to the Eskom workstream's attention. We will respond as soon as possible.

Kind regards,

**Shannon Van Vuuren**  
**Legal Advisor: Operations & Investigative Support**  
**COMMISSION OF INQUIRY INTO STATE CAPTURE**  
Hillside House, 17 Empire Road, Parktown,  
Johannesburg, 2193 | Gauteng | South Africa |  
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**From:** Elogran Naicker [<mailto:law@enattorneys.co.za>]  
**Sent:** Monday, 22 February 2021 17:46  
**To:** Shannon S. Van Vuuren <[ShannonV@commissionsc.org.za](mailto:ShannonV@commissionsc.org.za)>



"D"

OUR REF:  
G930/Mr Naicker

YOUR REF:  
RPS08/0024/RH

01<sup>st</sup> MARCH 2021

COMMISSION OF INQUIRY INTO STATE CAPTURE

EMAIL: [ShannonV@commissionsc.org.za](mailto:ShannonV@commissionsc.org.za)  
[BoipeloR@commissionsc.org.za](mailto:BoipeloR@commissionsc.org.za)

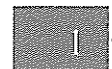
**"VIA ELECTRONIC MAIL"**

Dear Sir / Madam

**MATTER:**            **REQUEST FOR COMMENTS BY MR PRISHOTHMAN GOVENDER**

**OUR CLIENT:**       **MR PRISHOTHMAN GOVENDER**

The above matter bears reference, and more specifically your electronic mail dated the 23<sup>rd</sup> February 2021.



1. Our instructions are that our client undertakes to furnish the Commission with the affidavit, affirmed declaration or statement. However, he further requires an extension to file the aforementioned on or before the 30<sup>th</sup> April 2021, for reasons set out in greater detail hereunder.
2. The events in question have occurred some time ago and would require a proper consideration by our client, in order to provide the Commission with a useful affidavit. This would further require very lengthy consultations with our client and with Counsel, after our client has had the opportunity to collect and collate the information necessary to provide a proper response.
3. As indicated in our previous correspondence, our client is out of town on work and our further instructions are that he is due to return to the Republic of South Africa in the first week of April 2021. Our offices, together with Counsel would only then have the opportunity to consult with our client (as indicated in paragraph 2 above) after his return.
4. We trust that the above is in order and anticipate your urgent reply thereto.
5. Our client/s right's, that of the writer hereof and our firm remain strictly reserved.

Yours faithfully

THIS LETTER IS NOT SIGNED AS IT IS SENT ELECTRONICALLY

**Elogran Naicker**

**ELOGRAN NAICKER ATTORNEYS**

Monday, June 14, 2021 at 13:01:59 South Africa Standard Time

**Subject:** RE: Request for Information // Mr Prish Govender  
**Date:** Wednesday, 05 May 2021 at 12:15:46 South Africa Standard Time  
**From:** Shannon S. Van Vuuren  
**To:** Elogran Naicker  
**CC:** Andre J. Lamprecht, Boipelo B. Ratshikana, Rohan R. Hiles, Cobus C. De Wet Bester  
**Attachments:** image006.jpg, image007.jpg, image008.jpg, image009.jpg, image010.jpg, image011.jpg

"E"

Dear Elogran Naicker

We trust this email finds you well.

Prior correspondence refers. You informed the Commission that your client required the extension of time in order to provide the Commission with a useful affidavit.

We were expecting your client's affidavit around the 30<sup>th</sup> April 2021 and note that we have not yet received your client's affidavit.

Kindly advise us of the status thereof.

We look forward to hearing from you.

Kind regards,

**Shannon Van Vuuren**

**Legal Advisor: Operations & Investigative Support**

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

Hillside House, 17 Empire Road, Parktown,

Johannesburg, 2193 | Gauteng | South Africa |

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**From:** Elogran Naicker [mailto:law@enattorneys.co.za]

**Sent:** Monday, 01 March 2021 17:23

**To:** Shannon S. Van Vuuren <ShannonV@commissionsc.org.za>

**Cc:** Boipelo B. Ratshikana <BoipeloR@commissionsc.org.za>; Rohan R. Hiles <RohanH@commissionsc.org.za>; Secretary <Secretary@commissionsc.org.za>

**Subject:** Re: Request for Information // Mr Prish Govender

Dear Shannon,

Trust that this email finds you well.

Kindly acknowledge receipt of our attached correspondence.

CS P



V F "

OUR REF:

G930/Mr Naicker

YOUR REF:

RPS08/0024/RH

07<sup>TH</sup> MAY 2021

COMMISSION OF INQUIRY INTO STATE CAPTURE

EMAIL: [ShannonV@commissionsc.org.za](mailto:ShannonV@commissionsc.org.za)[BoipeloR@commissionsc.org.za](mailto:BoipeloR@commissionsc.org.za)**"VIA ELECTRONIC MAIL"**

Dear Sir/Madam

**MATTER:** **REQUEST FOR COMMENTS BY MR PRISHOTHMAN GOVENDER****OUR CLIENT:** **MR PRISHOTHMAN GOVENDER**

We draw your attention to the above matter.

1. The above matter refers and more specifically your electronic mail dated the 05 May 2021.
2. At the outset it must be established that our client has every intention of providing the Commission with the required information. Our letters dated the 01<sup>st</sup> of March 2021 and more specifically paragraph 4 thereof requested an urgent reply from yourselves, however, we did not receive any reply, and drew reasonable inference that the Commission no longer requires such information from our client. After consultation we advised our client to nevertheless collate the information

GROUND FLOOR, GATEWAY WEST, 22 MAGWA CRESCENT, WATERFALL CITY

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FAX: 006 510 6440

EMAIL: [law@enattorneys.co.za](mailto:law@enattorneys.co.za)

CELL: 082 413 4299



necessary for a reply so that we may be in a position to submit same should this be required by the Commission at a later stage.

3. It is also imperative for us to mention that while our client was in the country, he was forced to attend to a family member who was subsequently hospitalized as an emergency. This event had also taken quite a bit of time from the required consultations with our client.
4. Having said that, we shall require a final extension to the 17<sup>th</sup> of May 2021, in order to provide the Commission with our client's adequate reply.
5. We trust you find the above in order and await your urgent reply thereto.
6. Our client/s right's, that of the writer hereof and our firm remain strictly reserved.

Yours faithfully

**THIS LETTER IS NOT SIGNED AS IT IS SENT ELECTRONICALLY**

**Elogran Naicker**

**ELOGRAN NAICKER ATTORNEYS**



Monday, June 14, 2021 at 13:10:38 South Africa Standard Time

\* **Subject:** RE: Request for Information // Mr Prish Govender  
**Date:** Tuesday, 25 May 2021 at 22:56:36 South Africa Standard Time  
**From:** Shannon S. Van Vuuren  
**To:** law@enattorneys.co.za, ca1@enlaw.co.za  
**CC:** Pule Seleka, selekapg@duma.nokwe.co.za, Cobus C. De Wet Bester, Rohan R. Hiles, Andre J. Lamprecht  
**Priority:** High  
**Attachments:** image001.jpg, image002.jpg, image003.jpg, image004.jpg

Dear Mr Naicker

Please be advised that your client's comments in its present form does not constitute evidence before the Commission and cannot be placed before the Chairperson.

The Eskom workstream has requested that I write you and request that your client's comments be placed onto and filed with the Commission by way of affidavit.

Kindly file your client's affidavit with the Commission by **Friday, 28 May 2021**.

Kind regards,

**Shannon Van Vuuren**

**Legal Advisor: Operations & Investigative Support**

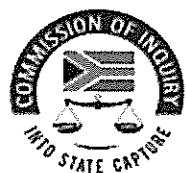
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**From:** Shannon S. Van Vuuren

**Sent:** Friday, 14 May 2021 19:37

**To:** 'law@enattorneys.co.za' <law@enattorneys.co.za>

**Cc:** Pule Seleka <PuleS@commissionsc.org.za>; selekapg@duma.nokwe.co.za; Cobus C. De Wet Bester <CobusD@commissionsc.org.za>; Rohan R. Hiles <RohanH@commissionsc.org.za>; Andre J. Lamprecht <andrel@commissionsc.org.za>; Boipelo B. Ratshikana <BoipeloR@commissionsc.org.za>; ca1@enlaw.co.za

**Subject:** RE: Request for Information // Mr Prish Govender

Dear Mr Naicker

I understand that an affidavit was expected from your client however we acknowledge receipt of your client's comments, with thanks, and will respond in due course.





"H"

OUR REF:  
G930/Mr Naicker

YOUR REF:  
RPS08/0024/RH

27<sup>TH</sup> MAY 2021

COMMISSION OF INQUIRY INTO STATE CAPTURE

EMAIL: [ShannonV@commissionsc.org.za](mailto:ShannonV@commissionsc.org.za)  
[BoipeloR@commissionsc.org.za](mailto:BoipeloR@commissionsc.org.za)  
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[RohanH@commissionsc.org.za](mailto:RohanH@commissionsc.org.za)  
[AndreL@commissionsc.org.za](mailto:AndreL@commissionsc.org.za)

**"URGENT"**

Dear Sir / Madam

**MATTER:**                    **REQUEST FOR COMMENTS BY MR PRISHOTHMAN**  
**GOVENDER**

The above matter bears reference, and more specifically your electronic mails of the 25<sup>th</sup> Instant.

1. It is imperative for us to establish at the outset, that we are concerned with regard to the manner in which this request is being handled, even after raising these concerns in our letter dated the 07<sup>th</sup> May 2021, which shall be amplified in greater detail hereunder.
2. The stage is set as, *11 days after acknowledging our client's comments, he has been requested to provide an affidavit within 3 days thereafter, under the circumstances that follow.* Our client has returned to work on or around the 28<sup>th</sup> April 2021, and being in a foreign country, is not in a position to have an affidavit countersigned and submitted by Friday, 28<sup>th</sup> May 2021. Even if this was possible, he would be forced to sign an affidavit without his legal representative advising him (as he is entitled to in law).
3. Our client was due to return to South Africa around the end of July 2021, in accordance with his schedule of leave. Notwithstanding the abovementioned, and under considerable inconvenience to our client, he is only in the position to provide an affidavit to the commission, on or before the 14<sup>th</sup> June 2021, having due regard to flight schedules, Covid 19 restrictions and leave approvals.
4. We trust that the above is in order and anticipate your urgent reply thereto.
5. Our client/s right's, that of the writer hereof and our firm remain strictly reserved.

Yours faithfully

THIS LETTER IS NOT SIGNED AS IT IS SENT ELECTRONICALLY

**Elogran Naicker**

**ELOGRAN NAICKER ATTORNEYS**



2<sup>nd</sup> floor, Hillside House  
17 Empire Road,  
Parktown  
Johannesburg  
2193  
Tel (International): +27 (10) 214-0651  
Tel (Tollfree): 0800 222 097  
Email: [inquiries@sastatecapture.org.za](mailto:inquiries@sastatecapture.org.za)  
Web: [www.sastatecapture.org.za](http://www.sastatecapture.org.za)

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

---

28 May 2021

**To: Elogran Naicker Attorneys**

Attention: Elogran Naicker

By e-mail: [ca1@enlaw.co.za](mailto:ca1@enlaw.co.za) ; 'Elogran Naicker' [law@enattorneys.co.za](mailto:law@enattorneys.co.za)

Dear Mr Naicker

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

**YOUR CLIENT: MR PRISHOTHMAN GOVENDER**

1. Prior correspondence in respect of this matter refers.
2. Paragraph 3 of the Commission's Request for Information ("RFI") issued to your client on 22 February 2021 clearly requested that your client furnish the Commission with either an affidavit or an affirmed declaration. Prior correspondence refers to an affidavit, including our email of 14 May 2021 we expressed that the Commission had expected to receive an affidavit from your client.
3. In the interim the Commission has considered the comments provided by your client and has identified dates referred to which we believe may be incorrect. The below table has reference:

Paragraph	Description	Incorrect date	Correct date
1.1.1	Start date at Eskom	January 2019	January 2001
2.10	BTC Meeting	23 October 2015	21 October 2015
4.5	BTC Submission	13 December 2013	13 December 2016
6.6	Mr Singh	April/May 2015	April/May 2016
6.7	Email from Shamal Sivasanker	15 June 2015	15 June 2016

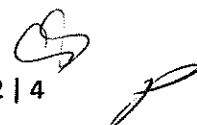
4. Further, following the issuing of the aforementioned RFI, we have identified further matters that the Commission would like your client to address in his affidavit. These further matters are set out in **Annexure 1** attached hereto.
5. Given the Commission's initial request to receive your client's affidavit by **04 March 2021** we note that the Commission has been reasonable with the various extensions granted to your client. We are certain that you appreciate that the Commissions has limited time within which to conclude its investigations.
6. This being said, considering your letter dated 27 May 2021 as well as the further matters we require your client to address in his affidavit as per our paragraphs 3 and 4 above, we are agreeable that your client provide us with his affidavit by Monday, 14 June 2021.
7. Lastly, the Eskom workstream request that you kindly resend the link to the annexures supporting your client's comments in the interim as they had not had an opportunity to save the annexures prior to the 7 days expiring.
8. We look forward to receiving your client's affidavit by no later than **Monday, 14 June 2021**.

Yours faithfully,



**PROF. ITUMELENG MOSALA**

Secretary



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

**ANNEXURE 1**

**FURTHER MATTERS TO BE ADDRESSED IN PRISHOTHMAN GOVENDER'S  
AFFIDAVIT**

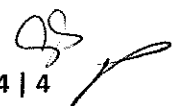
**KPMG Task Order**

1. On 05 August 2016, you signed, as compiler, a motivation to the Management Consulting Panel Control Committee ("MCPCC") requesting a mandate for the development and implementation of the new Procurement and Supply Chain Management Operating Model. This was done prior to the appointment of the Strategic Business Management and Consulting and Professional Services Panel ("SBM Panel"). We attach hereto **Annexure 2** in this regard.
2. Further, the signature of the above was on behalf of Group Finance, even though you had not yet transferred to Group Finance at that stage, which transfer was only effective on 1 September 2016. See attached **Annexure 3**.
3. Would you please provide the basis for having compiled the motivation in light of the issues dealt with above.
4. According to the Panel Control Committee ("PCC") minutes of 07 September 2016, you, as the end user, had recommended suppliers for the Finance Operation, Capital Scrubbing, and Results Management Office assignments. This would have been prior to the appointment of the SBM Panel and certainly prior to any procurement process having been followed for these assignments. We attach **Annexure 4** in that regard. Would please provide the basis for making such recommendation.
5. On 15 November 2016, you approved the PCC Evaluation Award report, to the effect that the task order, SM008, be re-advertised. By the time you approved the report, the RFP had already been re-issued on 8 November 2016. See **Annexures 5 & 6** in this regard. Please provide the basis for re-issuing the RFP prior to the submission of the evaluation report and prior to the PCC considering same.
6. On 16 January 2017, you rejected the recommendation of contained in the Evaluation Report compiled on 23 November 2016, which recommendation was to the effect that Deloitte and EY be negotiated with. See **Annexure 7** in this regard. Please provide the basis for the rejection of the recommendation and whether the reasons therefore were provided for in the Eskom Procurement Procedure.
7. According to the Evaluation Report dated 9 December 2016, PwC was recommended for appointment. This was, however, rejected by you on 16 January 2017 and instead

KPMG was appointed. See **Annexure 8** in this regard. Please provide the basis for the rejection of the recommendation and whether the reasons therefore were provided for in the Eskom Procurement Procedure.

#### SMB Panel

8. In a submission you compiled on 14 September 2016 to the EXCO Triple Adjudication, you sought to appoint Africa Wide Consulting (Pty) Ltd, on a sole source basis (**Annexure 9**). Please provide the basis for such request and whether the reasons therefore were provided for in the Eskom Procurement Procedure.
9. Explain your role, if any, in the reintroduction of risk based pricing in the contracts concluded with the SBM Panel members.
10. Following the evaluation of the SBM Panel tender, a mandate to negotiate with 13 suppliers for Panel A and 18 suppliers for Panel B was approved by EXCOPS on 24 May 2016 for a total contract value of R605 million. This was after Eskom's Audit and Assurance confirmed that the tender process followed was fair, transparent, unbiased, equitable, competitive and cost effective.
11. Notwithstanding the above, a decision was made to re-evaluate four (4) of the Panel A bidders "in light of that fact that a number of highly reputable, global companies had been disqualified for technical reasons", and to also re-evaluate all Panel B tenders.
12. This decision to re-evaluate followed a review that was conducted by Mr Dave Gorrie. According to Mr Gorrie, this review was conducted on instruction by you. Can you please provide the basis for the instruction to conduct the review which led to the re-evaluation. **Annexures 10 to 15** have been attached in this regard.
13. A modification report was compiled by Mr Gorrie to EXCOPS requesting for the increase in the panel budget from R605 million to R1, 2 billion and to establish a new panel, Panel C, which incorporated black-owned suppliers that failed to meet the technical score of 70%, but achieved between 60% and 70%. According to Mr Gorrie, he did not initiate this modification and the information relating to McKinsey included therein was provided to you. Can you please provide background to and basis for the compilation of this submission. **Annexure 16** is attached in this regard.



"EN I"

**Prishothman Govender**

---

**From:** Evie Londt  
**Sent:** Monday, 18 July 2016 11:27  
**To:** Prish Govender  
**Cc:** Evie Londt  
**Subject:** Interview: GM Group Capital: Assurance Integration & Special Projects  
**Attachments:** Invitation a.docx

Good day Prish

Please see the official interview invitation for the interview being held tomorrow.

Many thanks  
Evie

Regards,  
Evelyn Londt  
Assistant to Pat Mabena  
Human Resources – Executive Recruitment  
Lobedu House  
Sunninghill.  
Tel: +27 11 800 4270  
Mobile: +27 72 502 1017



"EN 2"



**CONFIDENTIAL**

Mr P Govender  
Unique Number : 0952231

Dear Prish

**APPOINTMENT GENERAL MANAGER CAPITAL ASSURANCE INTEGRATION AND SPECIAL PROJECTS**

This letter serves to confirm your appointment as General Manager (Capital Assurance Integration and Special Projects) at E-Band level in the Finance Division with effect from 1 September 2016.

Your total package will increase from R2 599 200,00 to R2 859 120,00 per annum. 60% of your package will be deemed to be pensionable earnings. This amount is inclusive of your annual increment for 2016.

Your benefits remain unchanged except for your present short term incentive. With reference to your performance bonus your performance bonus benefit will revert back to 25%.

You will be given the opportunity to structure your package by means of the modeling tool that is available on Eskom's Intranet. Should you need any assistance, please contact Hettie du Plooy on 011 800 3629.

I wish you every success.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anoj Singh'.

Anoj **SINGH**  
**CHIEF FINANCIAL OFFICER**

Date: 28/08/16.

**Head Office**  
Megawatt Park Maxwell Drive Sunninghill Sandton  
PO Box 1091 Johannesburg 2000 SA  
Tel +27 11 800 4647 www.eskom.co.za

Eskom Holdings SOC Ltd Reg No 2002/015527/30

A handwritten signature in black ink, appearing to be a stylized 'R' or 'P'.

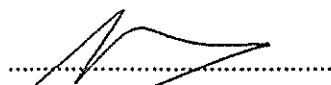


**ACCEPTANCE / REJECTION OF OFFER****GENERAL MANAGER (CAPITAL ASSURANCE INTEGRATION AND SPECIAL PROJECTS)**

NAME : Mr P Govender (0952231)


SUBJECT TO CONTINUATION OF 50%  
PERF BONUS INCENTIVE

I hereby accept / reject the offer of employment subject to Eskom's Conditions of service and will commence duty on 1 September 2016.

  
Signature5/09/2016  
DateAgreed based  
on discussion  
with AE  
and + ax. 21/09/16.

"EN 3"

C8

	MEMORANDUM	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

#### TITLE OF THE SUBMISSION

Strategy to develop the current TOP Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash

#### 1. PURPOSE

It is proposed to develop the TOP Engineers programme into a fully functioning internal consulting unit that can provide world class management consulting services capable of resolving emerging company-wide risks as well as temporarily run critical line functions as the need arises. This will require fundamental transformation of the current engineering focused Top Engineer's program through:-


- Expanding the professional background of the internal consultants from engineering to finance, economics and other relevant disciplines.
- Forming an internal leadership team by transferring senior Eskom talent into the unit and external recruiting,
- Developing a knowledge base capable of storing frameworks, best practice approaches, and benchmark data relevant to all core elements of Eskom's business
- Setting up governance within Eskom that gives the unit responsibility for all external consulting and outsourcing work.
- Adapting the current concept to enable a rapid increase of number of internal consultants to fulfil Eskom's current and future needs

#### 2. BACKGROUND

- Eskom annually spends between R2 Billion and R4 Billion for external consulting support directly and additionally outsources many tasks that in principle, a significant part should be performed by own staff complement.
- Given Eskom's current financial situation this amount needs to be reduced to an absolute minimum as soon as possible. The manner in which to achieve this target is to build up capacity and capability internally. The Internal Consulting Unit is a vehicle proposed for that purpose.




C8.1

	MEMORANDUM	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

- It will be essential that this unit has to have the management consulting as well as the professional competence to successfully deliver projects and line function work that Eskom currently seeks external support for.
- Eskom has already started to build such capacity with the TOP Engineers group. TOP Engineers are young high potentials within Eskom's organisation that combine a solid engineering background together with a one year management consulting skills training by the global leading consulting firm McKinsey.
- To date, 2 cohorts of TOP Engineers, roughly 30 individuals, have graduated from the programme and taken up consulting work within Eskom across all functions.
- With their consulting work, the TOP Engineers have generated significant impact. They have designed Eskom's future gas strategy, run various work streams of Eskom's BPP programme and rolled out Eskom's new gold standard for outages execution. Consequently, the TOP Engineers have saved Eskom approximately R 500 Million in external consulting fees.
- Further development of the Top Engineers program and its conversion into a capable Internal Consulting unit will require services of a suitable strategic partner with extensive skills and capabilities in the consulting world.


### 3. CHOICE OF STRATEGIC PARTNER

It is proposed that McKinsey & Co be chosen as a Strategic Partner for the development of the new Eskom Internal Consulting unit. McKinsey is a suitable due to the following reasons:

- McKinsey developed the original TOP Engineers Programme and has intellectual property in the design of the programme that Eskom cannot recreate in respect of:
  - Content of class room training programmes;
  - Reverse secondment approach to include Eskom employees as trainees on McKinsey's engagements within Eskom and at other clients;
  - Specific mentorship methodology to fast track development; and
  - Specific evaluation schemes to assess consulting readiness of engineers in training
- Additionally, McKinsey is the only leading global consulting firm capable of delivering this world class knowledge in South Africa, bearing in mind the following:
  - McKinsey is the largest global management consulting house;
  - McKinsey has the largest knowledge development spent in the industry;
  - McKinsey is the only global consulting company with a local presence of over 20 years, having transformed to a level 1 B-BBEE contributor



C8.2

	MEMORANDUM	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	0
		Review Date	July 2015
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- Eskom has completed the majority of its management consulting projects with McKinsey support, giving McKinsey privileged insight into the business, culture, processes, and people of Eskom. This intrinsic insight cannot be offered by any other consultancy.

#### 4. MOTIVATION FOR TYPE OF CONTRACTING

The development of the internal consulting unit is envisioned to be a 2-3 year journey. During this period the strategic partner will lead the internal consulting unit to deliver consulting projects focusing on accelerating efficiencies that can unlock immediate cash for Eskom as well as embedding long term efficiencies.

The strategic partner will make all of these projects accessible as training environment for Eskom's new internal consulting unit. The Strategic Partner will be paid for their consulting services as well as the development of the internal consulting unit out of the impact they generate during these projects and thus be self-funding. Total fee volume will depend on the benefits generated for Eskom.

Eskom's would be required approve work packages that will be earmarked for savings and the strategic partner will be required to define savings and capability-building targets/objectives early in each work package.

Impact would be measured separately to ensure transparency and close monitoring so that management can decide how to continue. The strategic partner would be contracted on a performance basis, where Eskom pays professional fees only if savings are achieved.

It is proposed that to kick-start the process, the BPP value package on optimization of Eskom's external spend currently with the commercial department and work underway on securitization of the EFC (Eskom Finance Company) for made available as first work packages into the project.

Other projects will be added as they are identified and as the program matures but will also be on the same fee structure.


#### 5. FINANCIAL IMPLICATION

The strategic partner will be contracted in a manner that is self-funding and directly linked to their impact. This means that the professional fees in the project will be paid out of the cash in-flows generated by the project work, e.g., procurement savings.

It is anticipated that the positive financial impact of the work of the strategic partner will exceed their professional fees significantly. This means that the net financial impact of the above proposed development of the internal consulting unit will be positive.




C8.3

	MEMORUNDUM	Unique Identifier	221-222
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It is Eskom's intention to negotiate zero payment from new cash. This will mean that the strategic partner will only be paid once savings are realised in a manner that will first make-up required project set-up costs prior to kick-in of benefits sharing as per the table below. *(Indicative Pricing)*

	Impact (ZAR bn)		Fees at risk	Success share	Fee (ZAR bn)	
	Min	Max			Min	Max
Module procurement (18 - 24 months)						
Base component			0%		0,050	0,050
Consulting and initiation fee			0%		0,060	0,100
Expenses						
Success based component			100%	10,00%	0,320	0,640
Success on capex and opex spent (~R 40 bn spent) @8-1	3,2	6,4				
Module claim and counter claim management (24 months)						
Base component			0%		0,150	0,150
Consulting and initiation fee			0%		0,060	0,100
Expenses						
Success based component			100%	5,00%	0,040	0,080
Success on capex and opex spent (~R 10 bn claims) @8-1	0,8	1,6				
Module balance sheet optimisation						
Base component			0%		0,025	0,025
Consulting and initiation fee			0%		0,008	0,008
Expenses						
Success based component			100%	2,00%	0,050	0,050
Sale of non-core property - agents commission	2,5	2,5	100%	1,20%	0,056	0,079
EPC Mortgage portfolio securitization	4,7	6,6	100%	2,00%	0,080	0,084
Sales of municipalities receivables	4	4,7	100%	2,00%	0,180	0,200
Forward sales of accounts receivable	9	10	100%	2,00%	0,180	0,180
Coal Monetisation*	9	9	100%	2,00%		
Module "Additional financing"						
Base component			0%		0,025	0,025
Consulting and initiation fee			0%		0,008	0,008
Expenses						
Success based component			100%	1,20%	0,120	0,120
Hybrid Instruments	10	10	100%	1,20%	0,036	0,036
Discounting NERSA refund	8	8				
Total	51,2	58,8			1,508	2,005
Thereoff fixed fees					0,886	0,466
Thereoff risk based fees					26%	23%
					1,122	1,539
					74%	77%

\* On coal monetization there will additional fees born by the subsequent SPV of 100 bps


## 6. HUMAN RESOURCE IMPLICATIONS

In order to make this programme successful Eskom needs to be willing to commit its young high potentials as well as key senior management resources to the development of the new Internal Consulting Unit. In certain instances, internal resources will not be sufficient to fill all necessary positions and external recruiting of people with specific skills and experience will be necessary.

## 7. RECOMMENDATION

It is recommended that the strategy for the development of Eskom's Internal Consulting Unit be approved and that the Acting Group Executive: Technology &

C8.4

	MEMORANDUM	Unique Identifier	221-222
		Document Type	OCSDE
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

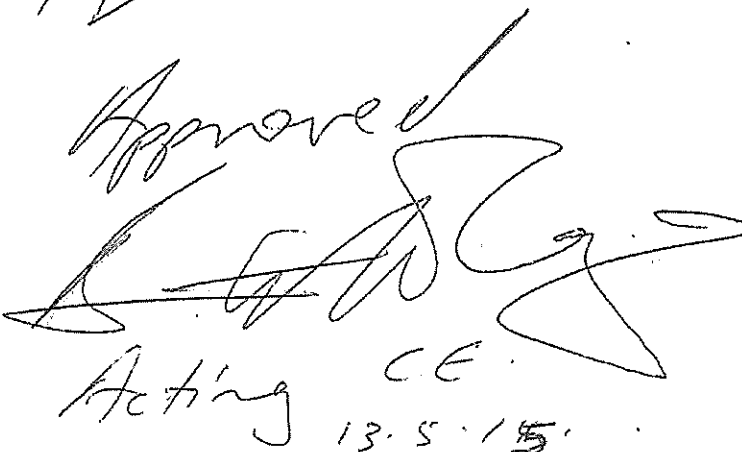
Commercial be authorised to put measures in place within Eskom's governance and commercial processes to secure services of McKinsey as a sole partner for the purpose of implementing the recommendation on the following parameters:

- 7.1 McKinsey be contracted in a manner that is self-funding and the project duration be limited to a maximum of 3 years;
- 7.2 The BPP value package on optimisation of Eskom's external spend, currently located within Group Commercial be used, as base project to generation savings that will fund project set-up costs;
- 7.3 The development of packages relating to the unlocking of cash by optimising the balance sheet, the unlocking of funding sources through additional financing opportunities and claim management at Medupi, Kusile and Ingula, is hereby approved. These projects to be included at Eskom's sole discretion on a case by case basis depending on value to Eskom.
- 7.4 Other projects be added as they are identified and as the programme matures; and
- 7.5 That a Negotiating Team that will also serve as a Steering Committee for the development of Eskom Internal Consulting Unit be authorised under the Chairmanship of the Acting Group Executive: Technology and Commercial

Prepared By:

  
 EDWIN MABELANE  
 GROUP EXECUTIVE: TECHNOLOGY AND COMMERCIAL (Acting)


2015/05/13

  
 Approved  
 Acting CE  
 13.5.15





C8.5

	MEMORUNDUM	Unique Identifier	221-222
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		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

Recommended / Not Recommended

EDWIN MABELANE  
GROUP EXECUTIVE: TECHNOLOGY AND COMMERCIAL (Acting)

Approved / Not Approved


BRIAN MOLEFE  
Acting CHIEF EXECUTIVE

Date





# "EN4"

	ROUND ROBIN RESOLUTION	Unique Identifier	221-249
		Document Type	OCSLTE
		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary Department	


BTC Members:	Date	06 July 2015
Mr Z Khoza	Enquiries:	Edwin Mabelane
Ms C Mabude	Contact Person	Matabane Monama
Ms N Carrim	Telephone number	(011) 800 2999
Ms D Naidoo		

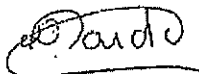
TITLE OF SUBMISSION	Mandate to negotiate with McKinsey & Co to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash.
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RESOLUTION REQUIRED	
Approval of a mandate to negotiate with McKinsey & Co to develop the current Top Engineers programme into an Internal Consulting Unit	
IT IS RESOLVED THAT:	<p>RESOLVED THAT:</p> <ol style="list-style-type: none"> <li>The Mandate to negotiate with McKinsey &amp; Co to develop the current Top Engineers programme into a consulting unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash is hereby approved subject to the following; <ol style="list-style-type: none"> <li>The contract value will be R0.00 as this initiative is self-funding and the project duration be limited to a maximum of 3 years. Consulting fees, expenses and performance incentives will be paid out of realized savings to a maximum of 12% per project. The contract will include an exit clause after first 12 months from start of contract if no benefits are realized.</li> <li>The BPP value package on optimisation of Eskom's total external spend, currently located within Group Commercial be used as a base project to generate savings for the whole of Eskom that will fund project set-up costs;</li> <li>The development of packages relating to the unlocking of cash by optimising the balance sheet, the unlocking of funding sources through additional financing opportunities and claim management at Medupi, Kusile and Ingula, be approved. These projects, together with any other project as may be identified in the future, may be included in the program at Eskom's sole discretion on a case by case basis depending on value to Eskom.</li> <li>That a Negotiating Team that will also serve as a Steering Committee for the development of Eskom Top Engineers consulting unit be authorised under the Chairmanship of the Acting Group Executive: Technology and Commercial to develop, negotiate and implement above strategy subject to Eskom Delegation of Authority.</li> </ol> </li> </ol>






	ROUND ROBIN RESOLUTION	Unique Identifier	221-249
		Document Type	OCSDTE
		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary Department	

COMMITTEE MEMBER	APPROVED (Signature)	NOT APPROVED (Signature)	DATE
Mr Z Khoza			
Ms C Mabude			
Ms N Carrim			
Ms D Naidoo			6/7/2015



*H Carrim*

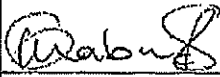
	ROUND ROBIN RESOLUTION	Unique Identifier	221-249
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COMMITTEE MEMBER	APPROVED (Signature)	NOT APPROVED (Signature)	DATE
Mr Z Khoza			
Ms C Mabude			
Ms N Carrim	<i>N Carrim</i>		3/7/15
Ms D Naidoo			


*[Signature]*

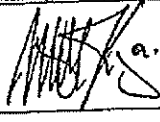
C Mabude

	ROUND ROBIN RESOLUTION	Unique Identifier	221-249
		Document Type	OCSDTE
		Revision	0
		Revision Date	July 2016
		Office of the Company Secretary Department	

COMMITTEE MEMBER	APPROVED (Signature)	NOT APPROVED (Signature)	DATE
Mr Z Khoza			
Ms C Mabude			06/07/15
Ms N Carrim			
Ms D Naidoo			




	ROUND ROBIN RESOLUTION	Unique Identifier	221-249
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		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary Department	

COMMITTEE MEMBER	APPROVED (Signature)	NOT APPROVED (Signature)	DATE
Mr Z Khoza			01/07/2015.
Ms C Mabude			
Ms N Carrim			
Ms D Naidoo			



"EN 5"

	<b>ESKOM HOLDINGS SOC LTD</b> Reg No 2002/015527/30	Unique Identifier	221-209
		Document Type	OCSDTE
		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary	

**EXTRACT OF APPROVED MINUTES OF THE BOARD TENDER COMMITTEE MEETING (05/2015-16) HELD ON 21 OCTOBER 2015 IN THE HUVU NKULU BOARDROOM AT 08:30**

**11.16 GROUP TECHNOLOGY AND COMMERCIAL**

Feedback on negotiated outcome with McKinsey & Co to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks by unlocking cash, without prior tendering

**Reference Document 11.16**

**Resolved that:**

- 1 The following is approved for recommendation to the Board Tender Committee (BTC):
  - 1.1 To accept the feedback of the negotiations with McKinsey and Co to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks, without prior tendering, for a period of 3 (three) years, with an option to terminate after a 12 (twelve) month period if no savings are realized.
  - 1.2 To ratify minor differences between negotiated outcomes and approved mandate parameters as contained in sub-clause 1.3.3 and 1.3.6
  - 1.3 To note the following negotiated conditions
    - 1.3.1 That the negotiated results for the Top Engineers Programme, Procurement (including inventory), Generations, Primary Energy and Claims Management value packages and the Supplier Development and Localisation (SD&L) proposal as contained in Appendix 4, 5, 6, 7, 8 and 9 be accepted,
    - 1.3.2 That the contract will be based on the R0.00 and self-funding


**CERTIFIED AS A TRUE EXTRACT**



S Daniels (Ms)  
**GROUP COMPANY SECRETARY**  
Date: 8/11/2016



"EN 6"

	ACCEPTANCE LETTER	Unique Identifier	240-54568433
		Revision	1
		Revision Date	October 2015
		Group technology & Commercial Division	

Alexander Weiss

Mc Kinsey and Co

Date: 17 December 2015

Enquiries:  
Tel +27 11 800 5358  
Dave Gorrie

NOTIFICATION OF ACCEPTANCE FOR THE PROVISION OF CONSULTING SERVICES

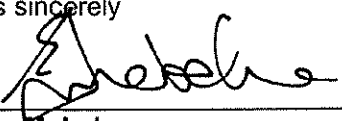
**Basis of Acceptance**  
We accept your proposal for the provision of Consulting Services concerning the Top Engineers Program on the terms and conditions generally agreed in the draft contract recently negotiated between McKinsey and Eskom.

It is a condition of the acceptance that the Eskom considered opinion of the National Treasury Instruction will hold throughout the life of the contract. In an unlikely eventuality that the said opinion is conclusively altered the parties hereby agree to review the contract payment basis to reflect the revised opinion.

**Documentation**  
The contract documents will be available for your signature and acceptance in due course.

**Confirmation**  
We confirm that a contract will exist between Eskom and Mc Kinsey and Company on the above basis. Please indicate your acknowledgement thereof by signing below and deliver to the undersigned.

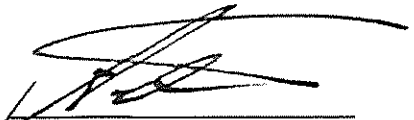
Yours sincerely

  
Edwin Mabelane  
Chief Procurement Officer (Acting)

2015/12/17  
Date:

**Acknowledgement**  
We acknowledge receipt of your Notification of Acceptance dated ..... confirming that a contract will exist between Eskom and McKinsey and Company from 17 December 2015 or soon thereafter.

Signature for and on behalf of the Supplier:

  
Name: Alexander Weiss  
Designation: Director

2015/12/17  
Date:



"EN 7"

---

**Prishothman Govender**

---

**From:** Solly Tshitangano <Solly.Tshitangano@treasury.gov.za>  
**Sent:** Thursday, 04 February 2016 15:23  
**To:** Dave Gorrie  
**Cc:** Charles Kalima; Vukani Ndaba; Sindile Mxunyelwa  
**Subject:** RE: Practice Note Number SCM 3 of 2003

Dear Dave

Practice note 3 of 2003 is still applicable until replaced with new instructions after the promulgation of the new Treasury Regulations. The retainer/contingency fee principles are not clearly outlined in the practice note, if you intend applying them, you need to do some further work to ensure that you do not compromise the principles of section 217 of the Constitution and other legislation.

Regards  
Solly

---

**From:** Dave Gorrie [mailto:GorrieDJ@eskom.co.za]  
**Sent:** Thursday, February 04, 2016 3:07 PM  
**To:** Solly Tshitangano  
**Cc:** Charles Kalima  
**Subject:** Practice Note Number SCM 3 of 2003

Good Afternoon Solly

Thank you for your hospitality this morning. We look forward to further productive engagements in the future. As we discussed, please confirm for us that Practice Note number SCM 3 of 2003 entitled Appointment of Consultants is currently valid and effective for public entities such as Eskom. We understand that this Practice Note, and others, will be incorporated into a new set of regulations once the review process has been completed.

Best Regards

Dave Gorrie  
Senior Manager Commercial  
Eskom Group Commercial  
Tel. 011-8005358  
Cell 083-6452319

I'm part of the 49Million initiative...  
<http://www.49Million.co.za>

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"EN 8"

**Prishothman Govender**

---

**From:** Prish Govender  
**Sent:** Friday, 12 February 2016 15:42  
**To:** Edwin Mabelane  
**Subject:** Final Mckinsey Contract Docs  
**Attachments:** [09.12.15v2] McKinsey\_Eskom\_Topps\_Performance Based\_SLA\_NO ANNEXURES.docx; 2010208 - Appendix 6 - Procurement proposal VF.docx; 20160208 - Appendix 4 - SD&L VF.docx; 20160208 - Appendix 7 - Generation proposal VF.docx; 20160208 - Appendix 8 - PED memo VF .docx; Eskom Cash Unlocking and Balance Sheet Optimisation Initiative\_08\_feb\_2016.docx

Please see attached as requested. I don't have the final claims stream doc, as soon as I receive it I will forward.


Regards

**Prish Govender**  
Programme Director  
Group Capital  
Office: +27 11 800 3835  
Mobile: +27 82 469 0467





"EN 9"

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		Document Type	OCSDTE
		Revision	0
		Review Date	Dec 2015
		Office of the Company Secretary Department	

EXECUTIVE SUMMARY

SUBMISSION TO:

BOARD TENDER COMMITTEE (BTC)

DATE: 09 June 2016

1. TITLE OF THE SUBMISSION

Briefing on McKinsey risk based contract

2. RESOLUTION REQUIRED

It is resolved that, the BTC grant:


- 2.1 Approval to cancel McKinsey risk based process
- 2.2 Allow all costs to be negotiated and finalised, to be approved by the relevant tender committee
- 2.3 Approval for activities to be re-directed to existing contracts where appropriate, with the incorporation of similar SDL objectives and the option of contracting on a risk based approach

3. SUMMARY OF FACTS

3.1 SALIENT FACTS


- In December 2015, a mandate was approved by Board Tender Committee to conclude a risk based contract with McKinsey & Co.
- A letter of acceptance was issued to McKinsey in December 2015 allowing work to commence until the contract was fully developed and finalised for signature. The contract was signed in January 2016
- Eskom submitted a letter to McKinsey on 19 February 2016, following a programme kick off steercom wherein key concerns on the program mechanics were raised. The issues can be summarised as follows:
  - The alignment of the programme as a vehicle to deliver Eskom's Design to Cost Strategy and 10 year Corporate Plan.
  - How lessons learnt from other organizational turn around programmes such as Back-to-Basics and the Business Productivity Programme have been incorporated into the Top Consultants Programme.



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- The development and implementation of a Change Management Process to ensure sustainability of the Programme.
- The development of the BBBEE partner as regards the vision, aspirations, skills and competency mix and overall plan for success over the contract duration including a focus on the health of the relationship with McKinsey.
- The development of the Eskom's Top Consultants regarding the intended aspirations, road map and key success measures with a clear goal to minimize the future use of Consultants in the organization.
- The inclusion into the Programme of other key focus areas such as Contracts Management and Fraud and Corruption.
- On 25 February 2016, McKinsey responded to Eskom's letter. It is Eskom's view that the letter did not fully address the concerns raised.
- Bearing in mind that the McKinsey risk based process was conducted via a sole source, albeit permissible within the approved procurement procedures, such contracts attract a higher level of scrutiny
- One such contract with McKinsey, that was awarded during the course of last year for the rapid finalisation of the Corporate Plan and Key Inputs for the National Treasury equity injection, has been the source of an audit finding to which the necessary management response were provided
- Furthermore, National Treasury has requested key information regarding contracts with McKinsey
- The above bullets create a significant need for management intervention to formulate all of the responses and detracts from the delivery of key business objectives
- With this in mind, it may be prudent to terminate the contract finalisation process for the McKinsey risk based contract
- It is management's view that McKinsey will have to be compensated for work carried out to date. Such costs will need to be negotiated and finalised with McKinsey
- It is recommended the approval for the costs be presented to the appropriate tender committee for approval of payment
- Activities to be re-directed to other existing contracts where appropriate, with the incorporation of similar SDL objectives and the option of contracting on a risk based approach



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### 3.2 KEY ASSUMPTIONS

Not applicable

### 3.3 FINANCIAL IMPLICATIONS

- Costs incurred to date on the McKinsey risk based activities will have to be reimbursed. This will be negotiated with McKinsey and presented to the relevant tender committee for approval
- Costs associated with the development of the Top Consultants Program will have to be budgeted for within the operating cost base of Eskom

### 3.4 HUMAN RESOURCE IMPLICATIONS

Possible slowdown in the roll out of the Top Consultants Program


### 3.5 KEY RISKS

RISK	MITIGATING FACTORS	LEVEL (HIGH/MED/LOW)
Slowdown in the roll out of Top Consultants Program	Ring fencing of budgets through savings and other value creation activities in advance to ensure that the program is not delayed	Medium
Meeting objectives relating to the turnaround strategy of Eskom ie. Cost savings, productivity improvement and other	Alternative contracting mechanisms to be explored and concluded to ensure the continuation of these activities.	Medium
McKinsey insists on cost recovery based on risk based methodology ie a percentage of the value created	Prudent negotiations with McKinsey to minimise financial implications to Eskom	Medium

### 3.6 VERIFICATION BY INDEPENDENT PARTY (if applicable)

Not applicable.



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4. OTHER APPROVALS REQUIRED

Not applicable

SUPPORTED BY  
PRISH GOVENDER  
PROGRAMME DIRECTOR

SIGNATURE  
Who hereby represents that the above  
Information is correct.


DATE

APPROVED BY:  
EDWIN MABELANE  
CHIEF PROCUREMENT OFFICER

SIGNATURE  
Who hereby represents that the above  
Information is correct.

DATE



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**CHECKLIST :****1. INTERNAL PROCESS****1.1 BUSINESS PLAN**

Has the project/issue been included in the business plan?  
(If no, information/explanation to be highlighted in documentation/ presentation/attachment.)

**1.2 BUDGET**

If financial approval is required, is the project/matter within the approved budget?  
(If no, information/explanation to be highlighted in documentation/ presentation/attachment.)

**1.3 HUMAN RESOURCE IMPLICATIONS**

Does the project have any HR implications?  
(If yes, information/explanation to be highlighted in documentation/presentation/attachment.)

**1.4 FINANCIAL EVALUATION**

- Has the project/issue undergone a financial evaluation? (Eskom Group Finance)
- Has the evaluation been verified?
- By whom (internally or independent)?

**1.5 LEGAL/CONTRACTUAL ISSUES**

- Are there legal implications?
- Has Corporate legal department input been obtained?
- If so, is the approval sought consistent with the legal input?

**1.6 TAX IMPLICATIONS**


- Are there tax implications?
- Has corporate tax department input been obtained?
- If so, is the approval sought consistent with the tax input?

**1.7 CAPITAL PROJECTS**

If the project is of a capital nature the checklist 2 (attached) for the evaluation of capital projects should be completed as well.

N/A	Yes	No
	X	
	X	
	X	
X		
X		
X		



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1.8	<b>TECHNICAL EVALUATION</b> <ul style="list-style-type: none"><li>- Has the project/issue undergone a technical evaluation? (Eskom Group Customer Services)</li><li>- Has the evaluation been verified?</li><li>- By whom (internally or independent)?</li></ul>	N/A	Yes	No
		X		
1.9	<b>BLACK ECONOMIC EMPOWERMENT IMPLICATIONS</b> Does the project have any BEE implications?		X	
1.10	<b>EMPLOYMENT EQUITY</b> Was due consideration given to employment equity in terms of the following: <ul style="list-style-type: none"><li>- Project team</li><li>- Drafting of submission documentation</li><li>- Individual(s) presenting to BOARD</li></ul>		X	
2.	<b>ADDITIONAL APPROVALS</b>			
2.1	<b>NERSA</b> <ul style="list-style-type: none"><li>- Is NERSA approval/consultation required?</li><li>- If approval or consultation is required, provide details and also highlight the time lines, deadlines, etc.</li></ul>	X		
2.2	<b>PUBLIC FINANCE MANAGEMENT ACT (PFMA)</b> <ul style="list-style-type: none"><li>- Is any PFMA approval required?</li></ul>	X		
2.3	<b>ARE THERE ANY OTHER APPROVALS REQUIRED? IN PARTICULAR</b> <ul style="list-style-type: none"><li>- Reserve Bank</li><li>- Competition Commission</li><li>- National Treasury</li></ul>	X		

APPROVED BY:  
EDWIN MABELANE  
CHIEF PROCUREMENT OFFICER

SIGNATURE  
Who hereby represents that the above Information is correct.

DATE

"EN 10"



Dr. Alexander Weiss  
Director  
McKinsey & Company  
3<sup>rd</sup> Floor Sandown Mews East  
SANDOWN  
2196

20 June 2016

Dear Dr. Weiss

**TOP CONSULTING GROUP MSA REMIBURSEMENT OF COSTS**

Further to the letter dated 16 June 2016 based on the Board decision to cancel the above contract we would like to inform you that Eskom will reimburse McKinsey & Company for costs up until the 08 August 2016.

We hope the above meets with your expectations

Yours sincerely

  
Edwin Mabelane  
**CHIEF PROCUREMENT OFFICER**  
Date: 20 June 2016

**Head office**  
Megawatt Park Maxwell Drive Sunninghill Sandton  
PO Box 1091 Johannesburg 2000 SA  
Tel +27 11 800 4647 [www.eskom.co.za](http://www.eskom.co.za)  
Eskom Holdings SOC Ltd Reg No 2002/015527/30



"EN II"

McKinsey&Company

21 June 2016

Mr Edwin Mabelane  
Chief Procurement Officer  
Eskom Head Office  
Megawatt Park  
Maxwell Drive  
Johannesburg 2000 SA

#### **TOP CONSULTING GROUP MSA REIMBURSEMENT OF COSTS**

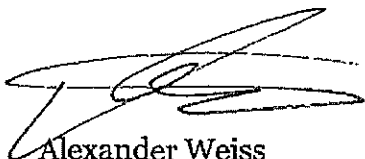
Dear Mr. Mabelane,

Many thanks for the letter dated 20 June 2016. We unfortunately notice that the board has decided to cancel the above Master Service Agreement (MSA) and that the board has further decided to reimburse McKinsey&Company for the cost until up the 08 August 2016.

Given the details of the MSA we cannot accept to be reimbursed on cost only – especially considering the risks that McKinsey took in the context of the MSA. The MSA points out that in the case of a termination McKinsey will be reimbursed the agreed share of the measures implemented and the agreed fraction of the share for those measures which have passed implementation stage IL2.

May we kindly request that Eskom reviews the terms of the MSA and reimburse McKinsey&Company in light with these contractual agreements?

Yours sincerely



Alexander Weiss  
Senior Partner





"EN 12"



Dr. Alexander Weiss  
Director  
McKinsey & Company  
3<sup>rd</sup> Floor Sandown Mews East  
SANDOWN  
2196

24 June 2016  
Edwin Mabelane  
011 800 8697

Dear Dr. Weiss

**TOP CONSULTING GROUP MSA REIMBURSEMENT OF COSTS**

In response to your letter dated 21 June 2016 Eskom has reconsidered your request and is still of the view that a cost based settlement is a prudent mechanism to conclude the Risk Based MSA with McKinsey & Company.

Your understanding on this issue is highly appreciated

Yours sincerely

A handwritten signature in black ink, appearing to read 'Edwin Mabelane'.

Edwin Mabelane  
**CHIEF PROCUREMENT OFFICER**  
Date: 24 June 2016

A small handwritten mark or signature in the bottom right corner of the page.

"EN 13"  
McKinsey&Company

28 June 2016

Mr Edwin Mabelane  
Chief Procurement Officer  
Eskom Head Office  
Megawatt Park  
Maxwell Drive  
Johannesburg 2000 SA

#### TOP CONSULTING GROUP MSA REIMBURSEMENT OF COSTS

Dear Mr. Mabelane,

Many thanks for the letter dated 24 June 2016. We are very surprised that Eskom is of the opinion that a cost based settlement is a prudent mechanism to conclude the Risk Based MSA with McKinsey. We have put 100% of our consulting fees at risk and have since 6 months not received a single payment to cover for the risk taken. We have virtually an army of consultants working across the business at significant cost. This effort has yielded significant results for Eskom- we have fully delivered and generated impact far exceeding ZAR 25 bn to date.

You will recognize that we dedicated a team for a period of 6 months, starting on 06-12.2015, to negotiate the Master Services Agreement that we finally concluded in January 2016. This agreement clearly outlines how McKinsey will be reimbursed including in the case of termination.

- §24.14 clearly states, that "... Termination of this Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination. The provisions of this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination, notwithstanding that the clauses themselves do not expressly provide for this."
- §13.1 states that "Unless pursuant to a Force Majeure Event, the employer may not terminate this Agreement or any obligations under any Work Package Schedule within a period of twelve (12) months from the Effective Date." This

GP

## McKinsey&Company

should be a subject of discussion between the two parties as opposed a unilateral decision by Eskom.

- §7.3 clearly states how McKinsey should be remunerated for the impact generated.
  - §7.3.1 "... in respect of any Recurring Realised Impact Amounts, ten point five five percent (10.55%) of the relevant Delta ..."
  - §7.3.2 "... in respect of any Once Off Realised Impact Amount, ten point eight percent (10,8%) of the relevant Delta ..."
- §7.3.3 to §7.3.5 outline clearly that Eskom is liable for impact payments in case Eskom decides not to implement ideas although they have passed IL2:
  - §7.3.3 "... in respect of Work Package Initiatives that have progressed to Implementation Level 2 (but which have not progressed through any other Implementation Levels due to the employer not pursuing or implementing such Work Package Initiatives strictly in accordance with the applicable Work Package Schedule), fifty five percent (55%) of the relevant Delta ..."
  - §7.3.4 "... in respect of Work Package Initiatives that have progressed to Implementation Level 3 (but which have not progressed through any other Implementation Levels due to the employer not pursuing or implementing such Work Package Initiatives strictly in accordance with the applicable Work Package Schedule), seventy percent (70%) of the relevant Delta ..."
  - §7.3.5 "... in respect of Work Package Initiatives that have progressed to Implementation Level 4 (but which have not progressed through any other Implementation Levels due to the employer not pursuing or implementing such Work Package Initiatives strictly in accordance with the applicable Work Package Schedule), ninety percent (90%) of the relevant Delta ..."
- §7.6 states that Eskom is furthermore liable to remunerate McKinsey in parallel for the expenses that it incurred in the following way: "The contractor shall invoice the employer for any expenses incurred on a monthly basis subject to any guidelines published by the South African National Treasury. The parties agree that such expenses shall be payable by the employer to the contractor separate from any amounts which may be payable by the employer to the contractor under any other provision of this Agreement."

Considering all of the above McKinsey feels entitled to be reimbursed as per the contractual arrangements. McKinsey would expect Eskom to review its contractual obligations and to honor the legal arrangements of the MSA between Eskom and McKinsey. We are sure that on this basis Eskom and McKinsey find a prudent arrangement on how to terminate the agreement and compensate McKinsey for the

## McKinsey&amp;Company

impact it has generated. Based on the Master Services Agreement, McKinsey has earned and is eligible for significant reimbursement – impact payments – based on the over R25bn in value created for Eskom. Considering the situation McKinsey willing to discuss the settlement in the form of a payment plan.

As part of this we would also recommend discussing the prudent termination time for each workstream to ensure benefits realization for Eskom is maximized. This may result in a 'transition period' for some of the workstreams.

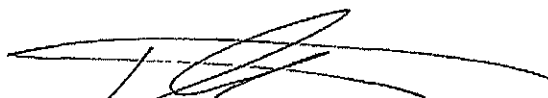
□ □ □

McKinsey has been in a partnership with Eskom for many years. We continue to approach our relationship with you in this spirit of partnership and wish to resolve this matter in a mutually beneficial manner.

Yours sincerely




Vikas Sagar  
Senior Partner



Alexander Weiss  
Senior Partner

" EN 14 "

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		Document Type	OCSDTE
		Revision	0
		Review Date	Dec 2015
		Office of the Company Secretary Department	

### EXECUTIVE SUMMARY

#### SUBMISSION TO:

BOARD TENDER COMMITTEE (BTC)

DATE: 08 August 2016

#### 1. TITLE OF THE SUBMISSION

Feedback on Mckinsey &amp; Co. Top Consultants Programme MSA Settlement Process

#### 2. RESOLUTION REQUIRED


The BTC notes the following:

- 2.1 To date the initiatives under the Top Consultants Programme MSA have achieved more than R18.6 billion of annualised impact for Eskom.
- 2.2 Applying the Termination and Settlement clauses within the MSA, Eskom may need to pay up to R2.84 billion (inclusive of payment to the BBBEE partner) for the value achieved to date

The BTC approves the following:

- 2.3 An already negotiated lower settlement value of R1.8 billion (inclusive of payment to the BBBEE partner)
- 2.4 The R1.8bn settlement negotiated will consist of an initial cash payment of R800m to cover the utilisation of the consultant's resources to date.
- 2.5 The current consultants have made an offer to reinvest the risk premium (R1bn) from the settlement to cater for the following:
  - 2.5.1 A transition period of six months whilst Eskom transfers outstanding work beyond 6 months and any other new initiatives to another contracting mechanism. During this period Eskom would reimburse the consultant on a rates basis. It is proposed that the new contracting mechanism should cater for a risk based approach on the same T&Cs negotiated with the current consultants as far as possible. Where not possible a standard rates based approach would be adopted.
  - 2.5.2 Any future work based on new saving initiatives or any other activities that Eskom may require from a management consultancy and financial advisory perspective that the consultant has been awarded through the appropriate procurement process.
- 2.6 If total risk premium is not paid to the consultant through 2.5 above, the balance will be redeemable by the consultant after a three year period.
- 2.7 The Group Chief Executive, Group Chief Financial Officer and Group Executive Generation and Technology are authorised to negotiate more favourable terms and conditions to the settlement process.




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### 3. BACKGROUND

- 3.1 The Master Service Agreement (MSA) provides the backbone of the Top Consultant Programme and describes the intention of the programme, the governance, the scope and the process to add scope, the payment logic and the risk-based remuneration scheme as well as the legal terms and the respective escalation mechanisms
- 3.2 The MSA was given effect by the Letter of Acceptance that Eskom issued in December 2015 and by Steering Committees that have taken place in the last seven months
- 3.3 The termination clauses of the MSA require that the current consultants are compensated for ideas that have reached Payment Trigger and be partly compensated for ideas that have been developed and approved to certain Implementation Levels ("IL Levels")
- 3.4 The Top Consultant Programme was introduced to turnaround Eskom when faced with a precarious financial and operational constraints in late 2015 when there were prospects of a net loss financial position and a severely constrained generation grid for winter 2016
- 3.5 Under the umbrella of the (MSA), The Top Consultant Programme was set-up to deliver key Corporate Plan priorities and develop critical skills in Eskom, including:
  - 3.5.1 Increasing the energy availability factor at the power station fleet, with Majuba serving as the first pilot station
  - 3.5.2 Reducing unnecessary external in spend in procurement
  - 3.5.3 Reducing coal cost to or below MYPD3 targets
  - 3.5.4 Limiting Medupi and Kusile claims to the figures outlined in the P50 business case
  - 3.5.5 Training and further developing more Top Consultants, with the target of 150 top consultants trained by 2020
  - 3.5.6 Requiring the consultant to achieve up to 50% SD&L contract share with black woman owned and BBEEE companies
- 3.6 The conditions of the Top Consultant Programme, under the charter of the MSA, were favourable for Eskom and should be maintained going forward, these terms included:
  - 3.6.1 The consultant only being paid based on impact achieved, with a share of 10.8% on once-off impacts and share 10.55% on recurring impacts paid over 3 years
  - 3.6.2 The consultant deploying an audited and IT Security approved impact tracking tool for corporate plan initiative tracking
  - 3.6.3 The consultant providing additional non billable initiatives such as the Project Management Office to aid in the administering of the programme, the 3 year Top Consultant Programme (worth R1.3billion), the coal strategy, the support on key strategic initiatives
  - 3.6.4 The consultant guaranteeing an SD&L share between 25% and 95% per work package resulting in an average of ~50% across the programme
  - 3.6.5 The consultant providing favorable termination conditions for Eskom, with ideas in the pipeline to be compensated at a discount




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- 3.7 The Top Consultant Programme has delivered considerable impact for Eskom already, including:
- 3.7.1 In Generation, the first six months of the Majuba turnaround programme ("Sakhasonke") have reduced 12-month moving average UCLF by 4.97pp and the support of the Unit 6 GO has help limit work to a single outage and avoid a further 4.5pp of PCLF in 2017/18 for Unit 6
  - 3.7.2 In Procurement, average savings of 15% have been attained, a Spend Control Tower has been implemented and the Top Buyer training programme have been launched
  - 3.7.3 In Primary Energy, fixed price coal contracts price have reduced by 2.5 - 15% and stockpile height and geography of stockpiles expansion have been addressed to mitigate the impact of the Medupi claim which can have a R3.2billion EBITDA impact for Eskom
  - 3.7.4 In Claims, historical claims for boilers and turbines have been addressed limiting claims potential down by R5.1billion and the boiler delivery model and turbine claim avoidance strategies have been developed which will limit future claims by more than R3.7billion
- 3.8 The programme has created change momentum across Eskom with a number of sustainability actions taking place, examples:
- 3.8.1 Over 300 commercial colleagues have attended the launch of the cost saving programme
  - 3.8.2 More than 50 TOP consultants have been working on high impact and top priority topics
  - 3.8.3 The Top Buyer programs provides technical and management training both in classroom style and with practical application on the job for the first cohort of 40 Eskom employees
  - 3.8.4 More the 70 Eskom employees have been trained in using Wave to capture and track business improvement ideas, improving their business acumen and project management skill

#### 4. PROGRESS TO DATE

- 4.1 Initiatives under the MSA have achieved more than R18.6 billion of annualised impact for Eskom (R34,9 billion over a five year basis) – this impact is a combination of capex and opex savings and improvements in revenue potential through increased EAF of the Majuba Power Station
- 4.2 The Programme has also identified a further R29 billion of initiatives (Pre-IL statues and beyond) that can be delivered over the next three years, covering key aspects of the Corporate Plan like external spend, coal procurement, employer claims at new build sites and improved EAF at Majuba
- 4.3 The Board Tender Committee on 22 June 2016 approved the decision to wind down the existing Top Consulting Programme Master Services Agreement (MSA) with the current consultants, based on an inability to reach agreement on the final T&Cs of the contract

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## 5. SETTLEMENT PROCEDURE

- 5.1 Applying the Termination and Settlement clauses within the MSA Eskom may need to pay up to R2.84 billion for the value achieved to date
- 5.2 The settlement values indicated include respective share for SD&L partners
- 5.3 The breakdown per work package is described below:
  - 5.3.1 Generation R1.036 billion
  - 5.3.2 Claims R804 million
  - 5.3.3 Procurement R489 million
  - 5.3.4 Primary Energy R407 million
  - 5.3.5 Finance R107 million
- 5.4 Eskom has already negotiated a lower settlement value of R1.8 billion
- 5.5 The R1.8bn settlement negotiated will consist of an initial cash payment of R800m to cover the utilisation of their resources to date.
- 5.6 The current consultants have made an offer to reinvest the risk premium (R1bn) from the settlement to cater for the following:
  - 5.6.1 A transition period of six months whilst Eskom transfers outstanding work beyond 6 months and any other new initiatives to another contracting mechanism. During this period Eskom would reimburse the consultant on a rates basis. It is proposed that the new contracting mechanism should cater for a risk based approach on the same T&Cs negotiated with the current consultants as far as possible. Where not possible a standard rates based approach would be adopted.
  - 5.6.2 Any future work based on new saving initiatives or any other activities that Eskom may require from a management consultancy and financial advisory perspective that the consultant has been awarded through the appropriate procurement process.
- 5.7 If total risk premium is not paid to the consultant through 5.6 above, the balance will be redeemable by the consultant after a three year period.

## 6. IMPLEMENTATION CONSIDERATIONS

- 6.1 The 17.5pp (R3.8 billion in annual revenue potential) forecast EAF increase for Majuba power station (9.9pp already realised) may lose momentum and thereby limit Eskom's strategic capacity optimisation options across the fleet
- 6.2 The engagement and improved performance from more than 580 Eskom employees and hundreds more contractors at Majuba who have been touched by the Sakhasonke programme could be lost and make reviving a new a program very cumbersome
- 6.3 The work in Claims requires specialized skills and hands-on commercial experience of the Eskom new build programmes and in-depth knowledge of the contractors, replacing these scarce skills may very time consuming and reduce the capex savings potential for FY17-21
- 6.4 Within Primary Energy, terms have been agreed with suppliers, a delayed transfer would destabilize the process of finalizing contracts potentially losing



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Eskom the 5%-15% savings that have been negotiated on a number of coal contracts


- 6.5 Within Cost-Plus mines, memorandums of understanding have been concluded with the mining houses, a delayed transfer of these initiatives would cause Eskom to lose the trust and credibility of the mining operators, and create the perception we are unable to implement our plans
- 6.6 A significant amount of work has been done to deliver Procurement savings that will only materialise later in the financial year, a delayed transfer decreases the capacity of the Procurement employees to capture all of these savings
- 6.7 Further uncertainty and discontinuity in the training and development of the 31 new Top Consultants and the 23 more experienced Top Consultants in the Top Consultant Programme may cause many of them to lose motivation and leave the programme or Eskom

## 7. FUTURE PIPELINE OF INITIATIVES

- 7.1 There is currently R29 billion of initiatives in the pipeline (Pre-IL statues and beyond) that can be delivered over the next three years, covering key aspects of the Corporate Plan including external spend savings, coal procurement optimisation, delivery of new build sites at or below P80 and improved EAF of plant
- 7.2 Given the importance of achieving DTC1, the value of the initiatives currently in the pipeline cannot be foregone during this process of transforming the MSA
- 7.3 To ensure that initiatives in the pipeline are not compromised, it is prudent to allow the current consultants maintain and prepare the current initiatives for transition until the 31st December 2016
- 7.4 This transition period will allow Eskom time to negotiate terms with any new consultants on the Management Consultant Panel, while ensuring the timing and impact of ideas in the pipeline are not compromised

## 8. FINANCIAL IMPLICATIONS

- 8.1 The termination clauses of the MSA will require Eskom to compensate the current consultants for the value of impact achieved as well as a percentage for the value of ideas generated depending on the IL status of each idea at the date of termination
- 8.2 Under the termination and settlement clauses of MSA Eskom may be liable to pay the current consultants up to R2.8 billion for termination of contract
- 8.3 Eskom has already agreed a negotiation position with the current consultants of R1.8bn.
- 8.4 The settlement of R1.8bn will be treated as per sections 5.5 and 5.6 above.

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## 9. HUMAN RESOURCE IMPLICATIONS

- 9.1 The launch of Design to Cost 1 (Project Mario) will cascade across the 43,000 people in the Eskom organization, the TCP is key part of this narrative
- 9.2 There are 54 Top Consultants currently in the programme, 31 new joiners that require 1 year of training and 22 that are growing in to senior consultant and manager roles who need training and coaching
- 9.3 The 580 Majuba Eskom employees that have been engaged in the Sakhasonke turnaround program that is reviving trainings and station wide communications
- 9.4 The 12-month Top Buyer capability building programme in Procurement has onboarded the first cohort of 40 Eskom employees

## 10. RISKS

RISK	MITIGATING FACTORS/ Actions	LEVEL (HIGH/MEDIUM/LOW)
Loss of value or delay in impact timing caused by transition to new vehicle	<ul style="list-style-type: none"> <li>Ideas in the pipeline moved into new contractual vehicle to limit lost value</li> <li>Conclude transfer to new contracting vehicle within an expedited timeframe</li> <li>Allow for a transition period of 6 months with the current consultants</li> </ul>	High
Terms of new contracting vehicle less favourable than current MSA in place	<ul style="list-style-type: none"> <li>Apply the same service conditions as in the MSA to the new RFP(e.g. 100% at risk, up to 50% SD&amp;L share, free work), including: <ul style="list-style-type: none"> <li>Maintain the ROI and speed of delivery of current programme, so as not to prejudice the timing or value of impact for Eskom</li> <li>Deliver Major sustainability actions at no additional cost to Eskom, i.e.: Top Consultant Programme, Top Buyer in Procurement</li> <li>Continue developing further ideas to capture full value available</li> </ul> </li> </ul>	Medium



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Risk to 54 Top Consultants currently in the Top Consultant Programme	<ul style="list-style-type: none"> <li>Additional value drivers not to be compromised</li> <li>To be included as negotiating parameters for the new contracting mechanism</li> </ul>	High
Risk to 40 people from Procurement that have been onboarded to the 12-month Top Buyer capability building programme	<ul style="list-style-type: none"> <li>Additional value drivers not to be compromised</li> <li>To be included as negotiating parameters for the new contracting mechanism</li> </ul>	High
Risk to foregoing to R29 billion in future impact	<ul style="list-style-type: none"> <li>Ideas in the pipeline moved into new contractual vehicle to limit lost value</li> </ul>	High
Place strain on relationships and activities with external stakeholders such as: <ul style="list-style-type: none"> <li>- Volume and operations improvements at cost plus mines</li> <li>- Finalizing prices and contracts with key suppliers in procurement</li> <li>- Optimizing commercial and delivery models – Major contractors at Kusile and Medupi</li> </ul>	<ul style="list-style-type: none"> <li>Conclude transfer to new contracting vehicle within an expedited timeframe</li> <li>Allow for a transition period of 6 months with the current consultants</li> </ul>	High


#### 11. VERIFICATION BY INDEPENDENT PARTY (if applicable)

Not applicable

#### 12. OTHER APPROVALS REQUIRED

None



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SIGNATURE:

PRISH GOVENDER  
GROUP CAPITAL INTEGRATION AND ASSURANCE



SIGNATURE  
Who hereby represents that the above  
Information is correct.

05/08/2016.  
DATE

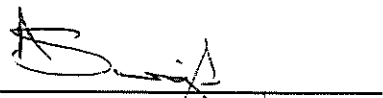
EDWIN MABELANE  
CHIEF PROCUREMENT OFFICER



SIGNATURE  
Who hereby represents that the above  
Information is correct.

2016/08/05  
DATE


ANOJ SINGH  
GROUP CHIEF FINANCIAL OFFICER



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CHECKLIST 1

1. INTERNAL PROCESS

1.1 BUSINESS PLAN

Has the project/issue been included in the business plan?  
(If no, information/explanation to be highlighted in documentation/ presentation/attachment.)

1.2 BUDGET

If financial approval is required, is the project/matter within the approved budget?  
(If no, information/explanation to be highlighted in documentation/ presentation/attachment.)

1.3 HUMAN RESOURCE IMPLICATIONS

Does the project have any HR implications?  
(If yes, information/explanation to be highlighted in documentation/presentation/attachment.)

1.4 FINANCIAL EVALUATION

- Has the project/issue undergone a financial evaluation? (If yes, by whom)
- Has the evaluation been verified?  
All initiatives making up the total settlement value has been reviewed and verified by the stream leads and minutes have been captured in the respective steercoms


1.5 LEGAL/CONTRACTUAL ISSUES

- Are there legal implications?
- Has Corporate legal department input been obtained?
- If so, is the approval sought consistent with the legal input?

1.6 TAX IMPLICATIONS

- Are there tax implications?
- Has corporate tax department input been obtained?
- If so, is the approval sought consistent with the tax input?
- 

N/A	Yes	No
	X	
	X	
	X	
X		
X		

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**1.7 CAPITAL PROJECTS**

If the project is of a capital nature the checklist 2 (attached) for the evaluation of capital projects should be completed as well.

X		

**1.8 TECHNICAL EVALUATION**

- Has the project/issue undergone a technical evaluation? (If yes, by whom)
- Has the evaluation been verified?
- By whom (internally or independent)?

N/A	Yes	No
X		

**1.9 BLACK ECONOMIC EMPOWERMENT IMPLICATIONS**

Does the project have any BEE implications?

	X	
--	---	--

**1.10 EMPLOYMENT EQUITY**

Was due consideration given to employment equity in terms of the following:

- Project team
- Drafting of submission documentation
- Individual(s) presenting to EXCO
- 

	X	

**2. ADDITIONAL APPROVALS****2.1 NERSA**

- Is NERSA approval/consultation required?
- If approval or consultation is required, provide details and also highlight the time lines, deadlines, etc.

X		

**2.2 PUBLIC FINANCE MANAGEMENT ACT (PFMA)**

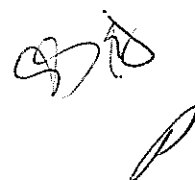
- Is any PFMA approval required?


X		
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**2.3 ARE THERE ANY OTHER APPROVALS REQUIRED? IN PARTICULAR**

- Reserve Bank
- Competition Commission
- National Treasury

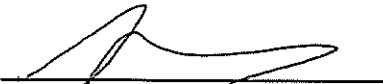
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SIGNATURE:

PRISH GOVENDER  
GROUP CAPITAL INTEGRATION AND ASSURANCE



SIGNATURE  
Who hereby represents that the above  
Information is correct.

05/08/2016  
DATE

EDWIN MABELANE  
CHIEF PROCUREMENT OFFICER



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ANOJ SINGH  
GROUP CHIEF FINANCIAL OFFICER




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EXECUTIVE SUMMARY

**SUBMISSION TO THE BOARD TENDER COMMITTEE (BTC) ON 13 DECEMBER 2016**

**1. TITLE OF THE SUBMISSION**

Update on McKinsey & Company Top Consultants Programme Master Service Agreement (MSA) Settlement Process

**2. RESOLUTION REQUIRED**

The Board Tender Committee approves the following:


- 2.1 A mandate to negotiate and conclude the remaining portion of the settlement up to **R849 million**, based on the total value of R1.8 billion communicated to the Board Tender Committee (BTC) in August 2016, noting the Legal, Internal Audit and External Benefits review of the contract. Once the negotiation is complete, the necessary feedback will be provided to the Board Tender Committee.
- 2.2 A payment of **R134 million** to finalise payments up to August 2016 to the BBEE partner that was due as per the work split agreed with McKinsey & Company
- 2.3 That the Acting Group Chief Executive, the Chief Financial Officer and the Chief Procurement Officer are authorised to negotiate and conclude the settlement process with McKinsey & Company.

**3. BACKGROUND**

- 3.1 The Master Service Agreement (MSA) provides the backbone of the Top Consultant Programme and describes the intention of the programme, the governance, the scope and the process to add scope, the payment logic and the risk-based remuneration scheme as well as the legal terms and the respective escalation mechanisms
- 3.2 The termination clauses of the MSA require that the current consultants are compensated for ideas that have reached Payment Trigger and be partly compensated for ideas that have been developed and approved to certain Implementation Levels ("IL Levels")
- 3.3 Under the umbrella of the (MSA), The Top Consultant Programme was set-up to deliver key Corporate Plan priorities and develop critical skills in Eskom, including:
  - 1. Increasing the energy availability factor at the power station fleet, with Majuba serving as the first pilot station
  - 2. Reducing unnecessary external in spend in procurement






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3. Reducing coal cost to or below MYPD3 targets
  4. Limiting Medupi and Kusile claims to the figures outlined in the P50 business case
  5. Training and further developing more Top Consultants, with the target of 150 top consultants trained by 2020
  6. Requiring the consultant to achieve up to 50% SD&L contract share with black woman owned and BBEEE companies
- 3.4 McKinsey & Co. has claimed that up to August 2016, the initiatives under the Top Consultants Programme MSA have achieved more than R18.6 billion of annualised impact for Eskom.
- 3.5 Applying the Termination and Settlement clauses within the MSA, Eskom may need to pay up to R2.84 billion (inclusive of payment to the BBEE partner), for the value achieved.
- 3.6 An initial lower negotiated lower settlement value of R1.8 billion was presented to Board Tender Committee in August 2016.
- 3.7 In line with the approval granted by (BTC) in August 2016, an initial payment of R800 million (inclusive of payment to the BBEE partner) was made to the consultant for work done up to August 2016.
- 3.8 In August 2016, the BTC also approved that the Group Chief Executive, Group Chief Financial Officer and Group Executive Generation and Technology are authorised to negotiate more favourable terms and conditions to the settlement process.

#### 4. PROGRESS TO DATE

- 4.1 The initial payment of R803.5 million (inclusive of payment to the BBEE partner) has been made.
- 4.2 Letter of demand from McKinsey & Co. and the BBEE partner has been received claiming outstanding payments up to the R1.8 billion
- 4.3 Management has put into place three review initiatives to assist with compliance and assurance on the overall process including any further payments that could be necessary.
- 4.4 An internal audit was conducted on the MSA procurement process. There were no major findings in the report.
- 4.5 Oliver Wyman was appointed to conduct a detailed assessment of the claimed value and payments due upon the cancellation of the MSA. A preliminary report is attached as appendix A and a final report is due on 15 December 2016. This assessment will be used as guidance for further negotiation of a final settlement value. Key points from the report can be summarised as follows:
  1. Of the R2,84 billion payment Eskom might have needed to pay under the termination and settlement clauses of the MSA:
    - R1.05 billion is accounted for by payments that are required under the MSA for early cancellation of




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- consulting initiatives, despite these payments not having been approved by the steering committee
- R1.79 billion is accounted for by payments for consulting initiatives that were approved by the steering committee (R1.68 billion) payments for the financial advisory work (R107 million)
- 2. Of the R1,79 billion:
  - R803.5 million has already been paid to the Consultant supplier and the BBBEE partner
- 3. Based on the invoice from the Consultant supplier and the split of revenues they have set out, a further payment of R134 million is due to the BBBEE partner for their contribution to the consulting work packages
- 4. The payment of the remaining R849 million could be further negotiated with the Consultant:
  - There appear to be clear-cut reasons to challenge R380 million of the payments
  - The other R469 million seems justified for payment, but there are reasons to argue that a portion of it should be delayed rather than paid immediately
- 5. These findings will be refined over the next week. The final report from the review will include a summary of lessons learned on the design of the contract for this type of work, to allow future contracts to be tailored to specific project needs.
- 4.6 Finally a legal review on the process was done by Cliff Dekker Hofmeyr. The key conclusions are summarised in section 8.

## 5. FINANCIAL IMPLICATIONS

- 5.1 Under the termination and settlement clauses of MSA Eskom may be liable to pay the current consultants up to R2.84 billion for termination of contract
- 5.2 Eskom has already agreed a negotiation position with the Consultants of R1.8bn.
- 5.3 R 803.5 million has already been paid to McKinsey & Co. inclusive of the BBBEE partner portion
- 5.4 A payment of R134 million in addition to the R803.5 million paid, is due to the BBBEE partner, in accordance to the pre-agreed work split with McKinsey & Co., to settle the initial payment process. The payment has been verified and supported by Oliver Wyman in the attached report.
- 5.5 A final negotiated value will be communicated to Board and could be between 0 and R849 million depending on the external benefits review and legal review.

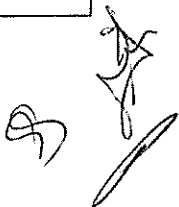



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6. HUMAN RESOURCE IMPLICATIONS  
None

7. RISKS

RISK	MITIGATING FACTORS/ ACTIONS	LEVEL (HIGH/MEDIUM/LOW)
Loss of value or delay in impact timing caused by transition to new vehicle	<ul style="list-style-type: none"><li>Ideas in the pipeline moved into new contractual vehicle to limit lost value</li><li>Conclude transfer to new contracting vehicle within an expedited timeframe</li></ul>	High
Terms of new contracting vehicle less favourable than current MSA in place	<ul style="list-style-type: none"><li>Apply the same service conditions as in the MSA to the new RFP (e.g. 100% at risk, up to 50% SD&amp;L share, free work), including:<ul style="list-style-type: none"><li>Maintain the ROI and speed of delivery of programme. So as not to prejudice the timing or value of impact to Eskom</li><li>Deliver major sustainability actions at no additional cost to Eskom i.e. Top Consultant Programme, Top Buyer in Procurement</li><li>Continue developing further ideas to capture full value available</li></ul></li></ul>	Medium
Risk to 54 Top Consultants	<ul style="list-style-type: none"><li>Additional value drivers</li></ul>	High

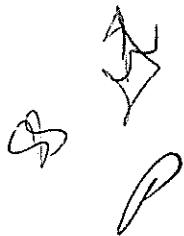



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RISK	MITIGATING FACTORS/ ACTIONS	LEVEL (HIGH/MEDIUM/LOW)
currently in the Top Consultant Programme	<ul style="list-style-type: none"><li>not to be compromised</li><li>To be included as negotiating parameters for the new contracting mechanism</li></ul>	
Risk to 40 people from Procurement that have been on-boarded to the 12 month Top Buyer capability building programme	<ul style="list-style-type: none"><li>Additional value drivers not to be compromised</li><li>To be included as negotiating parameters for the new contracting mechanism</li></ul>	High
Risk to foregoing R29 billion in future impact	<ul style="list-style-type: none"><li>Ideas in the pipeline moved into new contractual vehicle to limit lost value</li></ul>	High
Place strain on relationships and activities with external stakeholders such as: <ul style="list-style-type: none"><li>Volume and operations improvements at cost plus mines</li><li>Finalising prices and contracts with key suppliers in procurement</li><li>Optimising commercial and delivery models – major contractors at Kusile and Medupi</li></ul>	<ul style="list-style-type: none"><li>Conclude transfer to new contracting vehicle within an expected timeframe</li><li>Allow for transition period of 6 months with the current consultants</li></ul>	High

8. EXTERNAL LEGAL REVIEW

Cliffe Dekker Hofmeyer was retained to conduct the review and the conclusion is that Eskom needs to enter into a Termination Agreement with the parties to bring the matter to finality. This will absolve Eskom from any further liability once the Termination Agreement is in place.



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9. OTHER APPROVALS REQUIRED


None.

10. Appendices

- Appendix A – Detail Assessment Preliminary Report (Oliver Wyman)


Approved By:

EDWIN MABELANE  
CHIEF PROCUREMENT OFFICER


  
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SIGNATURE  
Who hereby represents that the above  
Information is correct.

2016/12/13.  
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DATE

Submission Compiled by: Prish Govender  
Contact Number: 0824690467  
Date: 09 December 2016

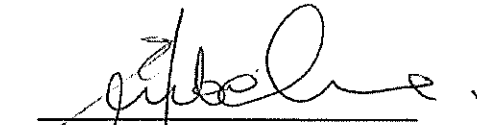
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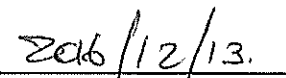
	N/A	Yes	No
1. INTERNAL PROCESS			
1.1 BUSINESS PLAN Has the project/issue been included in the business plan? (If no, information/explanation to be highlighted in documentation/ presentation/attachment.)		X	
1.2 BUDGET If financial approval is required, is the project/matter within the approved budget? (If no, information/explanation to be highlighted in documentation/ presentation/attachment.)		X	
1.3 HUMAN RESOURCE IMPLICATIONS Does the project have any HR implications? (If yes, information/explanation to be highlighted in documentation/presentation/attachment.)	X		
1.4 FINANCIAL EVALUATION <ul style="list-style-type: none"><li>- Has the project/issue undergone a financial evaluation? (Eskom Group Finance)</li><li>- An external review has been performed by Oliver Wyman</li></ul>		X	
1.5 LEGAL/CONTRACTUAL ISSUES <ul style="list-style-type: none"><li>- Are there legal implications?</li><li>- Both Corporate Legal and External Legal comments have been obtained</li></ul>		X	
1.6 TAX IMPLICATIONS <ul style="list-style-type: none"><li>- Are there tax implications?</li><li>- Has corporate tax department input been obtained?</li><li>- If so, is the approval sought consistent with the tax input?</li></ul>	X		
1.7 CAPITAL PROJECTS If the project is of a capital nature the checklist 2 (attached) for the evaluation of capital projects should be completed as well.	X		

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1.8	TECHNICAL EVALUATION	N/A	Yes	No
	- Has the project/issue undergone a technical evaluation? (Eskom Group Commercial)	X		
	- Has the evaluation been verified?			
	- By whom (internally or independent)?			
1.9	BLACK ECONOMIC EMPOWERMENT IMPLICATIONS			
	Does the project have any BEE implications?		X	
1.10	EMPLOYMENT EQUITY			
	Was due consideration given to employment equity in terms of the following:			
	- Project team		X	
	- Drafting of submission documentation			
	- Individual(s) presenting to BOARD			
2.	ADDITIONAL APPROVALS			
2.1	NERSA			
	- Is NERSA approval/consultation required?	X		
	- If approval or consultation is required, provide details and also highlight the time lines, deadlines, etc.			
2.2	PUBLIC FINANCE MANAGEMENT ACT (PFMA)			
	- Is any PFMA approval required?	X		
2.3	ARE THERE ANY OTHER APPROVALS REQUIRED? IN PARTICULAR:			
	- Reserve Bank	X		
	- Competition Commission			
	- National Treasury			

EDWIN MABELANE  
CHIEF PROCUREMENT OFFICER

  
SIGNATURE  
Who hereby represents that the above  
Information is correct.

  
DATE



**Draft**

## PRELIMINARY REPORT

TO:	Prish Govender
DATE:	09 December 2016
SUBJECT:	Preliminary recommendations - Review of Supplier Agreement between Eskom and McKinsey / BBBEE Partner

### Executive Summary

Eskom engaged Oliver Wyman and Marsh to review the performance of the Top Consultants Programme in terms of the payments associated with the specific variable fee contract (the MSA) that the Eskom Board halted on 15<sup>th</sup> July 2016. The external review started on the 23rd of November and will conclude on the 15th of December 2016.

The scope of this work is only to review the variable payments to the supplier. The original contracting process, the cancellation process and the work/fee splits between the consulting supplier and its BBBEE partner are not part of the scope. Two separate pieces of work are also being conducted including an internal audit review of the contract and a legal review of the MSA and split of fees between the consultant and BBBEE partner.

Work is ongoing, but the key preliminary findings of the review are:

- Of the R2,839MM payment Eskom might have needed to pay under the termination and settlement clauses of the MSA:
  - R1,786.5MM is based on R1,679.3MM of consulting initiatives that were approved by the Steering Committee and R107.2MM from the financial advisory work
  - R1,052.5MM is based on payment triggers that were never approved by the Steering Committee but are accounted for based on the cancellation terms of the MSA
- Of the R1,786.5MM:
  - R803.5MM has already been paid to the consultant supplier and the BBBEE partner
  - Based on the invoice from the consultant supplier and the split of revenues they have set out, a further payment of R134MM is due to the BBBEE partner for their contribution to the consulting work packages
  - The payment of the remaining R849MM could be further negotiated with the consultant supplier
    - There appear to be clear-cut reasons to challenge R380MM of the payments
    - The remaining R469MM appears justified for payment, but there are reasons to argue that a portion of the payment should be delayed rather than paid immediately

These findings will be refined over the next week.

The final report from the review will include a summary of lessons learned on the design of the contract for this type of work, to allow future contracts to be tailored to specific project needs.



## 1. Context of the work

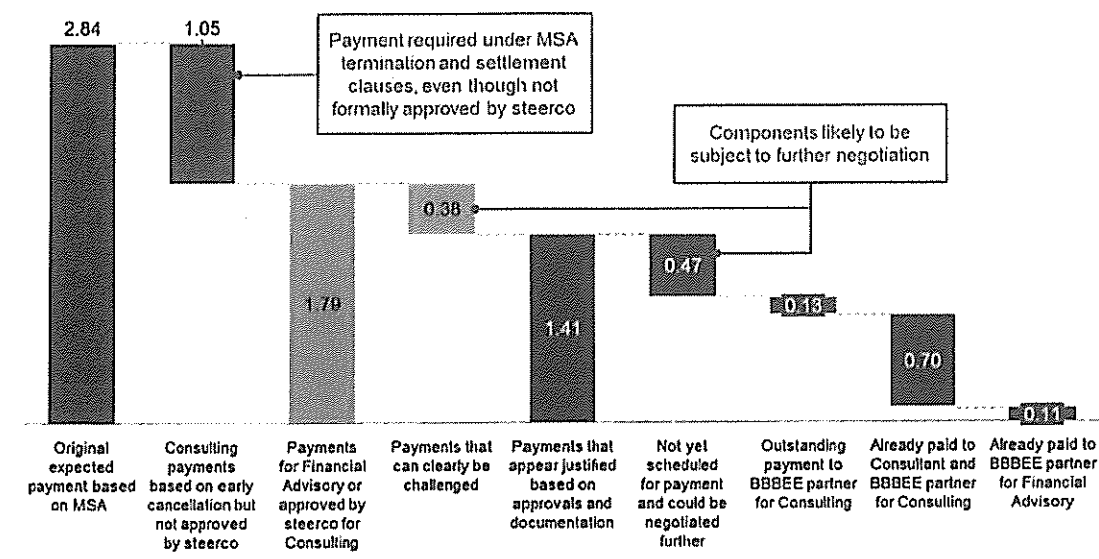
- Eskom engaged Oliver Wyman and Marsh to review the performance of the Top Consultants Programme in terms of the payments associated with the specific variable fee contract (the MSA) that the Eskom Board halted on 15th July 2016. Of particular interest is the link between the performance of McKinsey & Company and its BBBEE partner and the remuneration received.
- The objective of the assignment is to produce an independent peer review with regards to the reasonableness of the conditions, performance measurement and remuneration.
- The scope of the work is only to review the variable payments to the supplier. The original contracting process, the cancellation process and the work/fee splits between the consulting supplier and its BBBEE partner are not part of the scope. Two separate pieces of work are also being conducted including an internal audit review of the contract and a legal review of the MSA and split of fees between the consultant and BBBEE partner.
- The engagement will be conducted in 4 steps, as detailed below. The Project started on the 23<sup>rd</sup> of November and will be concluded on the 15<sup>th</sup> of December 2016.

## 2. Approach taken

- Step 1 (Week 1-2): Conduct a diagnosis of contractual arrangements
  - Assemble and review critical documentation on the terms of contract, deliverables, performance measurement, governance and earn-out of performance related payments and their conditions.
  - Develop an issue list and review preliminary conclusions with key personnel
- Step 2 (Week 2): Engage with Eskom senior leadership team
  - Clarify ambiguities coming from document review through focused interviews to obtain additional qualitative insights and diagnostic information.
- Step 3 (Week 2-3): Benchmark against industry practice
  - Conduct a high level benchmarking exercise on industry practices of contract structure for similar engagements and performance based payments.
  - Identify challenges or issues from a contracting perspective
- Step 4 (Week 4): Conclusion synthesis and report production
  - Synthesize the output of Steps 1, 2 & 3 to categorize and prioritize the issue-list incorporating legal review and expert insights.
  - Develop final report and present to key personnel.

### 3. Summary of findings to date

#### Reconciliation of total incentive payment (R BN)



- Our preliminary calculation indicates Eskom may have been required to pay R2.84BN under the termination and settlement clauses of the MSA. Of this amount:
  - R1.05BN of payment triggers has not been approved by the steering committee: our preliminary calculation indicates this is the payment that would be due for consulting initiatives based on the cancellation terms of the MSA but we believe it is justified to challenge this from a technical perspective
  - R1.79BN has been approved by the steering committee:
    - Financial advisory: the invoiced amount, supported by an hours and rates calculation from the BBBEE partner, is for R0.11BN
    - Consulting: from a review of the minutes and materials to the MSA project steering committees, we find R1.68BN of payments were approved
- Of the R1.79BN amount:
  - R0.70BN has already been paid to the consultant supplier and the BBBEE partner for consulting
  - R0.11BN has already been paid to the BBBEE partner for financial advisory
  - Based on the invoice from the consultant supplier and the split of revenues they have set out, an outstanding payment of R0.13BN is due to the BBBEE partner for their contribution to the consulting work packages
  - The outstanding at risk payment of R0.85BN could be further negotiated with the consultant supplier:
    - There appears to be clear-cut reasons to challenge R0.38BN of the payments

GP

- The remaining R0.47BN appears justified for payment, but there are reasons to argue that a portion of the payment should be delayed rather than paid immediately
- Our initial analysis therefore indicates, of the outstanding R0.85BN at risk payment, no more than R0.47BN should be paid to the supplier. Of the R0.47BN, we believe there are areas to investigate further which could lead to more negotiation on the final amount payable, including the stage at which payment is made.

In the next section, we provide further detail on the payments we believe can clearly be challenged, and on those that seem justified. We also provide more detail on the calculation of the outstanding R0.13BN payment to the BBBEE partner. Finally we raise some areas of concern from our review of the MSA contract relating to the risks that a contract in this form could create for Eskom.

#### 4. Supporting details to findings

##### A: R0.38BN of payments that can be challenged

We considered several sources to assess what payments are due for each initiative, including:

- Minutes and materials from the project steering committee meetings
- Initiative progress tracking from the Wave tool
- Invoices and supporting documentation from the suppliers

The steering committee has the authority to approve the triggering of payments, but investigation of these sources shows that there are several initiatives where the approved payment amount appears not to be correct, and where there seems to be a case to revise down the payment amount.

In the table below we set out the details of why we would challenge the payments approved for several initiatives, and the amounts by which it seems appropriate to revise down the payment. This amounts to a reduction of R380MM to the total payment due.



Key initiatives where there is a case to revise down the payment approved by the steering committee

Initiatives affected	Issue	Suggested revision (R MM)
6: Majuba U6 outage optimisation	<ul style="list-style-type: none"><li>Steering committee approved payment subject to internal confirmation of treating impacts as recurring</li><li>However, it was later decided the impact should be once-off, so subject to a lower total incentive payment</li></ul>	-205.7
1: Kusile turbine claims	<ul style="list-style-type: none"><li>Steering committee signed off payment trigger 1 (37.5% of total incentive payment).</li><li>However, the amount noted in the minutes for this approval is equal to 100% of the total incentive payment: this seems mistaken</li></ul>	-152.6
608: Medupi U4 Boiler delivery model	<ul style="list-style-type: none"><li>Approved impact was R194.5MM; total approved incentive payment was R35MM, 17.8% of the impact</li><li>For a once-off impact, this incentive rate is higher than allowed in the contract: it seems it should be 10.8%</li></ul>	-13.5
568: Boiler services short term contract negotiation 34: Boiler tube (new material number)	<ul style="list-style-type: none"><li>Both these initiatives are marked as cancelled in Wave because of limited involvement of the consultants</li></ul>	-8.0
Total:		-380

**B: R1.41BN of payments that seem justified**

Of the total payments that seem justified, the financial advisory work and the top 10 consulting initiatives account for 80% of the value, as summarised in the table below.

Work package	ID	Initiative name	Payment that seems justified (R MM)
Financial advisory			107
Generation	85	Improve EAF: Majuba Powerstation Turnaround (Impact Tracker)	345
Project delivery and claims management	2	Historic boiler claims - Medupi	108
Generation	6	Optimize Majuba U6 GO	106
Project delivery and claims management	610	Boiler New Delivery Model: Medupi U3 to U1	93
Project delivery and claims management	1	Kusile Historic turbine claims recovery and future claims avoidance	92
Project delivery and claims management	3	Historic boiler claims - Kusile	65
Project delivery and claims management	1128	Boiler new delivery model: Kusile unit 2 - 6 initiative agreement	61
Project delivery and claims management	16	Boiler employer claims - Kusile	60
Procurement	66	Cancel unnecessary PR/POs and reroute where possible (Spend Control Tower - Inventory) – Tracking 12 May '16 - 31 May '16	51
Project delivery and claims management	4	Boiler employer claims - Medupi	41
Other consulting initiatives			279
Total			1,407

We have investigated these consulting initiatives through a series of interviews with the leads of the work packages, and where relevant through follow-up discussions with the owners of individual work streams, in order to understand the activities undertaken, the role the consultants played, the source of benefit from the initiative and how far the work had progressed by July.

Although there are no clear-cut reasons to challenge these payments, in some cases there are issues that could be raised to question whether they represent fair value for the work, and in some cases there are reasons to argue that a portion of the payment should be delayed rather than paid immediately. Consequently, the portion of the payment not already paid or outstanding might be negotiated further.

We will investigate these issues further in the remainder of our project. Examples of some of the relevant issues for particular initiatives are outlined below.

Examples of content issues relevant for negotiations

Issue	Example initiatives affected	Total approved payment for these initiatives, after revisions from previous slide (R MM)
<b>Baselining:</b> Is the baseline reasonable, or chosen to make a large impact easier?	6, 65: Generation – Maibaga EAF improvements	451
<b>Delayed impact:</b> Will benefits not be realised financially for several years?	2,3,4,16: Claims and project delivery – boiler claims	274
<b>Spend stops:</b> Are these really savings? Might the spend be simply postponed or replaced elsewhere?	63: Procurement – reduce demand in line with stock on hand	19
<b>Unclear origination of ideas:</b> Can the original idea be attributed to the consultant or is it from Eskom?	577: Procurement – concentric cables – place off-contract spend onto contract	2

C: R0.13BN outstanding payment due to BBBEE partner

In August 2016, McKinsey and the BBBEE partner issued invoices to Eskom for R597MM and R99MM for their respective shares of the consulting work.

The invoice from the BBBEE partner was intended to be supplemented by a further payment once the appropriate share of consulting payments due to them was confirmed.

We have reviewed the McKinsey invoice and an accompanying memo from McKinsey to Eskom that sets out the shares due to the BBBEE partner. We have calculated the additional payment that these sources imply could need to be paid to the BBBEE partner on top of the R99M already paid. This amounts to R134.1MM, as set out in the table below.

Note that this does not constitute a legal opinion on the share due to the BBBEE partner: that is out of the scope of our work. Instead, this is a calculation to evaluate the expected amount to be paid based on the resources used on the engagement by the BBBEE partner.



Invoice amounts and payment shares  
R MM (pre-VAT)

Work package	Consultant Invoice	Implied total payment based on Consultant Invoice	Agreed BBBEE share of total	Calculated BBBEE payment based on share of Consultant Invoice	BBBEE August Invoice (already paid)	Outstanding payment due to BBBEE partner
Procurement	90.4	129.1	30%	38.7		
Primary Energy	74.4	106.3	30%	31.9	No split by work package available in BBBEE invoice	
Generation	234.8	313.0	25%	78.3		
Project delivery and claims management	197.4	282.0	30%	84.6		
<b>Total</b>	<b>597.0</b>	<b>830.4</b>		<b>233.5</b>	<b>99.4</b>	<b>134.1</b>

Sources: BBBEE partner and consultant invoices, August 2016, Memo to consultant invoice

#### D: Main areas of concern from review of MSA contract

The review of the contract materials by Marsh identified several areas of concern that are set out below. Note that these findings do not constitute a legal assessment of the contract. The basis of the below is to provide Eskom with recommendations to improve the contracting process in the future.

- Several terms of the contract appear to favour the supplier:
  - The agreement "locks" the employer into the contract for a minimum period of 12 months.
  - There is uncertainty regarding the fees and how the employer will be invoiced – this clause should be clearly set out with no ambiguity.
  - The agreement contains a review clause however the clause should have allowed for an exit provision within this clause to ensure that neither party are forced to renegotiate when the desired effect is immediate termination.
  - If the contractor intends to service competitors then the employer must be comfortable that their rights and interests have been taken into consideration and that same in fact has some form of protection.
  - The indemnification clause could have been more detailed and cater for more specific events occurring.
- There is ambiguity in the contract terms that deal with payments:
  - Various types of payments are referred to throughout the agreement such as work costs, mobilization/initiation payments, incentives, guarantees and down payments but these are not defined in detail and payment dates of same are not always clearly set out.

- Reference is made to expenses being remunerated separately but this is not elaborated on.
- Clause 7.10 states “either of the parties may request (no more than twice in a calendar year) that an external audit firm audit any aspect of this Agreement, its performance or implementation provided that such external audit firm shall not be entitled to request and/or audit any supporting documentation in respect of expenses charged by the contractor. The parties agree that the fees for such audit shall be considered “relevant costs” as contemplated in clause 6.1.10.2” – this is not standard practice as if it is a true ‘audit’ then the auditor has to comply with the audit standards which would require them to inspect supporting documentation.
- The contract lacks key details about outsourcing:
  - There is no reference to the specific BBBEE partner to be used, and no reference to a contractor being allowed to outsource services
  - Mention is made of subcontracting in appendix 4, but this clause does not meet the outsourcing legal contract requirements as it does not cover aspects such as what services will be outsourced, how the service provider will be remunerated, how the service provider will be elected etc.
- Reference is made to the baseline value and baseline renegotiation parameters– it is not clearly set out in the agreement as to how and when they apply.
- Important clauses are apparently missing:
  - There is no warranty clause.
  - There is no breach clause. Every agreement must have a breach clause. The table of contents states that there is one, but upon reading the agreement it is clear that there is no such clause in place.
- Clause 8 makes reference to the use of the tracking tool, but should have elaborated more on data privacy and protection and touched on the Protection of Personal Information Act, No 4 of 2013 (POPI) which promotes the protection of personal information by public and private bodies.
- Clause 18 deals with serving competitors. This clause could be more comprehensive in that it simply states that the contractor will not refuse to serve competitors and that it will assign other consultants to work on the project to prevent a conflict of interest. It does not state how the information will be protected and how the consultants will be denied access to competitive information.

## 5. Open issues

Our analysis to date has focused on developing a preliminary view on the fair payment due to McKinsey and its BBBEE based on its services provided to Eskom. There are a number of open issues to be investigated before finalising the range of fair payment:

- Clarification on the legal viability of the MSA that was put in place between Eskom and McKinsey regarding the structure of payment triggers and payment terms based on any cancellation of the contract



- Benchmarking of success fee trigger amounts compared to expected market practices
- Refinement of preliminary calculation of payments associated with early cancellation of initiatives

## 6. Next steps

- Refinement of the payment range based on additional analysis and benchmarking
- Assessment of fair timing of payments (i.e. immediate vs. structured over a longer time period to match delivery realisation)
- Develop key recommended changes to future contract construct including the terms of the MSA and financial reward set up for contractors
- Develop recommendations on improvements to operational construct of future projects with external vendors





Appendix 1

Priority groups for MSA initiatives

Priority	Definition and size of group	Actions
<div>A</div>	<p>Initiatives that appear in the McKinsey August Invoice</p> <p>30 initiatives</p> <p>Expected Impact from Wave: R 8.5BN</p>	<ul style="list-style-type: none"><li>Review whether Invoiced payments seem correct based on impacts, MSA and steering committee approvals</li><li>Benchmark of incentive rates for main work packages of initiatives against broader industry practice</li><li>Assess to what extent further payments would be reasonable</li></ul>
<div>B</div>	<p>Initiatives that:</p> <ul style="list-style-type: none"><li>do not appear in the August Invoice</li><li>reached at least implementation level 2 (i.e. they were approved to be covered by the MSA)</li><li>have an expected impact in Wave of at least R 300MM (cutoff chosen to capture ~80% of Impact)</li></ul> <p>8 Initiatives</p> <p>Expected Impact from Wave: R 7.9BN</p>	<ul style="list-style-type: none"><li>Assess to what extent payment for these initiatives might be required by the MSA</li><li>Provide a view on how reasonable these payments would be</li></ul>
<div>C</div>	<p>All other initiatives</p> <p>242 initiatives</p> <p>Expected impact from Wave (including only those that reached implementation level 2): R 2.0BN</p>	<ul style="list-style-type: none"><li>Tabulate aggregate information by work package</li></ul>

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Priority A initiatives: payments and approvals

Work package	ID	Title	Impact type	Impact! (ZAR MM)	McKinsey invoice (ZAR MM)	Payment triggers approved?	Issues identified so far
Procurement (continued)	35	Tactical: Sign contract for contract Wooden Poles & X-arms spend currently off contract using e-auction	Once-Off	34	2.6	✓	
	577	Tactical: Concentric Cables - Place off-contract spend on contract	Once-Off	22	1.7	✓	
	564	Inventory: 1.2 PO Cancellations Tracking - Majuba U6 outage	Once-Off	13	1.0	✓	
	1735	SCOPS: 6.1 Spend Control Tower: Cancel unnecessary PR/POs	Once-Off	13	1.0	✓	
	20	Tactical: Pole Transformers - Sign contract for items currently bought off contract	Once-Off	7	0.5	✓	
	760	ICT: Adobe (Tactical once-off) - Delay purchase of upgrades, limit new licenses, and buy standard instead professional version	Once-Off	4	0.3	✓	
	14	ICT: Adobe (Tactical recurring) - Delay purchase of upgrades, limit new licenses, and buy standard instead professional version	Recurring	1	0.1	✓	
	1	Kusile Historic turbine claims recovery and future claims avoidance	Once-Off	2,205	04.2	✓	
Project delivery and claims management	2	Historic boiler claims - Medupi	Once-Off	1,000	28.4	✓	
	3	Historic boiler claims - Kusile	Once-Off	600	45.4	✓	
	16	Boiler employer claims - Kusile	Once-Off	554	25.1	✓	Steerco approvals not all in Wave
	4	Boiler employer claims - Medupi	Once-Off	374	17.0	✓	
	608	Boiler New Delivery Model: Medupi U4 Initiative Agreement	Once-Off	195	5.5	✓	
	609	CBZ Intervention - Medupi	Once-Off	150	11.3	✓	
Generation	5	C&I employer claims - Medupi	Once-Off	7	0.5	✓	
	85	Improve EAF: Majuba Powerstation Turnaround (Impact Tracker)	Recurring	1,088	155.0	✓	Impact differs from Wave Impact not listed in Wave
	6	Optimize Majuba U6 GO	Recurring	985	79.8	✓	
	1139	Medupi penalty provision: operational actions - Increase existing Medupi stockpile height to 20m	Once-Off	239	18.1	✓	
	10	Silverlake; Negotiate contract savings of R114.38m p.a.	Recurring	114	15.2	✓	
	12	Wescoal Mining (Tutuka); Negotiate contract savings of R103m p.a.	Recurring	103	13.7	✓	
Primary energy	11	Universal Coal PLC; Negotiate contract savings of R100.01m p.a.	Recurring	100	13.3	✓	
	26	Welgemeend; Negotiate contract savings of R32.61m p.a.	Recurring	33	4.3	✓	
	247	Sudor Coal; Negotiate contract savings of R28.79m p.a.	Recurring	29	3.8	✓	
	191	Wescoal Mining (Majuba); Negotiate contract savings of R26m p.a.	Recurring	26	3.4	✓	
	28	Ntshovelo Mining; Negotiate contract savings of R17.67m p.a.	Recurring	18	2.3	✓	
	657	Mbali Coal; Negotiate contract savings of R1.52m p.a.	Recurring	2	0.2	✓	
Procurement	66	Inventory: 1.2 Cancel unnecessary PR/POs and reroute where possible (Spend Control Tower - Inventory)	Once-Off	804	60.8	✓	
	63	Power Transformers: Reduce demand in line with stock on hand	Once-Off	171	12.9	✓	
	65	Inventory: 1.1 Cancel unnecessary PR/POs and reroute where possible (Spend Control Tower - Inventory)	Once-Off	49	3.7	✓	
	125	Boiler service: Standardise core crew for maintenance	Recurring	44	5.8	✓	

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Priority B initiatives: None of these appear in the August invoice; however half have had payment triggers approved by the steering committee

Work package	ID	Title	Payment triggers approved?	Expected impact (from Wave, ZAR MM)
Primary energy	1361	Medupi Penalty Provision: Geographical expansion of Medupi stockpile to accommodate an additional 10.4 MT of coal	x	1,511
	1114	Sudor Rail siding; Supplier to install rail siding which will save R415m p a. from Feb 2019.	✓	415
	246	CP NDC - Increase volumes from 2.91MT to 3.62MT in FY17	✓	374
	352	Boiler service: Renegotiate contract - Price, Productivity & Quality levers	x	967
Procurement	64	Inventory; 1. Cancel unnecessary PR/POs and reroute where possible - FY16/17 (Spend Control Tower – Inventory Spend)	x	500
	1479	Liquid Fuels - Fuel Oils: Reduce fuel oil consumption by tackling root causes	x	385
Project delivery and claims management	610	Boiler New Delivery Model: Medupi U3 to U1	✓	2,291
	1128	Boiler new delivery model: Kusile unit 2 - 6 initiative agreement	✓	1,500
Total:				7,943

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EXTRACT FROM MINUTES OF THE ESKOM BOARD TENDER COMMITTEE MEETING HELD AT  
THE HUVU NKULU BOARDROOM ON 08 FEBRUARY 2017 AT 09H00

STRICTLY CONFIDENTIAL

5.4 Master Services Agreement (MSA) with McKinsey

The GCS and Mr Prish Govender joined the meeting for purposes of this discussion. No submission was tabled.

A brief overview of the matter was given to the Committee. It was noted that in the last submission presented to the Board on this matter, it had been stated that as a result of the termination of the MSA with McKinsey, Eskom had to settle at a negotiated amount. There was an outstanding payment of R800m that was theoretically due to McKinsey as part of the contract. Mr Govender reported that Eskom had, through an external process, interrogated the contract and the payments made and that, in line with the recommendations from the external verifier and as a result of the negotiation process, Eskom had settled at a value of R460m with McKinsey in terms of all outstanding payments. After paying the R460m and concluding a Termination Agreement, Eskom would then be in a position to close the matter.


It was confirmed that if the contract rate had been applied to the settlement then Eskom would have been liable for a payment of R2.8bn. This had now been negotiated down to R1.4bn in terms of all payments made thus far. It was furthermore confirmed that McKinsey had created R30bn in quantifiable value and that this amount had also been externally verified. The GCS added that the conclusion of a formal Termination Agreement had been agreed to as per the recommendation received from the auditors.

In response to a question from the Chair, it was confirmed that all sub-contractors to McKinsey would be paid from the R460m to be paid by Eskom.

IT WAS RESOLVED THAT:

- 5.4.1 the feedback on the settlement reached with McKinsey and the payment of R460m by Eskom as part thereof in full and final settlement of all claims in terms of the Master Service Agreement be noted and supported by the Board Tender Committee."

CERTIFIED AS A TRUE EXTRACT

  
S Daniels  
GROUP COMPANY SECRETARY  
Date: 22/2/2017



"EN 17"



**CONFIDENTIAL**

**DRAFT MEMORANDUM**

**Top Engineers Programme  
Review**

**Eskom Holdings SOC Ltd, Primary  
Energy Department**

**Assurance and Forensic**

A handwritten signature in the bottom right corner, consisting of a stylized 'S' shape with a flourish.

**MEMORANDUM**

**To :** Anoj Singh (Group Chief Financial Officer)

**From :** Molefi Nkhabu – Senior General Manager (Assurance and Forensic)

**SUBJECT :** **TOP ENGINEERS PROGRAMME REVIEW**

**1. INTRODUCTION**

Acceding to a request from the Chief Financial Officer (CFO), Assurance and Forensic (A&F) conducted a review of the procurement process followed in awarding the contract to McKinsey & Co (McKinsey) for the development of the current Top Engineers Programme into an Internal Consulting Unit including the cancellation of the contract and the related payments, and hereby report in this regard.

This review does not constitute an audit but an advisory review for the consumption of the CFO and other Executives according to the sole discretion of the CFO. Because of the nature of the review, we will only be providing limited assurance. Had we performed additional procedures or had we performed an audit, other matters might have come to our attention that would have been reported to you.

**2. OBJECTIVE AND SCOPE:****2.1 Objective**

The objective of the review was to determine whether or not:

- a) Procurement process followed by Eskom to appoint McKinsey complied with applicable Eskom policies, procedures and processes and the National Treasury guidelines, instructions and practice notes;
- b) The contracting with McKinsey followed the Eskom policies, procedures and processes and the National Treasury guidelines, instructions and practice notes;
- c) The contract cancellation between McKinsey and Eskom complied with all internal governance processes, policies and procedures ; and
- d) The payments were made in accordance with the contract terms and conditions as amended.

**2.2 Scope**

Based on A&F's understanding of the requirements and the request received, our scope was limited to the matters included in the objective above. Our review was from the receipt of the proposal (April 2015) to the partial settlement date (August 2016).

The review of the value achieved from the initiatives under the Top Engineers Programme amounting to R18.6bn and the related benefit due to McKinsey in terms of original and cancelled agreement have been specifically excluded in our scope as these form part of a different review by the external party appointed by Eskom.

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### 3. BACKGROUND

Timelines as per the documents reviewed.

May 2015	June 2015	October 2015	January 2016	June 2016	August 2016
Need for Top Engineers for consulting identified by management	Mandate to negotiate with McKinsey approved by EXCOPS and BTC	Feedback on negotiations with McKinsey provided to EXCOPS and BTC. Approval obtained from EXCOPS and BTC.	Service Level Agreement with McKinsey signed	Approval to cancel McKinsey risk based process obtained from BTC	Feedback on the settlement process and settlement approval obtained from BTC

As per the background provided in the EXCOPS submission of 22 June 2015 and BTC (Special meeting in June 2015). The Top Engineers Programme was launched in November 2012, as a Small Business Development and Localization (SD&L) requirement for McKinsey on the extended outage contract. The first cohort began their training in February 2013 and graduated in March 2014. The second cohort had completed their training and expected to graduate in June 2015. The aim of the programme was to develop engineers into consultants at an associate level within 12 months.

Internal capability to conduct short-duration and high impact projects that would ordinarily be outsourced to a management consulting firm is the expected benefit that Eskom will derive from the project.

It was anticipated that Eskom will save at least R500m of the total of R1bn that the company spends per year on external consultants when the Top Engineers consulting unit is fully capacitated within Eskom. Given Eskom's financial situation at the time, the amount needed to be reduced to an absolute minimum as soon as possible. The manner in which to achieve the target was to build up capacity internally. The Top Engineers consulting unit was a vehicle proposed for that purpose.

#### 3.1 Approval – Mandate to Negotiate: Submission to EXCOPS (22 June 2015) and BTC (Special meeting in June 2015)

Management requested the approval of the mandate to negotiate with McKinsey to develop the current Top Engineers programme into an internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company wide risks by driving savings and unlocking cash.

This was subject to conditions which included the following amongst others:

- a) The contract value of R0.00 as this initiative was self-funding. Consulting fees, expenses and performance incentives to be paid out of realised savings to a maximum of 12% per project with and exit period of 12 months from start of contract if no benefits are realised.

It was proposed that McKinsey be chosen as a Strategic Partner for the development of the new Eskom Internal Consulting Unit. McKinsey was selected as a sole source for the following reasons:

- a) McKinsey developed the original Top Engineers Programme and has the intellectual property in the design of the programme that Eskom cannot recreate.
- b) McKinsey is the only leading global consulting firm capable of delivering this world class knowledge in South Africa.

Regarding the use of negotiations without prior tendering, the following reason was cited:

*"Assets, good or services being procured under a new contract/project is a repetition of similar/identical assets., goods or services procured against contracts that form part of a programme/project for which an initial contract was awarded using the tendering procedures, and where Eskom indicated, in the notice of intended procurement or in the enquiry or tender documents for the initial procurement of the goods/services, that further contracts may be awarded using the negotiated contracting procedures"*

The EXCOPS and BTC having considered the request, then approved.

### **3.2 Feedback – Negotiated outcome: Submission to EXCOPS (08 October 2015) and BTC (22 October 2015)**

Management requested the acceptance of the feedback on the negotiations with McKinsey, ratification of the minor differences between the negotiated outcomes and the approved mandate parameters and also the noting of the negotiated conditions which included the following amongst others:

- a) That the contract be based on the R0.00 value and the self-funding principle.
- b) That down payments, in lieu of the project set-up costs and consulting fees at the total value of R475m be paid when they fall due after commencement of each value package.
- c) That McKinsey bank guarantee be issued to Eskom as security for the down payment.
- d) Payments trigger points regime be between implementation Level 3 and 4 and payments on once-off and recurring benefits be at 10.8% and 10.5% of projected savings respectively, and recurring benefits for impact calculation and for payment purposes is limited to 3 years.
- e) To contract using a Service Level Agreement (SLA) format of contracting with its associated conditions.

The EXCOPS and BTC having considered the request then approved.

### **3.3 Signing: Service Level Agreement 07 January 2016**

In January 2016 a contract using an SLA format being the Service Level Agreement between Eskom and McKinsey was signed.

### **3.4 Approval of Cancellation Process: Submission to BTC (09 June 2016)**

Management requested the BTC to grant the following:

- a) Approval to cancel McKinsey risk based process;
- b) Allow all costs to be negotiated and finalised, to be approved by the relevant tender committee; and
- c) Approval for activities to be re-directed to existing contracts where appropriate, with incorporation of similar SDL objectives and the option of contracting on risk based approach.

The BTC having considered the request then approved.



### 3.5 Approval of Settlement Process: Submission to BTC (08 August 2016)

Management requested BTC to note the following:

- a. That to date the initiatives under the TOP Consultant Programme have achieved more than R18.6bn of annualised impact for Eskom.
- b. Applying the termination and settlement clauses within the MSA, Eskom may need to pay up to R2.84bn (inclusive of payment to the BBBEE partner) for the values achieved to date.

Management further requested the BTC to approve the following:

- a) An already negotiated lower settlement value of R1.8bn (inclusive of payment to the BBBEE partner)
- b) The R1.8bn settlement negotiated will consist of the initial cash payment of R800m to cover the utilisation of the consultant's resources to date.
- c) The current consultant have made an offer to reinvest the risk premium (R1bn) from the settlement to cater for the following:
  - i. A transition period of six months whilst Eskom transfers outstanding work beyond 6 months and any new initiatives to another contracting mechanism. During this period Eskom would reimburse the consultant on a rates basis. It is proposed that the new contracting mechanism should cater for a risk based approach on the same T&Cs negotiated with the current consultant as far as possible. Where not possible a standard rates based approach would be adopted.
  - ii. Any future work on new saving initiative or any other activities that Eskom may require from a management consultancy and financial advisory perspective that the consultant has been awarded through the appropriate procurement process.
- d) If the total risk premium is not paid to the consultant through C above, the balance will be redeemable by the consultant after a three year period.
- e) The Group CE and group CFO and Group Executive Generation and Technology are authorised to negotiate more favourable terms and conditions to the settlement process.

The BTC having considered the request then approved.

As per the submission, the cancellation emanated from an audit finding emanating from a related contract awarded on a sole source.

#### 4. RESULTS OF THE REVIEW

##### 4.1 PROCUREMENT: SOURCING STRATEGY

###### a) Review Objective

Did the procurement process followed by Eskom to appoint McKinsey comply with applicable Eskom policies, procedures and processes and the National Treasury guidelines, instructions and practice notes?

###### b) Criteria

The following are the requirements from the relevant compliance documents:

###### ***Eskom's Procurement and Supply Chain Management Procedure (32-1034)***

*Paragraph 3.5.1 (i): The following are the number of ways in which a supplier may be justified as a sole source:*

- a. True Sole Source (Monopoly)*
- b. Installed Base [Original Equipment Manufacturer (OEM)]*
- c. Incompatible Material*
- d. Established (On-site) Supplier - At times, additional works or services not forming part of the initial contract become necessary in order to complete the plant, system or structure. If separating the additional works / services from the original contract will be difficult for technical or economic reasons and/or the separation will cause significant cost or time constraints to Eskom, a valid sole source motivation exists.*

###### ***National Treasury Supply Chain Management Practice Note Number SCM 3 of 2003***

*Paragraph 9.2: Various approaches may be followed in selecting consultants. Quality and Cost based selection is recommended. However other options are:*

- a. Quality Based selection*
- b. Election under fixed budget*
- c. Least cost selection*
- d. Single Source Selection – This option may be appropriate only if it represent a clear advantage over competition:*
  - For tasks that represent a natural continuation of previous work carried out by the firm (initial RFP to outline this prospect)*
  - Where a rapid selection is essential (e.g. emergency operation)*
  - For very small assignments; or*
  - When only one firm is qualified or has experience of exceptional worth for the assignment*

###### c) Analysis of facts based on review of the process followed by Eskom

The provision, on the Sole Source Justification form (dated 18 May 2015), indicating which option of sole source was applicable, i.e. *True Sole Source (Monopoly)*, *Installed Base [Original Equipment Manufacturer (OEM)]*; *Incompatible Material*; *Established (On-site) Supplier* was left blank.

The motivation provided on the form to motivate for the Sole Source was as follows:

- McKinsey developed the original Top Engineers Programme and has the intellectual property in the design of the programme that Eskom cannot recreate.
- McKinsey is the only leading global consulting firm capable of delivering this world call knowledge in South Africa.
- Eskom has completed most of its management consulting projects with McKinsey

support, giving McKinsey insight into the business, culture, processes and people of Eskom. This intrinsic insight cannot be offered by any other consultancy.

On the submission made to EXCOPS and BTC in June 2015 the following reason was used for the negotiations without prior tendering:

*"Assets, good or services being procured under a new contract/project is a repetition of similar/identical assets., goods or services procured against contracts that form part of a programme/project for which an initial contract was awarded using the tendering procedures, and where Eskom indicated, in the notice of intended procurement or in the enquiry or tender documents for the initial procurement of the goods/services, that further contracts may be awarded using the negotiated contracting procedures"*

Although not specific, it could be inferred that Eskom chose the Established (On-site) Supplier option.

#### d) Compliance assessment

Requirement	Results	
<b>Eskom's Procurement and Supply Chain Management Procedure (32-1034)</b> Paragraph 3.5.1 (i): The following are the number of ways in which a supplier may be justified as a sole source: a. True Sole Source (Monopoly) b. Installed Base (Original Equipment Manufacturer (OEM)) c. Incompatible Material d. <b>Established (On-site) Supplier</b> - At times, additional works or services not forming part of the initial contract become necessary in order to complete the plant, system or structure. If separating the additional works / services from the original contract will be difficult for technical or economic reasons and/or the separation will cause significant cost or time constraints to Eskom, a valid sole source motivation exists. The services required are for construction and/or engineering services where there is a proven monetary and project milestone benefit to retaining an existing (on-site) contractor to carry out an additional scope of work.	✓	Appointment complied with <b>Single Source Selection</b> on the basis of Mckinsey being an established (on-site) supplier since they developed the Top Engineers Programme as part of the extended outage contract.
<b>Additional Requirements from Eskom's Procurement and Supply Chain Management Procedure (32-1034)</b> Paragraph 3.5.1 (i): The following steps must be followed when a sole source supplier is identified:		
a. The cross-functional team led by the Procurement Practitioner, developing the commercial strategy arrives at the conclusion /deduction that a sole source supplier situation exists.	✓	Satisfactory.
b. The strategy indicating a sole source supplier situation must be compiled on the Commercial Strategy Approval template and approved by the line manager of the Procurement Practitioner or the relevant Delegated Approval Authority, based on the strategy delegations set out in 3.1.7 herein.	✓	Satisfactory.
c. Where the sole source is an Original Equipment Manufacturer (OEM) or a sole distributor of the OEM, who provides spare parts to Eskom, the cross-functional team must determine whether to proceed directly to negotiations or whether to follow an enquiry process. It is not permissible to request a quotation /proposal from a sole source supplier without first presenting the mandate request to the Delegated Approval Authority, as Eskom employees (including Procurement Practitioners) are not permitted to engage with suppliers in negotiations without a formal mandate from a Delegated Approval Authority.	N/A	Not applicable.
d. After approval of the commercial strategy, the Procurement Practitioner, together with the cross functional team, must complete a Commercial Transaction Approval Form requesting a mandate to negotiate from the Delegated Approval Authority. The approval of the commercial strategy and the request for a mandate to negotiate may be handled together by the Delegated Approval Authority.	✓	Satisfactory.
e. A formal supporting motivation for use of the supplier as a sole source must be provided by the End- User and approved by	✓	Satisfactory.

Requirement	Results	
his/her designated E-band Manager, who is responsible for the technical and operational integrity of the assets, goods or services required. This motivation is set out within a Sole Source Justification Form which must be duly signed and validated by all required signatories and which must accompany the Commercial Transaction Approval Form for approval by the Delegated Approval Authority.		
f. Prior research into the prices needs to be conducted by the cross-functional team in order to determine a real and aspiration base for negotiations on price, and any other parameters which may become a negotiation objective, forming part of the mandate request.	N/A	Not applicable. The contract was R0.0 based and the consultant was to be paid a rate based on the savings realised.
g. The Procurement Practitioner and End-User, together with any other members of the cross functional team present the Commercial Transaction Approval Form, together with the signed Sole Source Justification Form to the relevant Delegated Approval Authority for approval.	✓	Satisfactory.
h. Once the mandate is approved, the Procurement Practitioner either proceeds directly with negotiations or prepares a Request for a Quotation / Proposal, based on the approved mandate, and in consultation with the cross-functional team, and then issues the enquiry to the sole supplier for a quote/proposal. The offer / quotation is requested and submitted in the same way as for an informal tender up to R5m, and processed in the same way as a formal tender if greater than R5m. The cross-functional team then develops and plans their strategy for negotiation based on the Supplier's proposal / quotation.	✓	Satisfactory.
i. In order to proceed with negotiations, the Procurement Practitioner arranges a venue, invites the relevant supplier and the negotiation team as per the approved mandate, formulates an agenda and ensures that minutes of the negotiations are recorded in writing.	✓	Satisfactory.
j. The lead negotiator, as assigned by the Delegated Approval Authority granting the mandate, will lead the negotiations and ensure that all mandated parameters are discussed and agreed upon. After each session of negotiations, the supplier and Eskom sign off the recorded minutes, as proof of what has been agreed to and what remains outstanding for resolution.	✓	Summaries of negotiation results (minutes) are in place, these are however not signed by either party.
k. The Group Commercial Finance Department (within Group Commercial Business Enablement) or a site-based Finance Business Partner representative must form part of the negotiation team for the evaluation of any prices offered for contracts less than R300m. Should the offered price comprise foreign currency of more than USD 1 million, or the equivalent thereof, then BEAST from FPS must form part of the negotiation team to render advice and validate that the negotiated price is financially acceptable.	N/A	Not applicable.
l. Should negotiations not transpire as per the negotiation strategy or where negotiations result in failing to achieve the required mandate, the lead negotiator must seek advice from the assigned negotiation controller who must advise and direct the negotiation team toward resolution of the issues or toward an alternative negotiation strategy.	N/A	Not applicable.
m. If the outcome of the negotiations is within the ambit of the approved mandate parameters, the Procurement Practitioner submits feedback of negotiations against the relevant section of the Commercial Transaction Approval Form to the Delegated Approval Authority outlining the results of the negotiations against the mandate parameters.	✓	Satisfactory.
n. If the outcome of negotiations is outside the mandated parameters, the Procurement Practitioner, in consultation with the negotiation team / cross-functional team may request an approval of a negotiated outcome, a revised mandate or may request cancellation of the transaction from the Delegated Approval Authority.	✓	Satisfactory.
o. Where the Delegated Approval Authority grants approval to proceed with contract finalisation, the Procurement Practitioner in consultation with the cross-functional team prepares the contract documents and arranges for the signing thereof.	✓	Satisfactory.

Requirement	Results	
p. The Procurement Practitioner ensures that all relevant documents are filed for audit purposes.	✓	Satisfactory.
<b>National Treasury Supply Chain Management Practice Note Number SCM 3 of 2003</b>  Paragraph 9.2: Various approaches may be followed in selecting consultants. Quality and Cost based selection if recommended. However other options are: <ul style="list-style-type: none"> <li>a. Quality Based selection</li> <li>b. Election under fixed budget</li> <li>c. Least cost selection</li> <li>d. <b>Single Source Selection</b> – This option may be appropriate only if it represent a clear advantage over competition:             <ul style="list-style-type: none"> <li>- For tasks that represent a <u>natural continuation of previous work</u> carried out by the firm (initial RFP to outline this prospect)</li> <li>- Where a rapid selection is essential (e.g. emergency operation)</li> <li>- For very small assignments; or</li> <li>- When only one firm is qualified or has experience of exceptional worth for the assignment</li> </ul> </li> </ul>	✓	Appointment complied with <b>Single Source Selection</b> on the basis of Mckinsey having experience of exceptional worth for the assignment.  This is based on the original Top Engineers Programme they developed as part of the extended outage contract.

#### e) Conclusion

The procurement process followed by Eskom to appoint McKinsey complied with applicable Eskom policies, procedures and processes and the National Treasury guidelines, instructions and practice notes.

## 4.2 CONTRACTING

### a) Review Objective

Did the contracting with McKinsey follow the Eskom policies, procedures and processes and the National Treasury guidelines, instructions and practice notes?

### b) Criteria

The following are the requirements for the relevant compliance documents:

#### ***Eskom's Procurement and Supply Chain Management Procedure (32-1034)***

*Paragraph 3.2.10: Eskom-approved standard forms of contract and conditions of contract are used for placing all orders or contracts. The New Engineering Contract (NEC) suite of contracts, the FIDIC suite of contracts and selected Eskom in-house contracts are used as conditions of purchase in Eskom. The Procurement Practitioner in consultation with the cross-functional team, where applicable, selects the appropriate contract to best mitigate the risks of the procurement as part of the approved strategy and such selection is confirmed prior to the issue of the tender. Where there is no suitable standard form of contract or a Supplier proposes use of its own standard contract, the Procurement Practitioner may request Eskom Legal Department to Draft a special contract; or approve the Supplier's standard contract.*

#### ***National Treasury Supply Chain Management Practice Note Number SCM 3 of 2003***

*Types of contract as per the practice note:*

- a. Lump Sum (Firm Fixed Price) contract*
- b. Time-Based Contract*
- c. Retainer and or Contingency (Success) Fee Contract – the remuneration of the consultant includes a retainer and a success fee, the latter being normally expressed as a percentage.*
- d. Percentage Contract*
- e. Indefinite Delivery Contract (Price Agreement)*

#### ***National Treasury Instruction 01 of 2013/2014***

*Para. 4.1 Consultants may only be remunerated at the rates:*

- a. Determined in the "Guidelines for fees", issued by the South African Institute of Chartered Accountants;*
- b. Set out in the "Guide on hourly Fee Rates for Consultants", by the Department of Public Services and Administration; or*
- c. Prescribed by the body regulating the profession of the consultant.*

*Request for deviations from the paragraphs contained on the Treasury Instruction may be considered in terms of Section 79 of PFMA. All written requests for deviations must be forwarded to the Direction General (National treasury). Request for deviations in terms of Section 79 of PFMA shall only be considered after the Presidency has been consulted on the request and has consented to the deviation.*



**c) Analysis of facts based on review of the process followed by Eskom**

Eskom and McKinsey entered into a risk contract where McKinsey's consulting fees, expenses and performance incentives were to be paid out of realised savings to a maximum specified percentage. This is in line with the National Treasury Supply Chain Management Practice Note Number SCM 3 of 2003, which allows this type of contracting.

It is worth noting that National Treasury Instruction 01 of 2013/2014 gave guidance on rates to be used in respect of consultancy fees that are time based (input based). However, guidance on how to deal with consultants that are output based in terms of payments such as, "percentage contract" and "success fee contract" was not provided in the instruction. At the same time National Treasury did not officially withdraw the use of "output based" contracting with consultants as approved in their Practice Note Number SCM 3 of 2003.

The purpose of National Treasury Instruction 01 of 2013/2014 was clear that it was for cost containment however it is not apparent why NT opted to provide guidance on input based contracts and not on output based contracting with consultants. This is probably because with regard to input based contracts, payments are made irrespective of the outcome while with regard to output based contracts there is a direct link between payments and benefits realised. In the absence of guidance on rates to be used for output based contracts and none withdrawal of output based contracting, it could only be assumed that institutions were allowed to negotiate their own rates in the event of output based contracts such as success based contracting. Our conclusion is based on the above assessment and should it be found to be legally, incorrect, our conclusion will be amended accordingly.

Eskom engaged the National Treasury on the principles of Practice note 3 of 2003 and the National Treasury confirmed that Practice note 3 of 2003 is still applicable until replaced with new instructions after the promulgation of the new Treasury Regulations.

Management presented to BTC in October 2015 to request for noting, the negotiations conditions with McKinsey where it was agreed to contract using the SLA format of contracting. The BTC further resolved that the Group Executive for Technology and Commercial was authorised to sign all agreements.

The agreement entered between Eskom and McKinsey was in a form of a Service Level Agreement. The SLA was signed in January 2016 by the Eskom Chief Procurement Officer (Acting) in his delegated authority as Group Executive for Technology and Commercial and the McKinsey representative.

## d) Compliance assessment

Requirement	Results	
<b>Eskom Procurement and Supply Chain Management Procedure (32-1034)</b> stipulates that advance payments are not encouraged and may be considered in cases where the Supplier will have to make a big capital outlay before starting with the contract. This may be necessary when assets or goods are to be ordered and paid for and where assets or goods have a long lead time or where manufacturing slots need to be booked and paid for well in advance of the goods being delivered.	N/A	The payment terms included on the SLA with McKinsey required Eskom to make the mobilisation/initiation payments to McKinsey in six (6) equal monthly instalments with effect from the effective date. The down payments were not made to McKinsey by Eskom.
<b>National Treasury Supply Chain Management Practice Note Number SCM 3 of 2003</b>  Types of contract as per the practice note:  a. Lump Sum (Firm Fixed Price) contract b. Time-Based Contract c. Retainer and or Contingency (Success) Fee Contract – the remuneration of the consultant includes a retainer and a success fee, the latter being normally expressed as a percentage. d. Percentage Contract e. Indefinite Delivery Contract (Price Agreement)	✓	Satisfactory.
<b>National Treasury Instruction 01 of 2013/2014</b>  Para. 4.1 Consultants may only be remunerated at the rates:  a. Determined in the "Guidelines for fees", issued by the South African Institute of Chartered Accountants; b. Set out in the "Guide on hourly Fee Rates for Consultants", by the Department of Public Services and Administration; or c. Prescribed by the body regulating the profession of the consultant.  Request for deviations from the paragraphs contained on the Treasury Instruction may be considered in terms of Section 79 of PFMA. All written requests for deviations must be forwarded to the Direction General (National treasury). Request for deviations in terms of Section 79 of PFMA shall only be considered after the Presidency has been consulted on the request and has consented to the deviation.	N/A	Not applicable.

## e) Conclusion

The contracting with McKinsey followed the Eskom policies, procedures and processes and the National Treasury guidelines, instructions and practice notes.



### 4.3 CONTRACT CANCELLATION

#### a) Review Objective

Did the contract cancellation between Mckinsey and Eskom comply with all internal governance processes, policies and procedures?

#### b) Criteria

The following are the requirements for the relevant compliance documents:

***Eskom's Procurement and Supply Chain Management Procedure (32-1034)***

*Paragraph 3.6.9: A contract may be terminated for many reasons, including a breach of contract, a legal dispute, supplier reconsideration, change of a supplier, etc. A contract may only be terminated strictly in accordance with the termination clauses and reasons for termination as contained in the contract.*

***National Treasury Practice Note dated 21 July 2010 title "Government Procurement: General Conditions of Contract,"***

*Paragraph 18.1: No variation in or modification of the terms of the contract shall be made except by written agreement signed by both parties.*

#### c) Analysis of facts based on review of the process followed by Eskom

**Submission to BTC (09 June 2016)**

Management requested the BTC to grant the following:

- d) Approval to cancel McKinsey risk based process;
- e) Allow all costs to be negotiated and finalised, to be approved by the relevant tender committee; and
- f) Approval for activities to be re-directed to existing contracts where appropriate, with incorporation of similar SDL objectives and the option of contracting on risk based approach.

The BTC having considered the request then approved.

**Submission to BTC (08 August 2016)**

Management requested BTC to note the following:

- c. That to date the initiatives under the TOP Consultant Programme have achieved more than R18.6bn of annualised impact for Eskom.
- d. Applying the termination and settlement clauses within the MSA, Eskom may need to pay up to R2.84bn (inclusive of payment to the BBBEE partner) for the values achieved to date.

Management further requested the BTC to approve the following:

- f) An already negotiated lower settlement value of R1.8bn (inclusive of payment to the BBBEE partner)
- g) The R1.8bn settlement negotiates will consist of the initial cash payment of R800m to cover the utilisation of the consultant's resources to date.

- h) The current consultant have made an offer to reinvest the risk premium (R1bn) from the settlement to cater for the following:
- iii. A transition period of six months whilst Eskom transfers outstanding work beyond 6 months and any new initiatives to another contracting mechanism. During this period Eskom would reimburse the consultant on a rates basis. It is proposed that the new contracting mechanism should cater for a risk based approach on the same T&Cs negotiated with the current consultant as far as possible. Where not possible a standard rates based approach would be adopted.
  - iv. Any future work on new saving initiative or any other activities that Eskom may require from a management consultancy and financial advisory perspective that the consultant has been awarded through the appropriate procurement process.
  - i) If the total risk premium is not paid to the consultant through C above, the balance will be redeemable by the consultant after a three-year period.
  - j) The Group CE and group CFO and Group Executive Generation and Technology are authorised to negotiate more favourable terms and conditions to the settlement process.

The BTC having considered the request then approved.

At the BTC meeting in June 2016 management indicated to the BTC that Eskom is still in the process of concluding the contract. This statement from management appears to be incorrect as an SLA had already been signed by Eskom and McKinsey in January 2016.

An SLA way of contracting was selected.

As per the minutes of the BTC meeting dated 21 June 2016, where the contract cancellation and cancellation conditions were discussed, it is apparent that the contract will continue to exist if the cancellation conditions are not met.

Further, Mckinsey have made an offer to reinvest the risk premium (which is the balance of R1bn) from the settlement to cater for the transition period of six months whilst Eskom transfers outstanding work beyond 6 months and any new initiatives to **another contracting mechanism. During this period Eskom would reimburse the consultant on a rates basis.** Where if the total risk premium is not fully paid to the consultant the balance will be redeemable by the consultant after a three-year period.

The cancellation emanated from an audit finding emanating from a related contract awarded on a sole source.

#### d) Compliance assessment

Requirement	Results	
<b>Eskom's Procurement and Supply Chain Management Procedure (32-1034)</b>  <i>Paragraph 3.6.9: A contract may be terminated for many reasons, including a breach of contract, a legal dispute, supplier reconsideration, change of a supplier, etc. A contract may only be terminated strictly in accordance with the termination clauses and reasons for termination as contained in the contract.</i>	N/A	<i>We could not determine whether the contract was terminated in accordance with the termination clauses as contained in the contract or whether it was in fact terminated at all.</i>  <i>A&amp;F could not be provided with evidence (minutes of the meeting or signed addendum to the contract) that McKinsey agreed to the terms of the cancellation as stipulated in the submission to BTC.</i>
<b>National Treasury Practice Note dated 21 July 2010 title "Government Procurement: General Conditions of Contract,"</b>  <i>Paragraph 18.1: No variation in or modification of the terms of the contract shall be made except by written agreement signed by both parties.</i>	N/A	

**e) Conclusion**

We could not determine whether the contract was terminated in accordance with the termination clauses as contained in the contract or whether it was in fact terminated at all.

#### 4.4 CONTRACT PAYMENTS

##### a) Review Objective

Were the payments made in accordance with the contract terms and conditions as amended?

##### b) Criteria

The following are the requirements relevant for compliance:

*Payments to the supplier must be made in accordance with the contract terms or the related cancellations conditions thereof.*

##### c) Analysis of facts based on review of the process followed by Eskom:

As per the SLA, Eskom was to make the following mobilisation/initiation payments to McKinsey in six (6) equal monthly instalments with effect from the effective date:

- |                                 |                                |
|---------------------------------|--------------------------------|
| • Procurement Work Package      | R50m                           |
| • Claim Management Work Package | R100m                          |
| • Generation Work Package       | R340m                          |
| • Primary Energy Work Package   | R75m                           |
| • Other Work Package            | Amount agreed between parties. |

The impact amounts which are based on savings achieved were to be calculated monthly and deducted from the down payments paid to McKinsey. McKinsey was only required to invoice Eskom where the impact amounts exceeded the down payments.

Eskom did not make any down payments as stipulated on the SLA with McKinsey. No invoices were also received from McKinsey to bill Eskom.

The following payments were made to McKinsey and the BBBEE partner apparently in terms of the settlement reached with McKinsey as indicated in the submission to BTC:

- McKinsey - R680 524 879 (incl VAT) paid on 15 August 2016.
- BBBEE partner (Trillian Management Consulting) – R235 470 534 (incl VAT) paid on 12 August 2016.

Other than the minutes of the BTC and verbal confirmation from management, evidence that, McKinsey is agreed to the terms of the cancelation and settlement, does not exists.

##### d) Conclusion

We could not conclude on whether the payments made were in accordance with the settlement terms between Eskom and McKinsey as no written settlement agreement signed by both parties was presented.

## 5. CONCLUSION

Based on the review conducted, A&F hereby concludes as follows:

- The procurement process followed by Eskom to appoint McKinsey complied with applicable Eskom policies, procedures and processes and the National Treasury guidelines, instructions and practice notes.
- The contracting with McKinsey followed the Eskom policies, procedures and processes and the National Treasury guidelines, instructions and practice notes.
- We could not determine whether the contract was terminated in accordance with the termination clauses as contained in the contract or was in fact terminated at all.
- We could not conclude on whether the payments made were in accordance with the settlement terms between Eskom and McKinsey as no written settlement agreement signed by both parties was presented.

## 6. Management comments

- The settlement agreement will be established between the parties and the payments to date will be dealt with on the basis of that agreement. A Board mandate will be requested for the same.
- The request to Board was to have the contract with McKinsey terminated and the work be put back into the panel of Strategic Management for all panel members to tender for it.

Molefi Nkhabu – Senior General Manager  
**Assurance and Forensic**

"EN 18"

**Prishothman Govender**

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**From:** Prish Govender  
**Sent:** Monday, 05 December 2016 05:26  
**To:** Suzanne Daniels  
**Subject:** Mckinsey Risk Based Contract Documents  
**Attachments:** January 2016 \_ MSA Signed Contract.pdf; ATT00001.htm; 20160628\_McK Response to Letter Dated 24 June\_mah.pdf; ATT00002.htm; Trillian Letter - Payment.pdf; ATT00003.htm

Hi Suzanne

Please find attached the above for review. I am on leave today, driving up from Durbs. We can chat later on cellphone.

Prish Govender

Begin forwarded message:

**From:** Mary Anne Hendricks <[HendriMA@eskom.co.za](mailto:HendriMA@eskom.co.za)>  
**Date:** 05 December 2016 at 07:18:42 SAST  
**To:** Prish Govender <[GovendPri@eskom.co.za](mailto:GovendPri@eskom.co.za)>  
**Subject:** Payment Letters and Contract

S

P

"EN 19"

**Prish Govender**

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**From:** Prish Govender  
**Sent:** 09 December 2016 12:39 PM  
**To:** Suzanne Daniels; Edwin Mabelane  
**Cc:** Charles Kalima  
**Subject:** McKinsey MSA Board Submission  
**Attachments:** Feedback 2 to BTC MSA Settlement 13122016.docx; ATT00001.htm; 20161208  
\_Appendix B Oliver Wyman Supplier Review\_Preliminary Review\_v4.docx; ATT00002.htm

Hi Suzanne

Please see attached submission for your input. I have also attached external review. Charles will provide audit report. We have also checked the template with Matabane.

Prish Govender

Begin forwarded message:

**From:** Mary Anne Hendricks <[HendriMA@eskom.co.za](mailto:HendriMA@eskom.co.za)>  
**Date:** 09 December 2016 at 12:22:41 SAST  
**To:** Prish Govender <[GovendPri@eskom.co.za](mailto:GovendPri@eskom.co.za)>  
**Subject:** Emailing: Feedback 2 to BTC MSA Settlement 13122016, 20161208\_Appendix B  
Oliver Wyman Supplier Review\_Preliminary Review\_v4

Hi Prish

As Requested

Thanks



"EN 20"

**Prish Govender**

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**From:** Suzanne Daniels  
**Sent:** 12 December 2016 11:19 AM  
**To:** Prish Govender  
**Cc:** Edwin Mabelane  
**Subject:** RE: Final Mck MSA BTC Submission  
**Attachments:** Feedback 2 to BTC MSA Settlement 13122016 Final.docx  
  
**Importance:** High

**From:** Prish Govender  
**Sent:** Monday, 12 December 2016 10:49 AM  
**To:** Suzanne Daniels <[DanielSM@eskom.co.za](mailto:DanielSM@eskom.co.za)>  
**Cc:** Edwin Mabelane <[MabelaET@eskom.co.za](mailto:MabelaET@eskom.co.za)>  
**Subject:** Final Mck MSA BTC Submission

Hi Suzanne,

Changes incorporated as discussed.


Regards

97

P



"EN 21"

	<b>SUBMISSION DOCUMENT</b>	Unique Identifier	221-209
		Document Type	OCSDTE
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary	

**EXECUTIVE SUMMARY**

**SUBMISSION TO THE BOARD TENDER COMMITTEE (BTC) ON 13 DECEMBER 2016**

**1. TITLE OF THE SUBMISSION**

Update on McKinsey & Company Top Consultants Programme Master Service Agreement (MSA) Settlement Process

**2. RESOLUTION REQUIRED**

**The Board Tender Committee approves the following:**


- 2.1** A mandate to negotiate and conclude the remaining portion of the settlement up to **R849 million**, based on the total value of R1.8 billion communicated to the Board Tender Committee (BTC) in August 2016, noting the Legal, Internal Audit and External Benefits review of the contract. Once the negotiation is complete, the necessary feedback will be provided to the Board Tender Committee.
- 2.2** A payment of **R134 million** to finalise payments up to August 2016 to the BBBEE partner that was due as per the work split agreed with McKinsey & Company
- 2.3** That the Acting Group Chief Executive, the Chief Financial Officer and the Chief Procurement Officer are authorised to negotiate and conclude the settlement process with McKinsey & Company.

**3. BACKGROUND**

- 3.1** The Master Service Agreement (MSA) provides the backbone of the Top Consultant Programme and describes the intention of the programme, the governance, the scope and the process to add scope, the payment logic and the risk-based remuneration scheme as well as the legal terms and the respective escalation mechanisms
- 3.2** The termination clauses of the MSA require that the current consultants are compensated for ideas that have reached Payment Trigger and be partly compensated for ideas that have been developed and approved to certain Implementation Levels ("IL Levels")
- 3.3** Under the umbrella of the (MSA), The Top Consultant Programme was set-up to deliver key Corporate Plan priorities and develop critical skills in Eskom, including:
  - 1. Increasing the energy availability factor at the power station fleet, with Majuba serving as the first pilot station
  - 2. Reducing unnecessary external in spend in procurement

OS


*[Handwritten signature]*

	SUBMISSION DOCUMENT	Unique Identifier	221-209
		Document Type	OCSLTE
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary	

3. Reducing coal cost to or below MYPD3 targets
4. Limiting Medupi and Kusile claims to the figures outlined in the P50 business case
5. Training and further developing more Top Consultants, with the target of 150 top consultants trained by 2020
6. Requiring the consultant to achieve up to 50% SD&L contract share with black woman owned and BBEEE companies
- 3.4 McKinsey & Co. has claimed that up to August 2016, the initiatives under the Top Consultants Programme MSA have achieved more than R18.6 billion of annualised impact for Eskom.
- 3.5 Applying the Termination and Settlement clauses within the MSA, Eskom may need to pay up to R2.84 billion (inclusive of payment to the BBEE partner), for the value achieved.
- 3.6 An initial lower negotiated lower settlement value of R1.8 billion was presented to Board Tender Committee in August 2016.
- 3.7 In line with the approval granted by (BTC) in August 2016, an initial payment of R800 million (inclusive of payment to the BBEE partner) was made to the consultant for work done up to August 2016.
- 3.8 In August 2016, the BTC also approved that the Group Chief Executive, Group Chief Financial Officer and Group Executive Generation and Technology are authorised to negotiate more favourable terms and conditions to the settlement process.

#### 4. PROGRESS TO DATE


- 4.1 The initial payment of R803.5 million (inclusive of payment to the BBEE partner) has been made.
- 4.2 Letter of demand from McKinsey & Co. and the BBEE partner has been received claiming outstanding payments up to the R1.8 billion
- 4.3 Management has put into place three review initiatives to assist with compliance and assurance on the overall process including any further payments that could be necessary.
- 4.4 An internal audit was conducted on the MSA procurement process. There were no major findings in the report. The report is attached as appendix A.
- 4.5 Oliver Wyman was appointed to conduct a detailed assessment of the claimed value and payments due upon the cancellation of the MSA. A preliminary report is attached as appendix B and a final report is due on 15 December 2016. This assessment will be used as guidance for further negotiation of a final settlement value. Key points from the report can be summarised as follows:
  1. Of the R2,84 billion payment Eskom might have needed to pay under the termination and settlement clauses of the MSA:

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- R1.05 billion is accounted for by payments that are required under the MSA for early cancellation of consulting initiatives, despite these payments not having been approved by the steering committee
  - R1.79 billion is accounted for by payments for consulting initiatives that were approved by the steering committee (R1.68 billion) payments for the financial advisory work (R107 million)
2. Of the R1,79 billion:
    - R803.5 million has already been paid to the Consultant supplier and the BBBEE partner
  3. Based on the invoice from the Consultant supplier and the split of revenues they have set out, a further payment of R134 million is due to the BBBEE partner for their contribution to the consulting work packages
  4. The payment of the remaining R849 million could be further negotiated with the Consultant:
    - There appear to be clear-cut reasons to challenge R380 million of the payments
    - The other R469 million seems justified for payment, but there are reasons to argue that a portion of it should be delayed rather than paid immediately
  5. These findings will be refined over the next week. The final report from the review will include a summary of lessons learned on the design of the contract for this type of work, to allow future contracts to be tailored to specific project needs.
- 4.6 Finally a legal review on the process was done by Cliff Dekker Hofmeyr. The key conclusions are summarised in section 8.

## 5. FINANCIAL IMPLICATIONS


- 5.1 Under the termination and settlement clauses of MSA Eskom may be liable to pay the current consultants up to R2.84 billion for termination of contract
- 5.2 Eskom has already agreed a negotiation position with the Consultants of R1.8bn.
- 5.3 R 803.5 million has already been paid to McKinsey & Co. inclusive of the BBBEE partner portion
- 5.4 A payment of R134 million in addition to the R803.5 million paid, is due to the BBBEE partner, in accordance to the pre-agreed work split with McKinsey & Co., to settle the initial payment process. The payment has been verified and supported by Oliver Wyman in the attached report.
- 5.5 A final negotiated value will be communicated to Board and could be between 0 and R849 million depending on the external benefits review and legal review.

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6. HUMAN RESOURCE IMPLICATIONS  
None

7. RISKS


RISK	MITIGATING FACTORS/ ACTIONS	LEVEL (HIGH/MEDIUM/LOW)
Loss of value or delay in impact timing caused by transition to new vehicle	<ul style="list-style-type: none"><li>Ideas in the pipeline moved into new contractual vehicle to limit lost value</li><li>Conclude transfer to new contracting vehicle within an expedited timeframe</li></ul>	High
Terms of new contracting vehicle less favourable than current MSA in place	<ul style="list-style-type: none"><li>Apply the same service conditions as in the MSA to the new RFP (e.g. 100% at risk, up to 50% SD&amp;L share, free work), including:<ul style="list-style-type: none"><li>Maintain the ROI and speed of delivery of programme. So as not to prejudice the timing or value of impact to Eskom</li><li>Deliver major sustainability actions at no additional cost to Eskom i.e. Top Consultant Programme, Top Buyer in Procurement</li><li>Continue developing further ideas to capture full value</li></ul></li></ul>	Medium

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RISK	MITIGATING FACTORS/ ACTIONS	LEVEL (HIGH/MEDIUM/LOW)
	available	
Risk to 54 Top Consultants currently in the Top Consultant Programme	<ul style="list-style-type: none"> <li>• Additional value drivers not to be compromised</li> <li>• To be included as negotiating parameters for the new contracting mechanism</li> </ul>	High
Risk to 40 people from Procurement that have been on-boarded to the 12 month Top Buyer capability building programme	<ul style="list-style-type: none"> <li>• Additional value drivers not to be compromised</li> <li>• To be included as negotiating parameters for the new contracting mechanism</li> </ul>	High
Risk to foregoing R29 billion in future impact	<ul style="list-style-type: none"> <li>– Ideas in the pipeline moved into new contractual vehicle to limit lost value</li> </ul>	High
Place strain on relationships and activities with external stakeholders such as: <ul style="list-style-type: none"> <li>– Volume and operations improvements at cost plus mines</li> <li>– Finalising prices and contracts with key suppliers in procurement</li> <li>– Optimising commercial and delivery models – major contractors at Kusile and Medupi</li> </ul>	<ul style="list-style-type: none"> <li>– Conclude transfer to new contracting vehicle within an expected timeframe</li> <li>– Allow for transition period of 6 months with the current consultants</li> </ul>	High

## 8. EXTERNAL LEGAL REVIEW

Cliffe Dekker Hofmeyer was retained to conduct the review and the conclusion is that Eskom needs to enter into a Termination Agreement with the parties to bring the matter to finality. This will absolve Eskom from any further liability once the Termination Agreement is in place.

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9. OTHER APPROVALS REQUIRED

None.

10. Appendices

- Appendix A – Eskom Internal Audit Report
- Appendix B – Detail Assessment Preliminary Report (Oliver Wyman)

Approved By:


EDWIN MABELANE  
CHIEF PROCUREMENT OFFICER

SIGNATURE

Who hereby represents that the above  
Information is correct.


DATE

Submission Compiled by: Prish Govender  
Contact Number: 0824690467  
Date: 09 December 2016

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CHECKLIST 1

	N/A	Yes	No
1. INTERNAL PROCESS			
1.1 BUSINESS PLAN			
Has the project/issue been included in the business plan? (If no, information/explanation to be highlighted in documentation/ presentation/attachment.)		X	
1.2 BUDGET			
If financial approval is required, is the project/matter within the approved budget? (If no, information/explanation to be highlighted in documentation/ presentation/attachment.)		X	
1.3 HUMAN RESOURCE IMPLICATIONS			
Does the project have any HR implications? (If yes, information/explanation to be highlighted in documentation/presentation/attachment.)	X		
1.4 FINANCIAL EVALUATION			
- Has the project/issue undergone a financial evaluation? (Eskom Group Finance)		X	
- An external review has been performed by Oliver Wyman			
1.5 LEGAL/CONTRACTUAL ISSUES			
- Are there legal implications?		X	
- Both Corporate Legal and External Legal comments have been obtained			
1.6 TAX IMPLICATIONS			
- Are there tax implications?			
- Has corporate tax department input been obtained?	X		
- If so, is the approval sought consistent with the tax input?			
1.7 CAPITAL PROJECTS			
If the project is of a capital nature the checklist 2 (attached) for the evaluation of capital projects should be completed as well.	X		

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1.8	<b>TECHNICAL EVALUATION</b> <ul style="list-style-type: none"><li>- Has the project/issue undergone a technical evaluation? (Eskom Group Commercial)</li><li>- Has the evaluation been verified?</li><li>- By whom (internally or independent)?</li></ul>	N/A	Yes	No
		X		
1.9	<b>BLACK ECONOMIC EMPOWERMENT IMPLICATIONS</b> Does the project have any BEE implications?		X	
1.10	<b>EMPLOYMENT EQUITY</b> Was due consideration given to employment equity in terms of the following: <ul style="list-style-type: none"><li>- Project team</li><li>- Drafting of submission documentation</li><li>- Individual(s) presenting to BOARD</li></ul>		X	
2.	<b>ADDITIONAL APPROVALS</b>			
2.1	<b>NERSA</b> <ul style="list-style-type: none"><li>- Is NERSA approval/consultation required?</li><li>- If approval or consultation is required, provide details and also highlight the time lines, deadlines, etc.</li></ul>	X		
2.2	<b>PUBLIC FINANCE MANAGEMENT ACT (PFMA)</b> <ul style="list-style-type: none"><li>- Is any PFMA approval required?</li></ul>	X		
2.3	<b>ARE THERE ANY OTHER APPROVALS REQUIRED? IN PARTICULAR:</b> <ul style="list-style-type: none"><li>- Reserve Bank</li><li>- Competition Commission</li><li>- National Treasury</li></ul>	X		

EDWIN MABELANE  
CHIEF PROCUREMENT OFFICER

SIGNATURE  
Who hereby represents that the above  
Information is correct.

DATE



" EN 22 "

**Prishothman Govender**

---

**From:** Suzanne Daniels  
**Sent:** Monday, 06 February 2017 08:47  
**To:** Prish Govender  
**Subject:** RE: MSA Settlement Agreement Principles  
  
**Importance:** High

Thank you. Rishaban will give you a call during the course of today.

**From:** Prish Govender  
**Sent:** Monday, 06 February 2017 10:45 AM  
**To:** Suzanne Daniels <DanielSM@eskom.co.za>  
**Subject:** MSA Settlement Agreement Principles

Hi S

Please see below as discussed.

---

**From:** Calvey, Paul [<mailto:Paul.Calvey@oliverwyman.com>]  
**Sent:** 03 February 2017 05:11 PM  
**To:** Prish Govender; Mary Anne Hendricks  
**Cc:** Hartmann, Bernhard; De Wit, Maarten  
**Subject:** RE: Principles on contract negotiation

Prish,

As discussed.

Principles / drivers for contract negotiation:

- **Underlying contract:** The termination of the underlying contract is based on the terms agreed in the MSA between Eskom and the supplier
- **Approval requirement:** Payment by Eskom will be made only for initiatives that were approved and signed off by the Steering Committee. No payment should be made for initiatives that were not approved by the Committee
- **Documentation of initiatives:** Any initiative due for payment must have met the necessary payment triggers and be registered as such in the Wave PMO tool
- **Payment triggers:** Payment focus should be on initiatives that reached at least implementation level 3, i. e. are ready for implementation and have a detailed implementation plan with agreed milestones. Selectively initiatives with a lower implementation level can also be paid if SteerCo Approval has been given
- **Fair baseline and benchmarks:** Payment triggers must be based on a sound and fair baseline and aligned to industry benchmarks
- **Proven value contribution:** Initiatives must show a positive value contribution to Eskom's business (revenue uplift / cost savings)
- **Procedural issues:** Payments for initiatives with identified procedural issues such as a once-off impact vs. recurring benefits, unclear documentation of benefits or wrongfully applied incentive rates should be challenged

It should be noted that as a prerequisite to successfully winning the mandate for the TCP project, the supplier was required to enter into a contract with a BBBEE Partner, including the fair distribution of the contract value. The failure to put this in place could be grounds for full dissolution of the contract in place, rendering only a time and materials based payment due to the supplier.

AS  
P

As a result, we see a negotiation strategy that starts by laying the ground conditions by making clear that Eskom could declare the contract null and invalid, resulting in the requirement to refund the already executed payments. Eskom could simply offer a time and material payment resulting in a significantly lower figure. Second, Eskom should demonstrate significant errors in the savings accounting done by the supplier. These can be interpreted as breach of contract as well.

---

**From:** Calvey, Paul  
**Sent:** Friday, February 03, 2017 4:29 PM  
**To:** 'Prish Govender'; 'Mary Anne Hendricks'  
**Cc:** Hartmann, Bernhard; De Wit, Maarten  
**Subject:** Principles on contract negotiation

Prish, Mary-Anne,

Please find below the outlined principles of the agreement based on the work we have conducted.

Eskom conducted an independent technical review of the payment claims arising out of the Top Consulting Project that the Eskom Board cancelled on 15<sup>th</sup> July 2016. A separate legal review is being conducted of the contract.

The key findings of the technical review are:

- Of the total potential payment amount of R2,839MM:
  - R1,052.5MM is based on payment triggers that were never approved by the Steering Committee and thus will not be paid
  - The remaining R1,786.5MM is based on R1,679.3MM of consulting initiatives that were approved by the Steering Committee and R107.2MM from the financial advisory work
- Of the R1,786.5MM amount:
  - R937.63MM has already been paid to the consultant supplier and the BBBEE partner
  - There are clear issues with R387.50MM of the payments identified which will not be paid. (e.g. claims for recurring payment when it was agreed to be a one off payment, claims for full payment when only a proportion of payment was signed of, initiatives claimed for that were previously cancelled in Wave)
  - The remaining R461.33MM is calculated based on the approved variable impact registered in the project management tool and is therefore in principle payable. There are further remarks of note on this amount in the detailed study

It should be noted that as a prerequisite to successfully winning the mandate for the TCP project, the supplier was required to enter into a contract with a BBBEE Partner, including the fair distribution of the contract value. The failure to put this in place could be grounds for full dissolution of the contract in place, rendering only a time and materials based payment due to the supplier.

As a result, we see a negotiation strategy that starts by laying the ground conditions by making clear that Eskom could declare the contract null and invalid, resulting in the requirement to refund the already executed payments. Eskom could simply offer a time and material payment resulting in a significantly lower figure. Second, Eskom should demonstrate significant errors in the savings accounting done by the supplier. These can be interpreted as breach of contract as well.

Let us know if you require any additional information.

Regards  
Paul


Paul Calvey  
Partner- Financial Services

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Handwritten signature and initials in the bottom right corner of the page.

"EN 24"

**Prish Govender**

---

**From:** Rishaban Moodley <Rishaban.Moodley@cdhlegal.com>  
**Sent:** 15 February 2017 06:01 PM  
**To:** Prish Govender; Suzanne Daniels; Jackwell Feris; Nicolette Du Sart  
**Cc:** Mary Anne Hendricks  
**Subject:** Draft Letter to McKinsey - Proposed Settlement of the Risk Based Top Engineers Program (15 Feb 2017)  
**Attachments:** Draft Letter to McKinsey - Proposed Settlement of the Risk Based Top Eng....docx

Dear Prish,


Attached is the draft letter to McKinsey. A memorandum consisting of a timeline and clarity required by Eskom would be provided to you tomorrow.

I sincerely apologise for the delay.

Regards,

**Rishaban Moodley**

Director - Dispute Resolution  
Cliffe Dekker Hofmeyr Inc  
Reg No: 2008/018923/21  
1 Protea Place, Cnr of Fredman and Protea Place, Sandton, Johannesburg, 2196  
Tel. +27 11 562 1666 Mobile. +27 82 926 0454 Fax. +27 11 562 1466  
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P

"EN 25"

## TO BE TRANSPOSED ONTO ESKOM'S LETTERHEAD

[Drafting Note: Please consider our comments (click on the arrow to expand). Your response to the statements/comments will have an impact on the basis for the letter. In addition, a memorandum is being prepared on the sequence of events which would include certain factual conundrums and legal aspects/consequences flowing from the risk based agreement for the Top Engineers Programme/Top Consultants Programme.]

McKinsey &amp; Company

[•]

## WITHOUT PREJUDICE: FULL AND FINAL SETTLEMENT OFFER IN RESPECT OF THE TOP CONSULTANT PROGRAMME

- 1 At the outset, Eskom records that it values the service it has received from McKinsey & Company ("McKinsey") to date and looks forward in continuing its relationship with McKinsey.
- 2 Eskom has considered pursuant to meetings and correspondence exchanged with McKinsey, the settlement of the Top Engineers Programme (also known as the Top Consultant Program) for the period 1 February 2016 to 15 July 2016 based on the terms of the Service Level Agreement ("SLA") (also interchangeably referred to as the Master Service Agreement) between the parties.

[Drafting Note: Please confirm whether the suspensive conditions contained in the SLA were fulfilled by 31 January 2016, namely –

- The auditors confirmed that the Tracing Tool incorporates the necessary controls to allow a reasonable audit of the data thereon;
  - A Steering Committee was constituted by Eskom. It appears that the Steering Committee was constituted prior to 31 January 2016. Please confirm.]
- 3 We confirm that on 16 June 2016 a termination notice was issued by Eskom to McKinsey and the SLA was subsequently terminated on 15 July 2016.
  - 4 As a result of the termination of the SLA, the Board Tender Committee mandated Eskom to consider the settlement amount payable to McKinsey for services rendered for the period up and until 15 July 2016 on the risk based principles.
  - 5 After due consideration and without admitting any liability, Eskom is prepared to offer in full and final settlement an amount of R 461 330 000 in addition to the R937 630 000 already paid by Eskom to McKinsey on [•] ("Settlement Offer"). This Settlement Offer is in lieu of all claims demanded by McKinsey for services rendered in terms of the SLA and would constitute:
    - 5.1 The total settlement amount to McKinsey for the services rendered in terms of the SLA's risk based principles is R1 398 960 000 ("Settlement Amount");
    - 5.2 The Settlement Amount is inclusive of all claims by McKinsey and its BBBEE Partner;
  - 6 We confirm that the payment of the balance of the Settlement Amount (R461 330 000) is subject to the conclusion of a settlement agreement concluded between the parties.

**Comment [JFS1]:** We notice that the parties interchangeably refer to Top Engineers Program and Top Consultants Program – the Acceptance of Dec 2015 refers to the Top Engineers Program. It appears the inclusion of other professional during January 2016 resulted in the program be called the Top Consultant Programme as opposed to the Top Engineers Program. Please confirm that they synonymous.

**Comment [JFS2]:** The SLA would have been effective from 1 February 2016 had all suspensive conditions been fulfilled. See our drafting note on the suspensive conditions to the SLA in body of letter. McKinsey in its letter dated 28 June 2015 specifically refers to the January 2016 SLA for the basis of its claim.

There are various documents from Eskom, including submission to the BTC which reflect that the SLA is not yet effective and reference is made to a draft SLA. Should that be so, the specific termination provision of the SLA is not applicable and Eskom could ... [1]

**Comment [JFS3]:** Reference is made to the Master Service Agreement in a number of the minutes and correspondence between the parties. This appears to refer to the acceptance of the proposal for the Top Engineer ... [2]

**Comment [JFS4]:** We understand that the BTC approved a settlement ratio of R1:8 billion. Based on the Oliver Wyman report it appears that R 937 630 was subsequently paid. Client to confirm. ... [3]

**Comment [JFS5]:** The amount proposed (but qualified) by Oliver Wyman is R461 330 in terms of the report dated 15 December 2016. Subject to such counter-offer by McKinsey a lower figure is proposed also factoring in the ... [4]

**Comment [JFS6]:** This was a payment for both McKinsey & the BBBEE partner.

**Comment [JFS7]:** Add date

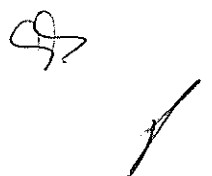
**Comment [RM8]:** Client to advise whether it wants a settlement agreement concluded. The terms would largely constitute those already contained in the letter.

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- 7 Please inform us within five (5) days from receipt hereof whether the Settlement Offer above is acceptable.
- 8 We await your reply.

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Page 1: [1] Comment [JFS2] CDH 2017/02/14 04:20:00 PM

The SLA would have been effective from 1 February 2016 had all suspensive conditions been fulfilled. See our drafting note on the suspensive conditions to the SLA in body of letter. McKinsey in its letter dated 28 June 2015 specifically refers to the January 2016 SLA for the basis of its claim.

There are various documents from Eskom, including submission to the BTC which reflect that the SLA is not yet effective and reference is made to a draft SLA. Should that be so, the specific termination provision of the SLA is not applicable and Eskom could potentially justify why any termination amount should be less. In that regard we will need to obtain a copy of the Letter of Intent to the extent it was signed by the parties. We will also need to obtain the underlying documents relating to the negotiations with McKinsey for the period July 2015 to September 2015 used for purposes of preparing the BTC submissions.

The nature of the acceptance will also need to be ascertain from the offer from McKinsey in July 2015 and the ultimate acceptance of Eskom thereon on December 2015. The acceptance letter from Eskom, specifically refers to a draft contract being finalised – should not SLA (Jan 2016) have been concluded the underlying documents becomes important to demonstrate what was ultimately agreed to by the parties.

Also see letter of 11 August 2016 from McKinsey.

Page 1: [2] Comment [JFS3] CDH 2017/02/14 04:06:00 PM

Reference is made to the Master Service Agreement in a number of the minutes and correspondence between the parties. This appears to refer to the acceptance of the proposal for the Top Engineers Program by Eskom and McKinsey on 17 December 2015. The various submission documents provided for the conclusion of the SLA as the standard NEC Professional Framework Contract was not deemed suitable.

We accordingly are consistent with the relevant documents refer to the SLA.

Page 1: [3] Comment [JFS4] CDH 2017/02/15 04:35:00 PM

We understand that the BTC approved a settlement ratio of R1.8 billion. Based on the Oliver Wyman report it appears that R 937 630 was subsequently paid. Client to confirm.

Page 1: [4] Comment [JFS5] CDH 2017/02/14 04:51:00 PM

The amount proposed (but qualified) by Oliver Wyman is R461 330 in terms of the report dated 15 December 2016. Subject to such counter-offer by McKinsey a lower figure is proposed also factoring in the qualifications on the lower amount by Oliver Wyman, see below

- R1 786 5MM has been approved by the steering committee:  
Financial advisory: the invoiced amount, supported by an hours and rates calculation from the BDOCC partner, is for R167.2MM  
Consulting: from a review of the minutes and materials to the MSA project steering committees, we find R1,679.3MM of payments were approved
- Of the R1,786.5MM:  
R937.63MM has already been paid to the consultant supplier and the BDOCC partner  
The payment of the remaining R848.83MM could be further negotiated with the consultant supplier  
Our analysis points to clear challenges to R397.50MM of the payments identified  
The remaining R461.33MM has no procedural issues associated that would allow it to be challenged. However from a technical perspective, we believe there are questions to be asked on the fairness and calculation of the pay out on a number of initiatives  
The structure of any additional pay outs also needs to be assessed in terms of immediate vs. delayed pay out
- Our analysis therefore indicates, of the outstanding R848.83MM of payment, no more than R461.33MM should be paid to the supplier. Of the R461.33MM, we recommend further analysis in order to provide evidence and support for negotiation with the supplier and its BDOCC Partner. All of this is contingent on the legal review that is being undertaken on the contracting terms and legal construct of the programme

For a lesser amount we would require Oliver Wyman or Marsh to consider what proposed amount would be reasonable/appropriate and the basis therefor.

"EN 26"

**Prish Govender**

---

**From:** Prish Govender  
**Sent:** 15 February 2017 06:08 PM  
**To:** Rishaban Moodley  
**Cc:** Suzanne Daniels; Jackwell Feris; Nicolette Du Sart; Mary Anne Hendricks  
**Subject:** Re: Draft Letter to McKinsey - Proposed Settlement of the Risk Based Top Engineers Program (15 Feb 2017)

Thanks Rishaban

However does the memo you referring to in the email hold us up from concluding the process with Mck?

Prish Govender

On 15 Feb 2017, at 18:01, Rishaban Moodley <[Rishaban.Moodley@cdhlegal.com](mailto:Rishaban.Moodley@cdhlegal.com)> wrote:

Dear Prish,

Attached is the draft letter to McKinsey. A memorandum consisting of a timeline and clarity required by Eskom would be provided to you tomorrow.

I sincerely apologise for the delay.

Regards,

**Rishaban Moodley**

Director - Dispute Resolution  
Cliffe Dekker Hofmeyr Inc  
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<Draft Letter to McKinsey - Proposed Settlement of the Risk Based Top Eng....docx>

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P



"EN 27"

**Prish Govender**

---

**From:** Prish Govender  
**Sent:** 15 February 2017 06:33 PM  
**To:** Molefi Nkhabu  
**Subject:** FW: Draft Letter to McKinsey - Proposed Settlement of the Risk Based Top Engineers Program (15 Feb 2017)  
**Attachments:** Draft Letter to McKinsey - Proposed Settlement of the Risk Based Top Eng....docx

Hi Molefi

Please review the proposed settlement letter drafted by legal counsel to finalise the McKinsey MSA. Please urgently let us know whether it meets your requirements.

Regards

---

**From:** Rishaban Moodley [<mailto:Rishaban.Moodley@cdhlegal.com>]  
**Sent:** 15 February 2017 06:01 PM  
**To:** Prish Govender; Suzanne Daniels; Jackwell Feris; Nicolette Du Sart  
**Cc:** Mary Anne Hendricks  
**Subject:** Draft Letter to McKinsey - Proposed Settlement of the Risk Based Top Engineers Program (15 Feb 2017)

Dear Prish,

Attached is the draft letter to McKinsey. A memorandum consisting of a timeline and clarity required by Eskom would be provided to you tomorrow.

I sincerely apologise for the delay.

Regards,

**Rishaban Moodley**  
Director - Dispute Resolution  
Cliffe Dekker Hofmeyr Inc  
Reg No: 2008/018923/21  
1 Protea Place, Cnr of Fredman and Protea Place, Sandton, Johannesburg, 2196  
Tel. +27 11 562 1666 Mobile. +27 82 926 0454 Fax. +27 11 562 1466  
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*S*

A handwritten signature in black ink, consisting of a stylized 'S' followed by a flourish.

"EN 28"

**Prish Govender**

---

**From:** Rishaban Moodley <Rishaban.Moodley@cdhlegal.com>  
**Sent:** 15 February 2017 07:55 PM  
**To:** Prish Govender; Suzanne Daniels  
**Subject:** Revised Letter to McKinsey - Proposed Settlement of the Risk Based Top Engineers (2) (003)  
**Attachments:** Revised Letter to McKinsey - Proposed Settlement of the Risk Based Top Engineers (2) (003).docx

Dear Prish,

Having reference to our earlier discussion.

I have effected your proposed changes to the letter and consolidated paragraph 5.

Regards,

**Rishaban Moodley**

Director - Dispute Resolution  
Cliffe Dekker Hofmeyr Inc  
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"EN 29"

TO BE TRANSPOSED ONTO ESKOM'S LETTERHEAD

McKinsey & Company

[•]

**WITHOUT PREJUDICE: FULL AND FINAL SETTLEMENT OFFER IN RESPECT OF THE TOP CONSULTANT PROGRAMME/TOP ENGINEERS PROGRAMME**

- 1 At the outset, Eskom records that it values the service it has received from McKinsey & Company ("McKinsey") to date and looks forward in continuing its relationship with McKinsey.
- 2 Eskom has considered pursuant to meetings and correspondence exchanged with McKinsey, the settlement of the Top Engineers Programme (also known as the Top Consultant Program) for the period December 2015 to 15 July 2016 based on the terms of the Service Level Agreement ("SLA") (also interchangeably referred to as the Master Service Agreement) between the parties.
- 3 We confirm that on 16 June 2016 a termination notice was issued by Eskom to McKinsey and the SLA was subsequently terminated on 15 July 2016.
- 4 As a result of the termination of the SLA, the Board Tender Committee mandated Eskom to consider the settlement amount payable to McKinsey for services rendered for the period up and until 15 July 2016 on the risk based principles.
- 5 After due consideration and without admitting any liability, Eskom is prepared to offer in full and final settlement an amount of R 461 330 000 in addition to the R937 630 000 already paid by Eskom to McKinsey and its BBEE Partner on [•] ("Settlement Offer"). The total settlement amount to McKinsey and its BBEE Partner for the services rendered in terms of the SLA's risk based principles is (R 461 330 000 plus R937 630 000) which totals R1 398 960 000 ("Settlement Amount");
- 6 This Settlement Amount is in lieu of all claims by McKinsey and its BBEE Partner for services rendered in terms of the SLA.
- 7 Please inform us within five (5) days from receipt hereof whether the Settlement Offer above is acceptable.
- 8 We await your reply.

Comment [JFS1]: Insert payment date

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"EN 30"

**Prish Govender**

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**From:** Molefi Nkhabu  
**Sent:** 16 February 2017 03:45 PM  
**To:** Prish Govender  
**Cc:** Busisiwe Mthimunye  
**Subject:** Draft Letter to McKinsey - Proposed Settlement of the Risk Based Top Eng...  
**Attachments:** Draft Letter to McKinsey - Proposed Settlement of the Risk Based Top Eng....docx.docx

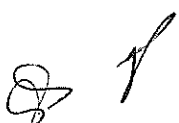
Hi Prish

Apologies for tardiness in response. We have reviewed the letter and are comfortable. We however think the part coloured yellow about the audit tool and the steercom should be deleted because it has become redundant. It is our understanding that Eskom is settling on an agreed amount without reference to the SLA and any conditions relating thereto, therefore reference to the steercom or a tool will be superfluous and may just confuse matters.

The real issue as we understand is that we had Board approval to settle for R1.8b and to date had already paid R.937b and if we settle for addition R.461b we will end up with **final settlement** of R1.4b which will still be within the approved R1.8b . The decision on how to share the additional R.461b will rest with the partners.

By the way, we realise that according to our last audit the total paid was R.916b and not R.937b, please confirm that the R.937 is the correct number as it may affect the final payment.

Molefi



"EN 31"

**Prish Govender**

---

**From:** Rishaban Moodley <Rishaban.Moodley@cdhlegal.com>  
**Sent:** 17 February 2017 01:24 PM  
**To:** Prish Govender; Suzanne Daniels  
**Subject:** Memorandum to Eskom - McKinsey Risk Based SLA (17 Feb 2017)  
**Attachments:** Memorandum to Eskom - McKinsey Risk Based SLA (17 Feb 2017).pdf

Dear Prish,

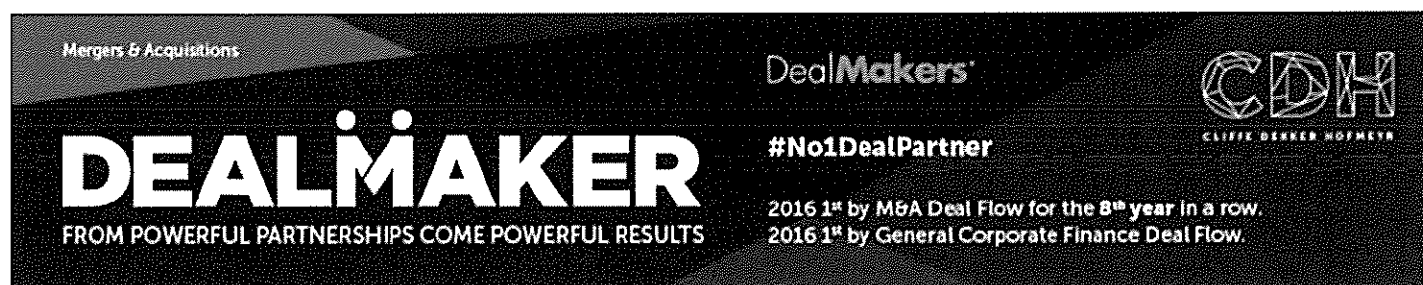
Having reference to our telephone discussion yesterday.

Attached is the memorandum.

Regards,

**Rishaban Moodley**

Director - Dispute Resolution  
Cliffe Dekker Hofmeyr Inc  
Reg No: 2008/018923/21  
1 Protea Place, Cnr of Fredman and Protea Place, Sandton, Johannesburg, 2196  
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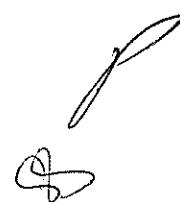
2016 1<sup>st</sup> by M&A Deal Flow for the 8<sup>th</sup> year in a row.  
2016 1<sup>st</sup> by General Corporate Finance Deal Flow.

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"EN 32"

## Memorandum

**TO : PRISH GOVERNDER**

**FROM : RISHABAN MOODLEY**

**SUBJECT : TOP ENGINEERS PROGRAMME: THE RISK BASED SERVICE LEVEL AGREEMENT BETWEEN ESKOM AND MCKINSEY & COMPANY**

**DATE : 17 FEBRUARY 2017**

---

Dear Prish,

- 1 We enclose a chronology of events with specific comments relating to the risk based service level agreement concluded between Eskom and McKinsey & Company (McKinsey). As part of the chronology of events we identified a number of risk elements Eskom must consider relating to the conclusion of the agreement with McKinsey – specifically from a governance and compliance perspective.
- 2 Please have specific regard to items 8 to 16, dealing with the nature of the agreement which came into effect between Eskom and McKinsey.
- 3 We will also provide you with a supplemented version of the chronology – dealing with events pursuant to the conclusion of the SLA, which highlights potential risk elements Eskom must be aware of.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be the initials 'SD' followed by a flourish.



Item	Event	Date
4	<p>Group Capital submission to the Chairperson of Exco Procurement Sub-Committee titled <b>"Strategy to Develop the current Top Engineers Programme into a unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash"</b> for the approval of the following strategy –</p> <ul style="list-style-type: none"> <li> <b>Commodity Strategy</b> <p>The recommended commodity strategy is the appointment of McKinsey &amp; Company on a Sole Source basis to develop the current Top Engineers' Programme into a unit that can provide world class management consulting service capable of resolving emerging company-wide risks by driving savings and unlocking cash for a period of three (3) years. The contract will include an exit clause after the first 12 months if no benefits are realized.</p> <p>The end state is that the Top Engineers will reach a stand-alone status where they are able to execute similar projects on their own.</p> <p>The contract value will be R0.00 as initiative is expected to be self-funding.</p> </li> <li> <b>Sourcing Strategy</b> <p>A Sole Source process will be followed for the following reasons:</p> <p>That Eskom enter into negotiations with McKinsey &amp; Co as a Strategic Partner for the development of the Top Engineers Programme into a consulting unit that can provide world class management consulting service to the whole of Eskom.</p> <p>McKinsey is a suitable partner due to the following reasons:</p> <p>McKinsey developed the original Top Engineers Programme and has intellectual property in the design of the programme that Eskom cannot recreate in respect of:</p> <ul style="list-style-type: none"> <li>Content of class room training programmes;</li> <li>Reverse secondment approach to include Eskom employees as trainees on McKinsey's engagements within Eskom and other clients;</li> <li>Specific mentorship methodology to fast track development; and</li> <li>Specific evaluation schemes to assess consulting readiness of engineers in training</li> </ul> <p>Additionally, McKinsey is the only leading global consulting firm capable of delivering this world class knowledge in South Africa, bearing in mind the following:</p> <ul style="list-style-type: none"> <li>McKinsey is the largest global management consulting house;</li> <li>McKinsey has the largest knowledge development spent in the industry;</li> <li>McKinsey is the only global consulting company with a local presence of over 20 years, having transformed to a level 1 B-BBEE contributor</li> <li>Eskom has completed the majority of its management consulting projects with McKinsey support, giving McKinsey privileged insight into the business, culture, processes, and people of Eskom. This intrinsic insight cannot be offered by any other consultancy.</li> </ul> </li> <li> <b>Motivation for Using Consultant</b> <p>Eskom needs to develop the Top Engineers skill-sets from the current associate level to a project manager level, which will mean that we will phase out consultant use in the future as the Top Engineers will be able to run projects as world class consultants. In order to achieve this, we would need a world class consultant firm to train, coach and mentor our Top Engineers to transfer all current competencies to that of the advanced stage by the end of the specified period. Currently in Eskom we have leadership courses that focus on the Eskom values, and have been attended by the Top Engineers. Furthermore, the proposed external consultant should have experience in conducting similar training initiatives, having provided services in strategy and implementation environments.</p> </li> <li> <b>Contracting Strategy</b> <p>The recommended contracting strategy is as follows:</p> <ul style="list-style-type: none"> <li>Establish a contract McKinsey using the NEC Professional Services Contract 3<sup>rd</sup> edition.</li> <li>The contract value will be at R0.00</li> <li>The contract duration will be for three (3) years. The contract to include an exit clause after first 12 months if no benefits are realized.</li> </ul> </li> </ul>	18 May 2015

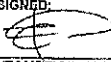






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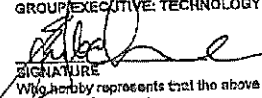
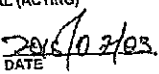

Page 3

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17 February 2017

	<p>The development of Top Engineers unit is envisioned to be 2-3 year journey. During this period the strategic partner will lead the Top Engineers unit to deliver consulting projects focusing on accelerating efficiencies that can unlock immediate cash for the whole of Eskom as well as embedding long term efficiencies.</p> <ul style="list-style-type: none"> <li>• <b>Mandate to Negotiate</b></li> </ul> <p>Negotiations be entered with McKinsey &amp; Co and be contracted in a manner that is self-funding at a contract value of R0.00 as this initiative is expected to be self-funding and the project duration be limited to a maximum of 3 years. The contract to include an exit clause after first 12 months if no benefits are realized;</p> <p>It is Eskom's intention to negotiate zero payment from now cash. This will mean that the strategic partner will only be paid once savings are realized in a manner that will first make-up required project set-up costs prior to kick-in of savings benefits if realised to a maximum of 12% per project.</p> <p>The BPP value package on optimisation of Eskom's external spend, currently located within Group Commercial be used as a base project to generate savings, for the whole of Eskom, that will fund project set-up costs;</p>	
5	Group Capital submission to Board Tender Committee: Special Meeting titled " <b>Strategy to Develop the current Top Engineers Programme into a unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash</b> " for the approval of the strategy.	22 June 2015
6	<p>The proposed strategy is supported by the following Group Technology &amp; Commercial officials –</p> <p>SIGNED: </p> <p>NTOMBIZODWA MOKOATLE SENIOR MANAGER: COMMODITY SOURCING GROUP TECHNOLOGY &amp; COMMERCIAL</p> <p>DATE: 3 July 2015</p> <p></p> <p>PRISH GOVENDER GENERAL MANAGER: COMMODITY SOURCING TECHNOLOGY &amp; COMMERCIAL</p> <p>DATE: 03/07/2015</p> <p></p> <p>MANDLA GOBINGCA GENERAL MANAGER: SD&amp;L GROUP TECHNOLOGY &amp; COMMERCIAL</p> <p>DATE: 5/07/2015</p> <p></p> <p>NONKULULEKO VELEFI FINANCE DIRECTOR (ACTING) CORPORATE FINANCE</p> <p>DATE: _____</p> <p></p> <p>EDWIN MABELANE GROUP EXECUTIVE (ACTING) GROUP TECHNOLOGY &amp; COMMERCIAL</p> <p>DATE: 20/07/2015</p>	3/6 July 2015
7	Submission by Eskom Group Technology & Commercial to Exco Procurement Sub-Committee & Board Tender Committee for a resolution to provide Eskom with the mandate to negotiate with McKinsey to develop the current Top Engineers Programme.	3 July 2015



	<p>SUBMISSION TO:</p> <p>EXCO PROCUREMENT SUB-COMMITTEE (EXCOPS)    DATE: 22 JUNE 2015</p> <p>BOARD TENDER COMMITTEE (BTC)                      DATE: SPECIAL MEETING</p> <p>1.    TITLE OF THE SUBMISSION</p> <p>Mandate to negotiate with McKinsey &amp; Co to develop the current Top Engineers programme into a consulting unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash.</p> <p>2.    RESOLUTION REQUIRED</p> <p>RESOLVED THAT:</p> <p>The Mandate to negotiate with McKinsey &amp; Co to develop the current Top Engineers programme into a consulting unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash is hereby approved subject to the following;</p> <p>2.1    The contract value will be R0.00 as this initiative is self-funding. Consulting fees, expenses and performance incentives will be paid out of realized savings to a maximum of 12% per project with an exit period of 12 months from start of contract if no benefits are realized.</p> <p>2.2    The BPP value package on optimisation of Eskom's total external spend, currently located within Group Commercial be used as a base project to generate savings for the whole of Eskom that will fund project set-up costs;</p> <p>2.3    The development of packages relating to the unlocking of cash by optimising the balance sheet, the unlocking of funding sources through additional financing opportunities and claim management at Medupi, Kusile and Ingula, be approved. These projects, together with any other project as may be identified in the future, may be included in the program at Eskom's sole discretion on a case by case basis depending on value to Eskom.</p> <p><small>the Chairmanship of the Acting Group Executive: Technology and Commercial to develop, negotiate and implement above strategy subject to Eskom Delegation of Authority.</small></p> <p>4.    OTHER APPROVALS REQUIRED</p> <p>Board Tender Committee and Board of Directors approval will be required.</p> <p>EDWIN MABELANE GROUP EXECUTIVE: TECHNOLOGY AND COMMERCIAL (ACTING)</p> <p>                       SIGNATURE                                      DATE</p> <p>Who hereby represents that the above information is correct.</p>	
8	<p>[Drafting Note: we do not have a copy of the minute of the Exco and BTC approving the following –</p> <ul style="list-style-type: none"><li>• Commodity Strategy</li><li>• Sourcing Strategy;</li><li>• Contracting Strategy;</li></ul> <p>From an extract of the October 2015 submission to the BTC a recordal states that on 6 July 2015 the BTC via a Round Robin approved the mandate to negotiate with McKinsey.</p> <p><small>The Board Tender Committee via Round Robin on the 06<sup>th</sup> July 2015 approved the following mandate to negotiate with McKinsey &amp; Co, without prior tendering, to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash.</small></p>	

	The importance of the minute is the negotiation parameters with reference to further submissions made in October 2015	
9	<p>On 24 July 2015 McKinsey provides Eskom with a proposal for the Top Engineers Programme.</p> <div><p>Ramp up phase</p><p>Develop the current Top Engineers Programme into a consulting unit that can provide world class management consulting services capable of resolving emergency complex risks by driving savings and increasing cash</p><p>ESKOM</p><p>Proposed</p><p>July 24 2015</p><p>CONFIDENTIAL AND PROPRIETARY</p><p>Not for use outside of the specific project or business relationship</p></div> <p>[Drafting Note: In relation to the proposal on "Elements and approach for a rapid turnaround of Eskom Generation", we require clarity whether this relates to the Strategic Partnership contract value of R101 733 124,80 million contract under contract no 4600059002 concluded on 29 September 2015. See below.</p> <div><p>Elements and approach for a rapid turnaround of Eskom Generation</p><p>ESKOM</p><p>Proposed</p><p>24 July 2015</p><p>CONFIDENTIAL AND PROPRIETARY</p><p>Not for use outside of the specific project or business relationship</p></div>	
10	<p>Submission were made to Exco Procurement Sub-Committee &amp; Board Tender Committee on the outcome of the negotiations with McKinsey. The negotiations took place between July 2015 to September 2015.</p> <p>Based on the submission the following resolution was required from the BTC –</p>	8 October 2015/22 October 2015

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SUBMISSION TO THE EXCO PROCUREMENT SUB-COMMITTEE (EXCOPS) ON 8 OCTOBER 2015  
SUBMISSION TO THE BOARD TENDER COMMITTEE (BTC) ON 22 OCTOBER 2015

1. TITLE OF THE SUBMISSION

Feedback on negotiated outcome with McKinsey & Co to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks by unlocking cash, without prior tendering.

2. RESOLUTION REQUIRED

2.1 To accept the feedback of the negotiations with McKinsey and Co to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks, without prior tendering, for a period of 3 (three) years, with an option to terminate after a 12 (twelve) month period if no savings are realized.

2.2 To ratify minor differences between negotiated outcomes and approved mandate parameters as contained in sub-clause 2.3.3 and 2.3.6.

2.3 To note the following negotiated conditions:

2.3.1 That the negotiated results for the Top Engineers Programme, Procurement (including Inventory), Generation, Primary Energy and Claims Management value packages and the Supplier Development and Localisation (SD&L) proposal as contained in the attached Appendix 4, 5, 6, 7, 8 and 9 be accepted;

2.3.2 That the contract will be based on the R0.00 and self-funding principle.

2.3.3 That down payments, in lieu of project set-up cost and consulting fees at a total value of R475 000 000.00 (four hundred and seventy five million rand) broken down per value package as indicated below, be paid when they fall due after commencement of each value package, therefore requiring a positive value contract initially:

Value Package	Value
Module "Top Engineers"	R0.00
Module "Procurement"	R50 000 000.00
Module "PEE"	R75 000 000.00
Module "Generation (PLL only)"	R50 000 000.00
Module "Generation (Project Factory)"	R50 000 000.00
Module "Generation (UCF Reduction)"	R250 000 000.00
Module "Claims Management" (not yet concluded)	R50 000 000.00
<b>Total</b>	<b>R475 000 000.00</b>

2.3.4 That the McKinsey bank guarantee be issued to Eskom as security for the down payments approved in 2.3.3 above, the value of which will include the down payments made plus interest, fixed at 12% p.a. (twelve percent per annum), in line with the SLA's Terms and Conditions relating to the Bank Guarantee;

2.3.5 Payment trigger points regime shall be between Implementation Level 3 and 4 (see Appendix 3) and payment on once-off and recurring benefits shall be at 10.80% and 10.55% (see Appendix 2) of projected savings respectively, and recurring benefits for impact calculation and for payment purposes is limited to 3 years;

2.3.5.1 That it be noted that the self-funding principle is envisaged to potentially be realized at some point in the future process, which will vary from package to package. The timing of the payments made to McKinsey and the potential benefits to be realized by Eskom will most probably be different;

2.3.6 To contract using an SLA format of contracting with its associated conditions;

2.4 That the Group Executive, Technology and Commercial is authorised to take all necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

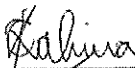
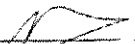
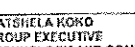
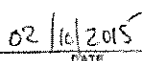
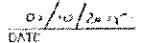

## The negotiation results are recorded as follows –

The following are the results of the negotiations:

- A Service Level Agreement (SLA) with terms and conditions to be used for this type of contract because the NEC 3 Professional Services Contract framework was not suitable for this type of contract. The SLA will incorporate general conditions that will govern all activities associated with the development and implementation of various value packages.
- That the objective of the contract is to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash;
- That the contract will be based on the R0.00 and self-funding principle, and will be for a period of three (3) years. Payments, however, will be made to McKinsey on work packages approved by a Steering Committee. The envisaged end state or implementation level of the work packages for benefit/impact calculations will be at Implementation Level (IL) between IL3 and IL4 (see Appendix 2 and 3) and will be to a maximum of 10.80% and 10.55% of the

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	<p>savings for once-off and recurring benefits or impact that is calculated respectively.</p> <ul style="list-style-type: none"><li>- The self-funding principle will potentially be realised at some point in the future process which will vary from package to package. For example, self-funding on the Procurement stream is envisaged to be realised by month 12 (twelve). This could be earlier if the value generated exceeds the magnitude of the down payments.</li><li>- The Intended Implementation level for all packages will be between levels 3 and 4 in Appendix 3 as illustrated. This will be the package/stream deliverable points and thus trigger points for all payments will be agreed at the negotiated Benefit percentage. The exact trigger events for payment will be negotiated for every workstream/value package and for each respective baseline;</li><li>- Only when a workstream/value package has passed IL2 and has been approved at the SteerCom, will it be considered for the arrangement under this agreement. If a package/workstream is not approved, no fees will be paid to McKinsey other than the upfront down payments.</li><li>- McKinsey has therefore proposed they receive a down payment in lieu of project set-up cost as consulting fees for each work stream that they will work on payable immediately after commencement of each work package. The down payments will be paid equally over a pre-determined duration (6 or 12 months depending on the individual workstream). The size and the duration of the down payments will depend on the nature and scope of work of each individual work stream.</li><li>- McKinsey will issue Eskom with a bank guarantee in lieu of the down payments. The bank guarantee value will include the down payments made plus the interest that will be incurred to the down payments at the potential termination point 12 months after contract start. The interest shall be fixed at 12% p.a;</li><li>- If McKinsey defaults, Eskom will immediately initiate a refund process, failing which, it will have the right to call-up the bank guarantee. Thus, ensuring that the principle of a R 0.00 value contract is maintained for Eskom. There will however be a timing difference from a cash flow perspective in terms of realising the R0.00 value principle. The model is illustrated in Appendix 1.</li><li>- After a 6 month period for each work stream, there will be a "true up" calculation (netting off benefits accrued against down payments already made) process. At the point of the "true up" the accumulated benefits of all the streams are multiplied by the agreed benefit percentages and compared to the down payments paid. In the case that the accumulated benefits of all the streams multiplied by the agreed benefit percentage exceed the down payments made, the excess fees become payable to McKinsey. In case that the accumulated benefits for all the stream multiplied by the fees payable is less than the down payments made after 6 months, McKinsey does not receive a payment for that month. This process repeats itself monthly;</li><li>- After month 12, Eskom has an option to cancel this agreement. At that stage, should Eskom elect to terminate the agreement, a "true up" process will take place. The Termination clause of the SLA will set in and settlement of monies owed to either party will take place.</li><li>- The payments/fees due to McKinsey will be paid over the terms as described in Appendix 1 and Appendix 2. Essentially Eskom will receive payment terms as follows for all payment due and payable to McKinsey:<ul style="list-style-type: none"><li>- 60% within 30 days of "true up" process;</li><li>- 30% of "true up" process within 1 year of "true up" process; and</li><li>- 10% within 2 years of initial "true up" process.</li></ul>The deferred payments do not attract any interest.</li><li>- Negotiations of the individual value packages for Top Engineers Programme and Procurement (including Inventory Management), Primary Energy, Generation and Claims Management have been concluded. However, there are few but significant open items and actions to be approved by the SteerCom and/or actioned by the various teams. Value Package Memorandums are attached as Appendices 5, 6, 7, 8 and 9 respectively. The value packages associated with funding sources and additional financing opportunities will resume once direction is provided by the Chief Financial Officer.</li><li>- An SD&amp;L proposal that deals with skills development, local partner capacitation and the development of Top Engineers is attached as Appendix 4.</li><li>- McKinsey is willing to comply with the National Treasury guideline for expenses payments and thus claims against Eskom for expenses. McKinsey however retains the right to apply its own travel guidelines. The expenses are also not available for scrutiny. The cap on expenses is at 10% of the McKinsey's share of benefits realised. See Appendix 2.</li></ul>	
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<p>4. OTHER APPROVALS REQUIRED</p> <p>Possible application for a deviation from the National Treasury Cost Savings Instruction Note 1 proscripta may be required. Furthermore in the event that the contract value exceeds the R1 200 000 000, there will be a need to report it to the Minister for Public Enterprises</p> <p>Corporate Legal and IT are to approve McKinsey's IT Wave tool to be used as a repository for all project information</p> <div> CHARLES KALIMA GENERAL MANAGER (COMMODITY SOURCING) (ACTING) GROUP TECHNOLOGY AND COMMERCIAL</div> <div> PRUTHI GOVENDER PROGRAMME DIRECTOR GROUP CAPITAL</div> <div> MATSHELE KOKO GROUP EXECUTIVE TECHNOLOGY AND COMMERCIAL</div> <div> DATE</div> <div> DATE</div> <div> DATE</div>					
<p>11</p> <p>Feedback Report to Exco Procurement Sub-Committee &amp; Board Tender Committee on the negotiated outcome with McKinsey on <b><i>developing the current Top Engineers Programme into a unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash, without tendering.</i></b></p> <p>Negotiations were held with McKinsey &amp; Co from the 29th July 2015 to 29th September 2015 at Mogwato Park. The contract is based on a Service Level Agreement, of which the terms and conditions have been substantially agreed. The scope includes included in the negotiations were Top Engineers Programme, Procurement (including inventory management), Primary Energy, Generation and Claims Management. SDRL was to be cross-cutting element in all the work packages.</p> <p>2. APPROVED MANDATE PARAMETERS AND NEGOTIATION RESULTS</p> <p>The table below reflects the approved mandate parameters and the results of the negotiations.</p> <table border="1"><thead><tr><th>Approved Mandate Objectives</th><th>Results Achieved</th></tr></thead><tbody><tr><td>Conditions of contract Terms and conditions remain the same as per the previous NEC contract</td><td><p>Negotiated Terms and Conditions:</p><p>A Service Level Agreement (SLA) - with terms and conditions is to be used for this type of contract because the NEC 3 Professional Services Contract framework was not suitable for this type of contract.</p><ol style="list-style-type: none"><li>1. The SLA, is a contractual document that incorporates general conditions, that will govern all activities associated with the development and implementation of various value packages;</li><li>2. Key principles of the SLA have substantially been agreed in the Master Services Agreement;</li><li>3. Negotiations of the individual value packages for Top Engineers Programme and Procurement (including Inventory Management), Primary Energy, Generation and Claims Management have been concluded. However, there are few but significant open items and actions to be approved by the SteerCom and/or actioned by</li></ol></td></tr></tbody></table> <p>[Drafting Note: In respect of the reference that "key principles of the SLA have substantially been agreed in the Master Services Agreement" Clarity is required on what Master Service Agreement is being referred to – the reference here appears to be mere justification that "certain key principles" being incorporated as part of the SLA have previously been approved by the BTC i.e. in September 2015. However, what is clear is that the Service Level Agreement "will govern all activities associated with the development and implementation of various value packages."]</p>	Approved Mandate Objectives	Results Achieved	Conditions of contract Terms and conditions remain the same as per the previous NEC contract	<p>Negotiated Terms and Conditions:</p> <p>A Service Level Agreement (SLA) - with terms and conditions is to be used for this type of contract because the NEC 3 Professional Services Contract framework was not suitable for this type of contract.</p> <ol style="list-style-type: none"><li>1. The SLA, is a contractual document that incorporates general conditions, that will govern all activities associated with the development and implementation of various value packages;</li><li>2. Key principles of the SLA have substantially been agreed in the Master Services Agreement;</li><li>3. Negotiations of the individual value packages for Top Engineers Programme and Procurement (including Inventory Management), Primary Energy, Generation and Claims Management have been concluded. However, there are few but significant open items and actions to be approved by the SteerCom and/or actioned by</li></ol>	<p>8 October 2015/22 October 2015</p>
Approved Mandate Objectives	Results Achieved				
Conditions of contract Terms and conditions remain the same as per the previous NEC contract	<p>Negotiated Terms and Conditions:</p> <p>A Service Level Agreement (SLA) - with terms and conditions is to be used for this type of contract because the NEC 3 Professional Services Contract framework was not suitable for this type of contract.</p> <ol style="list-style-type: none"><li>1. The SLA, is a contractual document that incorporates general conditions, that will govern all activities associated with the development and implementation of various value packages;</li><li>2. Key principles of the SLA have substantially been agreed in the Master Services Agreement;</li><li>3. Negotiations of the individual value packages for Top Engineers Programme and Procurement (including Inventory Management), Primary Energy, Generation and Claims Management have been concluded. However, there are few but significant open items and actions to be approved by the SteerCom and/or actioned by</li></ol>				

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	<p>the various teams. Value Package Memorandums are attached as Appendices 5, 6, 7, 8 and 9 respectively. The value packages associated with funding sources and additional financing opportunities will resume once direction is provided by the Chief Financial Officer.</p> <p>The Mandate to negotiate with McKinsey &amp; Co to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash was approved subject to the following:</p> <ul style="list-style-type: none"><li>The contract value will be R0.00 as this initiative is self-funding and the project duration be limited to a maximum of 3 years. Consulting fees, expenses and performance incentives will be paid out of realised savings to a maximum of 12% per project</li></ul>	<p>Accepted. The negotiated principles of the programme are attached as Appendix 5 of this document.</p> <ul style="list-style-type: none"><li>That the contract will be based on the R0.00 and self-funding principle, and will be for a period of three (3) years.</li><li>However, payment will be made to McKinsey on work packages approved by a Steering Committee. The envisaged and state or implementation level of the work packages for benefit impact calculations will be at Implementation Level (IL) between IL3 and IL4 (see Appendix 2 and 3) and will be to a maximum of 10.80% of the savings benefits or impact calculated.</li><li>The self-funding principle will potentially be realised at some point in the future process, which will vary from package to package. For example, self-funding on the Procurement stream is envisaged to be realised by month 12 (twelve).</li></ul>	
		<ul style="list-style-type: none"><li>The negotiation results summarising key parameters associated with the payment regime is attached as Appendix 2. The negotiation results need to be read together with Appendix 3 (The different implementation levels defined by McKinsey).</li><li>With reference to the table attached as Appendix 3, the intended implementation level for all packages will be between levels 3 and 4. This will be the package/stream deliverable points and thus trigger points for all payments will be agreed at the negotiated benefit percentage. The exact trigger points for</li></ul>	
		<p>payment will be negotiated for every workstream/value package.</p> <ul style="list-style-type: none"><li>Only when a workstream/value package has passed IL2 and been approved by the Steering Committee, will it be considered for the arrangement under this agreement. If a package/workstream is not approved, no fees will be paid to McKinsey other than the upfront down payments.</li></ul> <p>The presence of McKinsey to ensure a higher level of implementation (e.g. up to IL6) could result in the following:</p> <ul style="list-style-type: none"><li>Significantly inflated use of expensive resources while potentially not improving the expected benefits for Eskom.</li><li>Disempowerment of Eskom's own resources involved in the project work and by that significantly reducing the sustainability of activities.</li></ul> <p>The above proposal is due to the fact that McKinsey would require significant involvement to ensure that all savings are banked. It is envisaged that the Top Engineers together with other trained Eskom personnel will drive all measures to bottom line impact via Implementation Level 5.</p>	
	<ul style="list-style-type: none"><li>The BP2 value package on optimisation of Eskom's total external spend, currently located within Group Commercial to be used as a base project to generate savings for the whole of Eskom that will fund projects set-up costs;</li></ul>	<ul style="list-style-type: none"><li>McKinsey has not accepted Eskom's initial position concerning project set-up costs and expenses payments only being paid from realised savings (money in the bank).</li><li>McKinsey would require project setup and fees for value packages as a down payment as McKinsey is of the view that they will be exposed to a higher than acceptable cashflow risk. This risk would not be acceptable to McKinsey as a company.</li></ul>	
		<ul style="list-style-type: none"><li>McKinsey has therefore proposed they receive down payments in lieu of project set up costs as consulting fees for each work stream that they will work on, payable after commencement of each work package. The down payments will be paid equally over a pre-determined duration (6 or 12 months depending on the individual</li></ul>	

	<p>workstream). The size and the duration of the down payments will depend on the nature and scope of work of each individual work stream.</p> <ul style="list-style-type: none"><li>• McKinsey will issue Eskom with a bank guarantee in lieu of the down payments. The bank guarantee value will include the down payments made plus the interest that will be incurred on the down payments at the potential termination point of 12 months after contract start. The interest shall be fixed at 12% p.a.</li><li>• The proposed set-up costs plus consulting fees to be paid as a down payment for the Procurement stream is R50 000 000, 00, payable after commencement of each work package at equal tranches of R5 000 000.00 over a 6 month period. Refer Appendix 1</li></ul>	
	<ul style="list-style-type: none"><li>• If McKinsey defaults, it immediately initiates a refund process, failing which, it will have the right to call-up the bank guarantee. Thus, ensuring that the principle of a R 0.60 value contract is maintained for Eskom.</li><li>• There will however be a timing difference from a cash flow perspective in terms of realising the R1000 value principle. The model is illustrated in Appendix 1.</li></ul>	
	<ul style="list-style-type: none"><li>• After a 6 month period for each work stream, there will be a "true up" calculation (netting off benefits accrued against down payments already made) process.</li><li>• At the point of the "true up" the accumulated benefits of all the streams are multiplied by the agreed benefit percentage and compared to the down payments paid. In the case that the accumulated benefits of all the streams multiplied by the agreed benefit percentage exceed the down payments made, the excess fees become payable to McKinsey. In case that the accumulated benefits for all the streams multiplied by the fees payable is less than the down payments made after 6 months, McKinsey does not receive a payment for that month. This process repeats itself monthly.</li></ul>	
	<ul style="list-style-type: none"><li>• After month 12, Eskom has an option to cancel this agreement if no savings have been realised. At that stage, should Eskom elect to terminate the agreement, a "true up" process will take place.</li><li>• The Termination clauses of the contract will apply and settlement of monies owed to either party will take place, if there is money owed to either party. Thus if the financial benefit to Eskom is smaller than the down payments made to McKinsey, McKinsey will have to pay back the difference to Eskom.</li><li>• The payments/fees due to McKinsey will be paid over the terms as described in Appendix 1 and Appendix 2. Essentially Eskom will receive payment terms as follows for all payment due and Payable to McKinsey i.e. 60% within 30 days of "true up" process, 30% of "true up" process within 1 year of "true up" process and 10% within 2 years of initial "true up" process. The deferred payments do not attract any interest.</li></ul>	
<ul style="list-style-type: none"><li>• The contract will include an exit clause after first 12 months from start of contract if no benefits are realised</li></ul>	<ul style="list-style-type: none"><li>• Accepted</li><li>• The following four termination scenarios are to apply</li></ul>	
	<ul style="list-style-type: none"><li>• Eskom has the right to terminate, either the full contract or individual workstreams after 12 months of contract start or start of the workstream in case the benefits for either the whole contract or an individual workstream does not outweigh the down payments made until this point.</li></ul>	
	<ul style="list-style-type: none"><li>• In case the contract is terminated after 12 months of either contract or workstream start the true-up at the point of termination shall be the down payments net of the "realised measure" and the respective value shares for those measures between IL2 (approved by StuerCom) and IL "realised"</li></ul>	
	<ul style="list-style-type: none"><li>• Either of the parties may terminate if any of the events mentioned in the section "boundary conditions" arise and Eskom will be liable to</li></ul>	

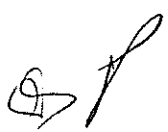
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	<div><div><div><div><div></div><div>provide full payment of all initiatives approved by SteerCom in line with the stage gate process. In each event, a true up will be undertaken following a termination.</div></div></div><div><div><div></div><div>• If a termination is due to any events outside any of the parties' control, (Force Majeure) Eskom shall pay to McKinsey: (1) any amounts due to McKinsey pursuant to a true up; or (2) 75% of any relevant down payment if impact does not exceed down payments received at the relevant time</div></div><div><div><div></div><div>• The development of packages relating to the unlocking of cash by optimising the balance sheet, the unlocking of funding sources through additional financial opportunities and claim management at Nedupl, Kusile and Ingula, be approved. These projects together with any other projects as may be identified in the future may be included in the program at Eskom's sole discretion on a case by case basis depending on value to Eskom.</div></div><div><div><div></div><div>• That a Negotiating Team that will also serve as a Steering Committee for the development of Eskom's Top Engineers consulting unit be authorised under the Chairmanship of the Group Executive: Technology and Commercial to develop, negotiate and implement the above, subject to Eskom Delegation of Authority.</div></div><div><div><div></div><div>• SD&amp;L and Skills development matrix</div></div><div><div><div></div><div>Travel and Subsistence expenses shall be in accordance with the National Treasury Guideline</div></div><div><div><div></div><div>Approved Negotiation Team: Lead Negotiator: Prith Govender Commercial: Ntombizodwa Mokoale Technical: Johnstone Makhubu Freddy Ndou Snehal Nagat Mandla Goblingo</div></div></div></div><div><div><div></div><div>• Accepted. • Negotiations of the individual value packages for Top Engineers Programme and Procurement (including Inventory Management), Primary Energy, Generation and Claims Management have been concluded. However, there are few but significant open items and actions to be approved by the SteerCom and/or actioned by the various teams. Value Package Memorandums are attached as Appendices 5, 6, 7 &amp; 8 respectively. • The value packages associated with funding sources and additional financing opportunities will resume once direction is provided by the Chief Financial Officer.</div></div><div><div><div></div><div>• Accepted • The terms of reference of this committee will be finalised once the required delegation of powers for this committee has been approved</div></div><div><div><div></div><div>A Supplier Development and Localisation (SD&amp;L) proposal that deals with skills development, local partner capacitation and the development of Top Engineers is attached as Appendix 4.</div></div><div><div><div></div><div>McKinsey require expenses payments outside the "at risk" portion of its fees. McKinsey is willing to comply with the National Treasury guideline for expense payments. McKinsey however retains the right to apply its own travel guidelines. The cap on expenses is at 10% of the McKinsey's share of benefits realised. See Appendix 2. The expenses are also not available for scrutiny.</div></div><div><div><div></div><div>Negotiation Team Participants: Lead Negotiator Prith Govender Commercial: Ntombizodwa Mokoale Business Enablement - Johnstone Makhubu Finance - Snehal Nagat SD&amp;L - Mandla Goblingo Andile Dhlana Top Engineers - Dunn Mokoena Bruno Comela Lyle Timm Freddy Ndou was not available for the negotiations due to prior engagements.</div></div></div></div></div></div></div></div></div></div></div></div></div>	
12	<div><div><div><div><div></div><div>BTC passes the following resolution on 21 October 2015 in relation to the Top Engineers Programme –</div></div></div><div><div><div></div><div>EXTRACT OF APPROVED MINUTES OF THE BOARD/TECHCOM COMMITTEE MEETING (26/2015-16) HELD ON 21 OCTOBER 2015 IN THE KAYO NOLU BOARDROOM AT 08:30</div></div><div><div><div></div><div>11.10 GROUP TECHNOLOGY AND COMMERCIAL Feedback on negotiated outcome with McKinsey &amp; Co to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of realising emerging company wide risks by unlocking cash without prior tendering. Reference Document 11.10 Resolved that: 1. The following is approved for recommendation to the Board/Technical Committee (BTC): 1.1 To accept the feedback of the negotiations with McKinsey and Co to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of realising emerging company wide risks without prior tendering for a period of 5 (five) years, with an option to terminate after a 12 (twelve) month period if no savings are realised. 1.2 To ratify minor differences between negotiated outcomes and approved minutes parameters as contained in sub-clause 1.2.1 and 1.2.2 1.3 To note the following negotiated conditions: 1.3.1 That the negotiated results for the Top Engineers Programme, Procurement (including Inventory, Generation, Primary Energy and Claims Management) value packages and the Supplier Development and Localisation (SD&amp;L) proposal as contained in Appendices 5, 6, 7 &amp; 8 are accepted. 1.3.2 That the contract will be seen to the 100% and self-funding</div></div><div><div><div></div><div>CERTIFIED AS A TRUE EXTRACT</div></div><div><div><div></div><div> E. Komane (s/o) GROUP COMPANY SECRETARY Date: 21/10/2015</div></div></div></div></div></div></div></div>	21 October 2015
13	<div><div><div><div></div><div>The documents record that Eskom request McKinsey to commence with services prior to the conclusion of the SLA. A letter of intent appears to</div></div></div></div>	

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	<p>have been circulated to McKinsey (not official or dated) which records the aforesaid and the basis for the engagement with McKinsey.</p> <p>McKinsey Incorporated 85 Savile Street Sandown Meadows East Sandton 2196</p> <p>Dear Mr. Naga,</p> <p><b>RE: LETTER OF INTENT for provision of Services, Capabilities and Resources to Develop the TOP ENGINEERS Programme into a Consulting Unit</b></p> <p>Pursuant to your offer (dated 20 April 2015), we wish to inform you that we have accepted your offer and consequently have the mandate to negotiate and agree a formal written contract with respect to the supply by you of <b>Services, Capabilities and Resources to Develop the TOP ENGINEERS Programme into a Consulting Unit</b> that can provide world class services capable of resolving emerging company-wide risks by driving savings and unlocking cash (the "<b>Services</b>") on the conditions set out in section 1 below.</p> <p>The Parties to this agreement are:</p> <ol style="list-style-type: none"><li>1. Eskom Holdings SOC Ltd ("<b>Eskom</b>"), a State Owned Company and procurer of the <b>Services</b> (Registration Number 2002/015427/06), together with</li><li>2. <b>McKinsey and Company Africa (Proprietary) Limited</b> (the "<b>Supplier</b>"), (Registration Number 2013/091251/07)</li></ol> <p><b>We require a copy of the official letter to McKinsey, as this also gives rise to contractual obligation to the extent that the SLA is deemed to not have come into effect on 1 February 2016.</b></p>	
14	<p>On 17 December 2015 Eskom accepts the proposal of McKinsey for the provision of consultancy services in respect of the <b>Top Engineers Programme</b>, with the following note –</p> <ul style="list-style-type: none"><li>• The considered opinion of the National Treasury instruction will hold throughout the life of the contract;</li><li>• The contract documents will be available for your signature in due course;</li></ul>	17 December 2015


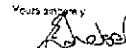
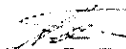


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<div data-bbox="346 746 845 780">  <div data-bbox="483 746 845 780"> <p>UNIQUE IDENTIFIER: 2105458431</p> <p>Revision: 1</p> <p>Revision Date: October 2016</p> <p>Group Technology &amp; Commercial Division</p> <p>Date: 17 December 2016</p> <p>1 Impresario</p> <p>Tel: +27 11 650 5350</p> <p>Dear Gomo</p> </div> </div> <p><b>ACCEPTANCE LETTER</b></p> <p>Alexander Weiss McKinsey and Co</p> <p><b>NOTIFICATION OF ACCEPTANCE FOR THE PROVISION OF CONSULTING SERVICES</b></p> <p><b>Basis of Acceptance</b> We accept your proposal for the provision of Consulting Services concerning the Top Engineers Program on the terms and conditions previously agreed in the draft contract recently negotiated between McKinsey and Eskom.</p> <p>It is a condition of the acceptance that the Eskom considered opinion of the National Treasury Inspectorate will be held throughout the life of the contract. In an unlikely eventuality that this said opinion is conclusively adverse the parties hereby agree to review the contract payment terms to reflect the revised opinion.</p> <p><b>Documentation</b> The contract documents will be available for your signature and acceptance in due course.</p> <p><b>Confirmation</b> We confirm that a contract will exist between Eskom and a McKinsey and Company on the above basis. Please indicate your acknowledgement thereof by signing below and deliver to the undersigned.</p> <p>Yours sincerely  Edwin Mabelane Chief Procurement Officer (Acting)</p> <p>2015/12/17 Date:</p> <p><b>Acknowledgement</b> We acknowledge receipt of your final form of Acceptance dated 17 December 2016 and confirm that a contract will exist between Eskom and McKinsey and Company from 17 December 2016 in terms thereof.</p> <p><b>Signature for and on behalf of the Supplier:</b>  Name: Alexander Weiss Designation: Director</p> <p>2015/12/17 Date:</p> <p><b>Up and until this point of the negotiation and approval of the Top Engineers Programme the intention of the parties are to conclude a Service Level Agreement.</b></p>	
<p>15 On 7 January 2016 Eskom and McKinsey concluded a Service Level Agreement which contains the following material terms –</p> <ul style="list-style-type: none"> <li>Condition Precedent: <ul style="list-style-type: none"> <li>The auditors confirmed that the Tracing Tool incorporates the necessary controls to allow a reasonable audit of the data thereon;</li> <li>A Steering Committee was constituted by Eskom. It appears that the Steering Committee was constituted prior to 31 January 2016, as the first steercom meeting was on 9 February 2016.</li> </ul> </li> </ul> <p>[Drafting Note: we require confirmation whether the suspensive conditions contain in the SLA were fulfilled by 31 January 2016.</p> <p>For this to be demonstrated, we require the following</p> <ul style="list-style-type: none"> <li>Copy of the written confirmation of the auditors. [The agreement does not define the term Auditors];</li> <li>The date when the Steering Committee was finally constituted by Eskom. As the Steering Committee would be fulfilling certain functions normally vested with the BTC and Eskom Board. In that regard we require a copy of the minutes of the BTC meeting</li> </ul>	<p>7 January 2016</p>

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17 February 2017

	<p>which approved the Terms of Reference of the Steering Committee as annexed as "I" to the SLA.</p> <ul style="list-style-type: none"><li>• <b>Alternatively, were the conditions waived or extended?</b></li></ul> <p><b>Note:</b> Eskom must be satisfied that the Steering Committee was properly constituted by the BTC (should such authority vest in the BTC), if not by the Eskom Board in accordance with the Eskom Delegation of Authority Framework. As the Steering Committee fulfils a very important role in the approval process contemplated by the SLA – we need to ensure that there is no basis to challenge the authority of the Steering Committee to discharge the duties afforded to it.</p> <p style="text-align: center;">Annex I STEERING COMMITTEE TERMS OF REFERENCE</p> <p>1. <b>CONSTITUTION</b></p> <p>The McKinsey Master Agreement Steering Committee ("the Committee") is a committee established by BOARD TENDER COMMITTEE to provide guidance and support to the Top Engineers Programme, as well as provide guidance to, and approval of all Work Package Initiatives (as defined in the Services Level Agreement to be entered into between McKinsey &amp; Company and Eskom (the "Services Level Agreement") for generation of savings viz Procurement, Primary Energy, Generation and Claim Management. The Committee shall be in operation for the duration and term of the Services Level Agreement.</p> <p>The Committee shall exercise its delegated authority as set forth herein, in accordance with the latest revision of the Eskom Delegation of Authority Framework subject to the provisions of the Companies Act No 71 of 2008, Eskom Memorandum of Incorporation, the Shareholder Compact, the Public Finance Management Act No. 1 of 1999 and any other applicable legislation.</p> <p>We have also noticed that the amounts reflected as "Down payments" in respect Working Packages for "Claim Management" and "Generations: unplanned capacity loss" is different to the amounts approved by the BTC on 21 October 2015 by R140 million.</p> <ul style="list-style-type: none"><li>• It is not clear from the documents provided whether any down payments were made by Eskom in terms of the SLA accompanied by the McKinsey guarantees.</li></ul> <p><b>We need to understand whether effect was given to the SLA in this respect.</b></p>	
16	On 9 February 2016, the first steercom meeting was held.	



	<div><div>MINUTES OF THE TOP CONSULTANTS PROGRAMME STEERING COMMITTEE MEETING 01/2016 HELD AT KGORONG BOARDROOM ON 09 FEBRUARY 2016 FROM 12H30</div><div><div>STRICTLY CONFIDENTIAL</div><div>PRESENT:</div><div>MEMBERS</div><div>Mr Anoj Singh                      Chief Finance Officer ("CFO") Chairman Mr Matshela Koko Mr Abram Masango Mr Edwin Mabelane Mr Willie Majola</div><div>OFFICIALS</div><div>Mr Prish Govender Ms M A Hendricks              Committee Secretary</div><div>IN ATTENDANCE</div><div>Mr Kobus Steyn Mr Vusi Mboweni Mr Dave Gorrie Mr Willie Pretorius Ms Unathi Hlathe Mr Jonathan Brown              McKinsey &amp; Company Mr Alexander Weiss              McKinsey &amp; Company Mr Lorenz Jungling              McKinsey &amp; Company Mr Vikas Sagar                   McKinsey &amp; Company</div></div></div>	
	<div><p>The parties commenced with the implementation of the SLA. The assumption is made that the suspensive conditions to the SLA were fulfilled as at this point thereby properly constituting the Steering Committee. However, the meeting records that SLA, "Service Level Agreement to be entered into between McKinsey &amp; Company and Eskom".</p><p>7. PURPOSE OF THIS MEETING</p><p>Prish informed the committee members this meeting is set up to assist the McKinsey Contract. To provide guidance and support to the Top Engineers Programme, as well as provide guidance to, and approval of all Work Package Initiatives, as defined in the Service Level Agreement to be entered into between McKinsey &amp; Company and Eskom (the "Service Level Agreement") for generation of savings viz. Procurement, Primary Energy, Generation and Claim Management. The Committee shall be in operation for the duration and term of the Service Level Agreement.</p><p><b>Steering Committee Members:</b> Anoj Singh Maya Bhana Prish Govender Charles Kaima Dave Gorrie Mary Anne Hendricks Matshela Koko Ayanda Noah Abram Masango Edwin Mabelane Alex Weiss (McK) Lorenz Jungling (McK) Eric Wood (Trillian) Bianca Smith (Trillian) Vikas Sagar (McK) Jonathan Down (McK) Mosile Molhepu (Trillian)</p><p>We require clarity on the following –</p><ul style="list-style-type: none"><li>As the SLA was signed on 9 January 2016 by both McKinsey and Eskom, why does the minute record the agreement will still to be entered into. The parties concluded the SLA – the only outstanding "contractual issue" was for the suspensive conditions contained at clause 3 of the SLA to be fulfilled. If the suspensive conditions were not fulfilled by 31 January 2016 (or no waiver or extension) thereof occurred prior to the said date – the SLA would lapse to the extent that there are "Surviving Provisions". In this case the SLA record that clause 1 to 3 and 10 to 25 are surviving provisions. Thus all clauses dealing with the services, payment of fees etc. would lapse on 31 January 2016, if the suspensive conditions were not fulfilled.</li></ul></div>	

SS f

	<p>IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.</p> <p>MCKINSEY AND COMPANY AFRICA PROPRIETARY LIMITED By: <i>REYNOLD L. LUIS</i> Name: REYNOLD L. LUIS Title: SENIOR MANAGER Date: 16 Feb 2017</p> <p>ESKOM HOLDINGS SOC LIMITED Name: Edwin Mabeane Title: Chief Procurement Officer (PCTN) <i>[Signature]</i> Date: 07 January 2016</p> <ul style="list-style-type: none"><li>Is there any specific reason Eskom contends that the SLA was "not entered into" as at 9 February 2016 (date of the first Steering Committee meeting?)</li></ul> <p>During the first meeting reference is also made to the Top Consultant Programme, as opposed to Top Engineers Programme.</p> <p>Please confirm whether reference to the Top Engineers and Top Consultants Programme is the same in accordance with the resolution of the BTC on 21 October 2015. <b>We need to understand the following</b></p> <ul style="list-style-type: none"><li>Why the change in terminology;</li><li>If there is a difference between Top Engineers and Top Consultants Programme, please advise what the difference is and whether the scope of the programme was extended and if so, whether the BTC approved any extension to the scope of the programme.</li></ul>	
17	<p>In correspondence between Eskom and McKinsey concerns are raised relating to Regiment Group and Trillion Group with reference to the Financial Mail article of February 2016.</p> <p>These correspondence also refers to "Top Consultant Programme" as opposed to the Top Engineers Program"</p>	February 2016
18	<p>Steering Committee meeting 31 March 2016</p> <p>12. STEERCO GOVERNANCE</p> <p>Prish Govender presented an overview on the three best options on how to align the TCP Steering Committee. This committee is put in place to drive the Design to Cost Strategy and how the Corporate Plan results can be achieved. Guidance from the Committee members on the Governance and Decisions to be made at this committee in terms Eskom's overall Guidance. Prish to engage with Deloitte, Matshele Koko and Abram Masango with the proposed options for the Steerco Governance and mandate in setting up the RMO.</p> <p>Resolved/Action/Comment:</p> <ul style="list-style-type: none"><li>Prish Govender to provide feedback at the next Steerco after discussion with Matshele, Abram and Sibile from Deloitte.</li></ul>	

*[Handwritten signature]*

	<p>It appears that certain governance related aspects of the Steercom was not yet resolved at this point. Please advise whether the status of Steercom would have been impacted or does this deal with other realted aspects of the process.</p>	
19	<p>In the letter of McKinsey dated 31 March 2016, Eskom is informed of the termination of its relationship with Trillion, including the following -</p> <p>We acknowledge that the draft of the Services Level Agreement between Eskom and McKinsey entails the requirement of outsourcing a percentage of the total consulting fee to a Supplier Development partner. We are fully committed to giving effect to this obligation despite the termination. In light of the previously envisaged sub-contracting relationship with Trillian which, under the current conditions, will not be possible, we would appreciate an opportunity to develop options with Eskom to ensure that we meet our supplier development obligations.</p> <p>We are very much committed to support Eskom on this going forward. Please take it as our sign of commitment that we so far continued our teams to push for impact</p> <p>McKinsey refers to the SLA as a draft Service Level Agreement, but in its letter to Eskom on 28 June 2016 (pursuant to Eskom's termination of the SLA on 16 June 2016) as the "Master Services Agreement finally concluded in Janaury 2016". Thus referring the the SLA.</p> <p><b>From a legal assessment the SLA was concluded on 9 Janaury 2016, however certain of its provision (clauses 4 to 9) may not have come into effect if the suspensive conditions were not fulfilled by 31 Janaury 2016 (alternatively waived or extended).</b></p> <p><u>You will recognize that we dedicated a team for a period of 6 months, starting on 06-12-2015, to negotiate the Master Services Agreement that we finally concluded on January 2016. This agreement clearly outlines how McKinsey will be reimbursed including in the case of termination.</u></p> <p>■ §24.14 clearly states, that "... Termination of this Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination. The provisions of this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination, notwithstanding that the clauses themselves do not expressly provide for this."</p>	



"EN 33"

**Prishothman Govender**

---

**From:** Prish Govender  
**Sent:** Tuesday, 21 February 2017 14:07  
**To:** Suzanne Daniels  
**Subject:** FW: 20170217\_Mckinsey Contract Final \_Memorandum\_mah\_V0-1  
**Attachments:** 20170217\_Mckinsey Contract Final \_Memorandum\_mah\_V0-1.docx

For review thx

---

**From:** Mary Anne Hendricks  
**Sent:** 21 February 2017 04:06 PM  
**To:** Prish Govender  
**Subject:** 20170217\_Mckinsey Contract Final \_Memorandum\_mah\_V0-1





"EN 34"



## MEMORANDUM

---

**To:** Mr Matshela Koko; Interim Group Chief Executive  
**From:** Mr Edwin Mabelane; Chief Procurement Office  
**Date:** 17 February 2017  
**SUBJECT:** FINAL SETTLEMENT RISK BASED CONTRACT  
MCKINSEY & COMPANY

---

### PURPOSE:

1. Request to pay the final amount for the termination of the McKinsey MSA in line with approval from Board Tender Committee and the provision for the amount payable in October 2016.

### BACKGROUND:

2. Following the negotiation process and Board Tender Committee Approval:
  - A. MSA terminated in July 2016
  - B. An amount of R 937 630.00 paid to date on the settlement.
  - C. Historical and any future payments have been subjected to an internal review by Oliver Wyman (Appendix 1)
  - D. Furthermore the MSA procurement and termination processes have been reviewed by Internal Audit (Appendix 2). No major findings were identified. Internal Audit recommended the conclusion of a termination agreement. A termination agreement has been concluded with McKinsey & Company.
  - E. The settlement agreement was drawn up by Cliffe Dekker Hofmeyr. No major findings (Appendix 3)

SP

**DISCUSSION:**

3. In line with negotiations with McKinsey & Company to date, the external review by Oliver Wyman and the Board Tender Committee Approval on the 8 February 2017, a final settlement value of R460 million is due to McKinsey & Company and BBBEE partner.

**FINANCIAL IMPLICATIONS:**

4. A final settlement payment of R460 million is due to McKinsey and the BBBEE partner. The provision for payment for R 500 million was made October 2016 (appendix 4)

**BUDGET IMPLICATIONS:**

5. This is budgeted for in Cost Centre 111000.

**RECOMMENDATIONS**

6. To settle the outstanding amount payable to McKinsey and the BBBEE partner of R460m conclude the termination of the MSA.

Supported By:



Prish Govender  
**GENERAL MANAGER:  
CAPITAL ASSURANCE**

Date:

Supported by:



Edwin Mabelane  
**CHIEF PROCUREMENT OFFICER**

Date:

Supported By:



Suzanne Daniels  
**GROUP COMPANY SECRETARY  
ACTING HEAD: LEGAL & COMPLAINTS**

Date:

Approved:

Matshela KoKo  
**INTERIM GROUP CHIEF EXECUTIVE**

Date:

2 

" EN35 "

**Prishothman Govender**

---

**From:** Prish Govender  
**Sent:** Friday, 04 September 2015 06:08  
**To:** Tshiamo Makoloane; Bruno Correia  
**Subject:** Fwd: Proposal for finance work  
**Attachments:** 150902 LOP strategy and finance work (v3).docx; ATT00001.htm

As discussed

Prish Govender

Begin forwarded message:

**From:** <lorenz\_jungling@mckinsey.com>  
**Date:** 03 September 2015 at 5:52:19 PM SAST  
**To:** <Prish.Govender@eskom.co.za>  
**Cc:** <kokoMM@eskom.co.za>, <alexander\_weiss@mckinsey.com>, <vikas\_sagar@mckinsey.com>, <christine\_wu@mckinsey.com>  
**Subject:** Proposal for finance work

Hi Prish,

as discussed with you, Matshela and Anoj, please find enclosed the fixed fee proposal for the emerging finance work. Please let me know if there is anything additional you need from us.

Take care,

Lorenz

---

Dr.-Ing. Lorenz Juengling  
Principal  
McKinsey & Company  
Johannesburg  
Mobile: +27 82 329 8178

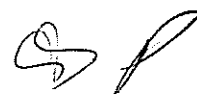
Pamela Khumalo  
Executive Assistant  
Office: +27 11 506 8959  
Mobile: +27 83 321 8042  
[pamela\\_khumalo@mckinsey.com](mailto:pamela_khumalo@mckinsey.com)

*(See attached file: 150902 LOP strategy and finance work (v3).docx)*

+=====+  
=====+

This email is confidential and may be privileged. If you have received it in error, please notify us immediately and then delete it. Please do not copy it, disclose its contents or use it for any purpose.

+=====+  
=====+



" EN 36 "

McKinsey&Company

CONFIDENTIAL

Click here to enter text.

Matshela Koko, Group Executive Technology and Procurement, Eskom

Click here to enter text.

Vikas Sagar, Director, McKinsey

Lorenz Juengling, Principal, McKinsey

1 August, 2015

## Ad hoc support for urgent finance and strategy work

Dear Matshela,

As discussed with you and Anoj over the past couple of days, please find enclosed our proposal how to support Eskom on the emerging work around financial and strategic topics that do not fit under the currently negotiated performance based MSA. This document outlines our understanding of the scope, a suggested approach and required professional fees. We are looking forward to discussing this proposal with you.

### OUR UNDERSTANDING OF THE SCOPE

In its current turn around mode Eskom requires support on a various urgent topics. In detail we discussed the following work streams

- Meeting cash flow and profitability targets for FY16
- Updating the current business cases for Medupi and Kusile
- Further developing and disseminating Eskom's new design to cost strategy doctrine
- Adapting Eskom's top level governance to ensure delivery of the new strategy

All of the above work streams need to be tackled ASAP and finalised before the end of the financial year.



## **SUGGESTED APPROACH**

### **Meeting FY16 targets**

Latest Estimates indicate R 11 billion profitability gap versus the corporate plan for FY16 and additional cash flow requirements of up to R 12 billion. These numbers move as more and more detailed information about Eskom's true financial health becomes available. Target of this work stream is to ensure a positive year end closing and to deal with the additional cash requirements.

In order to achieve this goal potential initiatives how to avoid short term losses and unlock cash will have to be identified, quantified and handed over to the respective line managers for immediate implementation. These initiatives will focus on short term measures like primary energy cost containment, procurement spend reduction, reduction of employee benefits, and generation of additional financial income.

As soon as Exco approves the initiatives as identified by the team, our support will shift towards supporting the initiative owners and monitoring immediate implementation. This support will continue until the end of the year to ensure that all required targets are met.

### **Updating Medupi and Kusile business cases**

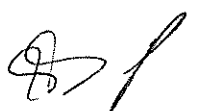
Since the last update of the business cases for Medupi and Kusile several substantial changes have taken place, like switch of the C&I supplier and additional labour unrests. The focus of the new update is to work these into the timeline and budget calculations and by that ensure that both critical projects have the required funding for timely completion available.

McKinsey has supported both projects extensively in the past and can draw on substantial experience to ensure a quick and precise implementation of the update. We expect to be able to complete this work stream within five weeks after project start.

### **Further developing the design to cost strategy**

Eskom has decided to change its strategic from a cost reflective tariff under any circumstance towards adopting a long term tariff path that supports sustained growth for the South African economy. This strategic shift triggers drastic changes to Eskom's financial model, budgeting and ultimately the corporate plan for the next five years.

The focus of our work would be to detail out the high level strategic plan into realistic financial statements and detailed budgets over a five year horizon. Additionally operational KPI's for a turnaround of Eskom's health have to be defined and aligned with Eskom's various delivery units. This work will be



accompanied by multiple stakeholder engagements with board, DPE, DoE, NERSA, and the public.

McKinsey has supported the early development of the design to cost strategy of Eskom as well as a deep understanding of the operational side of the business. We are therefore perfectly positioned to detail out this work going forward and support Eskom in aligning its stake holders. It is our understanding that this work will continue until the end of FY16.

### **Adapting Eskom's governance**

Accomplishing the design to cost strategy will require Eskom to step up its capability to deliver on its targets. In this context Eskom is considering a couple of governance changes like: reviewing the current ExCo configuration, reviewing the current structure of committees and decision bodies, and decentralising critical support functions to empower its station management teams.

The focus of our work would be to support Eskom in defining and implementing its desired governance changes. We assume that this effort will be possible to complete within four weeks.

### **REQUIRED PROFESSIONAL FEES**

As already mentioned above the nature of the work outlined in this proposal does not lend itself to performance based fees that fund itself from direct savings. We would therefore propose to use our traditional consulting team bundle rates as quoted by us in the recent strategy panel tender CORP 3153 plus CPI escalation of 8% p.a.. These team bundle rates are compliant with current National Treasury requirements

For the support as outlined above we would charge the following team bundle rates

- **Meeting FY16 targets:** Medium/Large project, long term bundle with a monthly rate of R 7,037,356.68 for 6 months. The total professional fees for this work stream would be R 42,224,140.08.
- **Updating Medupi and Kusile business case:** medium project, short term bundle with a monthly rate of R 7,365,306.24 for five weeks. The total professional fees for this work stream would be R 9,206,632.8.
- **Further developing design-to-cost strategy:** Medium/Large project, long term bundle with a monthly rate of R 7,037,356.68 for 6 months. The total professional fees for this work stream would be R 42,224,140.08.
- **Adapting Eskom's governance:** Small project, short term bundle with a monthly rate of R 5,115,111.12 for 1 months.



\*\*\*\*\*

The professional fee bundle rates quoted above exclude VAT and expenses for travel and accommodation. Expenses will be charged on top as they occur according to National Treasury guideline.

□ □ □


We are very excited to support Eskom on these crucial topics for the company and the country. We are looking forward to discussing this proposal with you.

Vikas Sagar  
(Director)

Lorenz Juengling  
(Principal)

A handwritten signature in black ink, appearing to be a stylized 'S' followed by a 'P'.

"EN 37"

	ACCEPTANCE LETTER	Unique Identifier	240-54568433
		Revision	1
		Revision Date	October 2015
		Group technology & Commercial Division	

Alexander Weiss and Vikas Sagar

Date: 29 September 2015

McKinsey & Company  
Sandown Mews East  
88 Stella Street  
Sandown 2196

Enquiries:  
Tel +27 11 800 5976  
Tshiamo Makoloane  
makolt@eskom.co.za

NOTIFICATION OF ACCEPTANCE FOR THE PROVISION OF CONSULTING SERVICES

Basic of Acceptance

We accept your proposal for the provision of Consulting Services on a fixed fee basis in accordance with the terms and conditions specified below:

Scope of work

- Meeting FY16 targets
- Updating Medupi and Kusile business cases
- Further developing the design to cost strategy
- Adapting Eskom's governance

Contract

The terms and conditions of the NEC Professional Services Contract will apply.

Contract Conditions


Additional SD&L Requirement  
-Subcontracting of 30% of the contract value to a black owned supplier will apply.

Fees

The agreed fee for the contract is R 98 461 228.27 excluding VAT, travel and subsistence allowance. The fees are activity and output based.

*Handwritten signature and initials*  
mm  
ACW



	ACCEPTANCE LETTER	Unique Identifier	240-54568433
		Revision	1
		Revision Date	October2015
		Group technology & Commercial Division	

The rates per hour applicable to the contract are as follows;

	Rate per hour – short term projects (< 60 consulting days)	Rate per hour – long term projects (> 60 consulting days)
Director	R 2885	R 2380
Associate Director	R 2885	R 2356
Senior Manager	R 2297	R 1895
Manager	R 2323	R 1917
Supervisor	R 1300	R 1166
Senior Consultant	R 1300	R 1166
Junior Consultant	R 935	R 623


Documentation

The contract documents will be available for your signature and acceptance within one week of receiving the Notification of Acceptance, or within any longer period agreed between Eskom and McKinsey and Company.



Confirmation


We confirm that a contract will exist between Eskom and Mc Kinsey and Company on the above basis. Please indicate your acknowledgement thereof by signing below and deliver to the undersigned.

Yours sincerely



Matshela Koko  
GROUP EXCECUTIVE – TECHNOLOGY AND COMMERCIAL  
DATE: 29/9/15

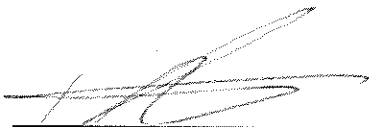
  
AW

	ACCEPTANCE LETTER	Unique Identifier	240-54568433
		Revision	1
		Revision Date	October 2015
		Group technology & Commercial Division	

Acknowledgement

We acknowledge receipt of your Notification of Acceptance dated 21.09.2015 confirming that a contract will exist between Eskom and McKinsey and Company from 01 October 2015 or soon thereafter.

Signature:

 (21.09.2015)  
Name: ALEXANDER WEISS  
Designation: DIRECTOR

For and on behalf of the Supplier



"EN 38"

**Prishothman Govender**

---

**From:** vikas\_sagar@mckinsey.com  
**Sent:** Friday, 27 November 2015 14:20  
**To:** Prish Govender  
**Cc:** alexander\_weiss@mckinsey.com; Eric Wood; Matshela Koko  
**Subject:** Fw: Trillian Management Consulting

Per our discussion.  
Rgds  
Vikas

---

Vikas Sagar  
Director  
McKinsey & Company, Johannesburg  
Tel: +27 11 506 8149  
Cell: +27 82 329 8149  
Fax: +27 11 506 9149

----- Forwarded by Vikas Sagar/JOH/Africa/MCKINSEY on 2015/11/27 04:19 PM -----

From: Clive Angel <clive@integratedcapital.co.za>  
To: Vikas <vikas\_sagar@mckinsey.com>  
Cc: Wood Eric <EricW@regiments.co.za>  
Date: 2015/11/25 09:21 AM  
Subject: Trillian Management Consulting

Dear Vic

Herewith details with regard to Trillian Management Consulting (Pty) Ltd for the purpose of the contract;

Entity: Trillian Management Consulting  
Previously: 2015/111709  
VAT Number: 4950270852  
TAX Number: 9330530180

PS: The name change is still pending at CIPC

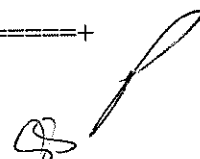
Please let me know if you require any further information in this regard

Best Regards  
Clive Angel

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"EN 39"

## Prishothman Govender

---

**From:** janet\_de\_beer@mckinsey.com  
**Sent:** Monday, 22 February 2016 09:51  
**To:** Mary Anne Hendricks  
**Subject:** Fw: Direct payment to Trillian  
**Attachments:** 0805\_001.pdf

Hi Mary Anne,

Please see letter attached to Prish on 9 February 2016, should you have any later communication with regards to this request I would appreciate if you could give me feedback so that I can go back to the leadership so that I can make the correct arrangements with regards to billing and payment to Trillian.

Appreciate your continues support on this project.

Kind regards

Janet de Beer | Senior Accountant  
 McKinsey & Company | Sandown Mews, East, 88 Stella Street | 2196 Sandown | Republic of South Africa  
 Direct + 27 11 5068260 | Fax + 27 11 5069260 | Mobile + 27 636846043 | Internal 3273260  
 janet\_de\_beer@mckinsey.com  
 ----- Forwarded by Janet de Beer/JOH/Africa/MCKINSEY on 2016-02-22 11:47 AM -----

From: Benedict Phiri/JOH/Africa/MCKINSEY  
 To: Janet de Beer/JOH/Africa/MCKINSEY@MCKINSEY  
 Date: 2016-02-22 11:37 AM  
 Subject: Fw: Direct payment to Trillian

---

Hi Janet

See attached. I have not seen a response to this yet. I think best to follow up with Vikas.

Best

Benedict

Benedict Phiri | Associate General Counsel  
 McKinsey & Company | Sandown Mews, East, 88 Stella Street | 2196 Sandown | Republic of South Africa  
 Direct +27 11 506 8289 | Fax +27 11 506 9289 | Mobile +27 83 3206280 | Internal 327 8289  
 benedict\_phiri@mckinsey.com

Assistant Anita Ulanowska | Direct +27 11 506 8802 | Internal 327 8802  
 anita\_ulanowska@mckinsey.com  
 ----- Forwarded by Benedict Phiri/JOH/Africa/MCKINSEY on 2016-02-22 11:21 AM -----

From: Vikas Sagar/JOH/Africa/MCKINSEY  
 To: "Prish Govender" <Prish.Govender@eskom.co.za>  
 Cc: Benedict Phiri/JOH/Africa/MCKINSEY@mckinsey, "Alexander Weiss" <alexander.weiss@mckinsey.com>, eric@tcp.co.za, clive@tcp.co.za  
 Date: 2016-02-09 04:39 PM  
 Subject: Direct payment to Trillian

---

Hello Prish

In line with the contractual arrangement agreed in our MSA and per Trillian's request, we attach the authorization to pay Trillian directly.

Please let us know if you have any questions.

Rgds  
Vikas

Vikas Sagar  
McKinsey & Co  
+27 82 329 8149  
(See attached file: 0805\_001.pdf)

=====+  
This email is confidential and may be privileged. If you have received it  
in error, please notify us immediately and then delete it. Please do not  
copy it, disclose its contents or use it for any purpose.  
=====+



" EN 40 "  
McKinsey&Company

9 February 2016

Prish Govender  
Eskom  
Megawatt Park  
Sunninghill

Email:Prish.Govender@eskom.co.za

Dear Prish,

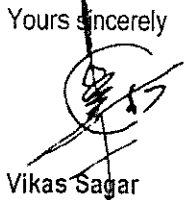
**Authorisation to pay Subcontractor Directly**

We refer to the Professional Services Contract for the provision of consulting services for 6 months entered into between Eskom SOC Ltd (Eskom) and McKinsey and Company Africa Proprietary Limited ("McKinsey"), dated 29 September 2015 (the Agreement). As you know, McKinsey has subcontracted a portion of the services to be performed under the Agreement to [Trillian Proprietary Limited] (Trillian).

Subject to: (i) the terms of the Agreement relating to any payments to be made by Eskom to us; and (ii) us issuing a written confirmation of our satisfaction with the relevant services to be performed by Trillian to McKinsey and; (iii) the correctness of the amount to be invoiced, we hereby agree for, and authorize, Trillian to invoice, and be paid directly by, Eskom for any services performed by it in pursuance of our obligations under the Agreement.

We trust you find the above in order.

Yours sincerely



Vikas Sagar  
Director

McKinsey and Company Africa Proprietary Limited



"EN 41"

**Prishothman Govender**

---

**From:** Doug Dewey  
**Sent:** Friday, 02 October 2015 09:37  
**To:** Matshela Koko; Anoj Singh  
**Cc:** Prish Govender; Edwin Mabelane; Roman Crookes  
**Subject:** Medupi and Kusile ; Business case and Cost savings review: 2014; Outstanding McKinsey Invoice  
**Attachments:** 20151002 McKinsey GE letter.pdf

Dear Sirs

As summarized in the attached document, Eskom owes McKinsey R 41 466 710.00 for the above work performed during 2014.

I will appreciate your consideration of the way forward as recommended in order to unlock the current impasse and decision taken by the R300 million Tender Committee.

Feel free to contact me for any further details you might require.

Regards

Doug

0826525122

"EN 42"



Group Executive: Technology and Commercial  
Attention: Matshela Koko

Date:  
30 September 2015

Finance Director  
Attention: Anoj Singh

Enquiries:  
Tel +27 11 800 2814

Dear Sirs

**Outstanding McKinsey Invoice: Business Case: Medupi and Kusile Power Station Projects**

At the request of the previous Group Executive, Dan Marokane, McKinsey performed work at Medupi and Kusile on the review of the business cases and the portfolio. The work on the business cases was seen as an extension of the BPP activities to drive cost savings across Eskom. In October 2014 McKinsey invoiced Eskom R41 466 710.00 for the work performed. Eskom has not yet paid McKinsey.

During 2014, to enable this payment, the Medupi Project was tasked to normalize the process by acquiring Internal Consulting's recommendation for using consultants and the necessary condonations from the relevant tender committee for not having a contract in place.

The process was normalized and Internal Consulting ratified the use of McKinsey but however recommended that the amount be reduced by 50 %. This recommendation was informed by the fact that McKinsey had the benefit of not competing for work and previously reduced their rates by matching prices of other contenders for associated work.

The tender committee has since condoned the transaction, however, based on the recommendation by Internal Consulting, the committee only approved an amount of R29 201 392.00 based on the appropriate National Treasury rates

McKinsey was informed of this decision but subsequently rejected it and requested a hearing with the then acting Group Executive: Commercial and Technology, Edwin Mabelane. Based on McKinsey's interpretation of the National Treasury procedures McKinsey has now resubmitted their invoice to the amount of R 41 466 710.00. They are also now claiming an additional amount for interest on the outstanding amount since October 2014 of approximately R2, 9 million.

**Recommendation:**

Taking all factors into account and similar precedencies I am of the opinion that if this matter becomes a legal issue that Eskom will not be able to defend our stance. I would therefore recommend that we settle the original invoice as submitted by McKinsey in October 2014 and endeavor to negotiate the interest now claimed.

Yours sincerely

  
Doug Dewey

Senior Manager, Finance and Risks  
Medupi Power Station Project

Group Capital Division  
Medupi Power Station Project  
Steenbokpan Rd Lephalale  
Private Bag 7502 Onverwacht Lephalale 0557 SA  
Tel +27 14 762 2401 Fax +27 14 762 2410 [www.eskom.co.za](http://www.eskom.co.za)  
Eskom Holdings SOC Limited Reg No 2002/015527/30





"EN 43"

## Prishothman Govender

**From:** Frans Marais  
**Sent:** Wednesday, 13 January 2016 06:21  
**To:** Nhlanhla Kraai; alexander\_weiss@mckinsey.com  
**Cc:** Surien De Greeff; Mary Anne Hendricks; janet\_de\_beer@mckinsey.com; lorenz\_jungling@mckinsey.com; Khethile Mkhabela; Prish Govender; christine\_wu@mckinsey.com  
**Subject:** RE: Contract 4600059002: McKinsey

Thanks to all.

May the SE's and GR's now be processed?

Frans Marais  
 Middle Manager Contracts Management  
 Business Enablement  
 Group IT  
 Megawatt Park D2 Z34  
 PO Box 1091 Johannesburg 2000  
 T +27 (0)11 800 3361  
 M +27 (0)82 653 4455  
 F +27 (0)69 669 4995  
 E-mail [frans.marais@eskom.co.za](mailto:frans.marais@eskom.co.za)



**From:** Nhlanhla Kraai  
**Sent:** 12 January 2016 19:11  
**To:** alexander\_weiss@mckinsey.com  
**Cc:** Surien De Greeff; Mary Anne Hendricks; janet\_de\_beer@mckinsey.com; lorenz\_jungling@mckinsey.com; Frans Marais; Khethile Mkhabela; Prish Govender; christine\_wu@mckinsey.com  
**Subject:** RE: Contract 4600059002: McKinsey  
**Importance:** High

Good day Alex,

I'm well thanks, compliments of the new year and all the best for 2016.

Prish, the review of the business case for Kusile was carried out satisfactory in December 2014 and all the documents were handed over to the Project by McKinsey.

Thank you.

Nhlanhla Kraai



Capital & Properties Division – Finance  
 Group Capital – Kusile Power Station Project  
 Eskom Holdings SOC Limited (Reg No: 2002/015527/06)  
 Tel (ZA) +27 13 699 7150 | Mobile +27 82 824 4254 |  
 E-mail [kraai@eskom.co.za](mailto:kraai@eskom.co.za) | Website [www.eskom.co.za](http://www.eskom.co.za)

97 1

"EN 44"

**Prishothman Govender**

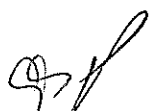
---

**From:** Mary Anne Hendricks  
**Sent:** Tuesday, 02 February 2016 12:35  
**To:** Prish Govender  
**Subject:** McKinsey completion certificate.xls  
**Attachments:** McKinsey completion certificate.xls

Hi Prish

See attached as discussed sent to Nhlanhla Kraai and Doug Dewey to complete for payment

Thanks



"EN 45"

**Prishothman Govender**

---

**From:** Mary Anne Hendricks  
**Sent:** Thursday, 11 February 2016 13:38  
**To:** Maya Bhana  
**Cc:** Prish Govender  
**Subject:** FW: mckinsey invoices for jan 2016  
**Attachments:** 20160211153357833.pdf

Hi Maya

Please find attached the January Mckinsey invoices for payment

Thanks and Regards





## McKinsey &amp; Company

30 November 2015

Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sunninghill  
2157

Dear Anoj,

Please find invoice 6393 for professional fees, including out of pocket expenses and support services (excluding travel and lodging) during November 2015 for the support to the CFO Office on the Corporate Plan work.

Please find below an overview of our main activities for this workstream:

**Corporate Plan**

- Preparation of rating agency presentation with Eskom Treasury
- RCA preparation on OCGTs and other topics
- Finalised NT and DPE presentations
- Launched divisional engagements on Corporate Plan to develop divisional plans
- Developed draft operational plans for 2-3 key divisions (Gx, PED, Tx, Dx)
- Completed Board document
- Launched Production Plan integration process

Yours sincerely,

Alexander Weiss  
Director

McKinsey and Company Africa Propriety Limited  
Sandown Mews East 88 Stella Street Sandown Sandton 2196 PO Box 652767 Benmore 2010 South Africa  
Telephone +27 (0) 11 506 8000 Fax +27 (0) 11 506 9000

Incorporated and registered in South Africa NO 2013/091251/07 Directors L.H. Arwidi (Swedish) W.A. Russo (American) M.M. Halbye (Danish)



SE: 1082730906  
GR: 50052730906

450 2285514 line 10

## McKinsey & Company

Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sunninghill  
Sandton  
2157

McKinsey and Company Africa  
(Pty) Ltd  
VAT no: 4040268668

Tax invoice: 6393

VAT no: 4740101508  
Unique Identifier: 240-54568433

Charge code: ESK160

Payment due within 30 days of invoice date

30 November 2015

Professional fees and support services (excl.  
travel and lodging) \_ November 2015

ZAR 20 404 815.00

VAT @ 14%

ZAR 2 856 674.10

**TOTAL**

ZAR 23 261 489.10

Payment may be made by direct transfer to:

Account Name: McKinsey and Company Africa (Pty) Ltd  
Account Number: 421061812  
Branch: 019205  
Bank name and address: The Standard Bank of South Africa Ltd.  
Sandton Branch  
156 Fifth Street  
Sandton, 2196  
South Africa

Please note:

Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.



A handwritten signature in black ink, appearing to be "GZ" or similar, located in the bottom right corner of the page.

## McKinsey&amp;Company

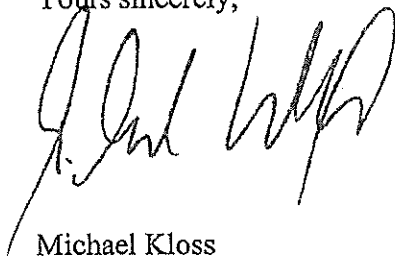
30 November 2015

Prish Govender  
Director Project Development  
Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sunninghill  
Sandton  
2157

Dear Prish,

Please find invoice 6393 for professional fees, out of pocket expenses and support services during November 2015 for the Eskom – Development design to cost strategy.

Yours sincerely,



Michael Kloss  
Director



## McKinsey&amp;Company

30 October 2015

Mr Anoj Singh  
Chief Financial Officer  
Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sunninghill  
2157

Dear Anoj,

Please find invoice 6377 for professional fees, including out of pocket expenses and support services (excluding travel and lodging) during October 2015 for the support to the CFO Office on the Corporate Plan work.

Please find below an overview of our main activities for this workstream:

**Corporate Plan**

- Developed the @Risk cashflow estimate for Eskom with optimization scenario
- Finalised the Eskom Design to Cost strategy KPIs and Corporate Planning Directive
- Supported multiple stakeholder engagement submissions (e.g., Gx, PED)
- Developed revised funding plan with Treasury

Yours sincerely,

Alexander Weiss  
Director

McKinsey and Company Africa Propriety Limited  
Sandown Mews East 88 Stella Street Sandown Sandton 2196 PO Box 652767 Benmore 2010 South Africa  
Telephone +27 (0) 11 506 8000 Fax +27 (0)11 506 9000

Incorporated and registered in South Africa NO 2013/091251/07 Directors LJH Arwidi (Swedish) WA Russo (American) MM Halbye (Danish)





4502285514 line 20

SE:1082730909  
GR:5005287126**McKinsey&Company**Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sunninghill  
Sandton  
2157McKinsey and Company Africa  
(Pty) Ltd  
VAT no: 4040268668

Tax invoice: 6377

VAT no: 4740101508  
Unique Identifier: 240-54568433

Charge code: ESK160

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**Payment due within 30 days of invoice date**

30 October 2015

Professional fees and support services (excl.  
travel and lodging) \_ October 2015


ZAR 6 801 605.00

VAT @ 14%

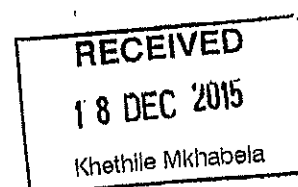
ZAR 952 224.70

**TOTAL**ZAR 7 753 829.70Payment may be made by direct transfer to:

Account Name:	McKinsey and Company Africa (Pty) Ltd
Account Number:	421061812
Branch:	019205
Bank name and address:	The Standard Bank of South Africa Ltd. Sandton Branch 156 Fifth Street Sandton, 2196 South Africa

  
19/01/2016Please note:

Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.



## McKinsey&amp;Company

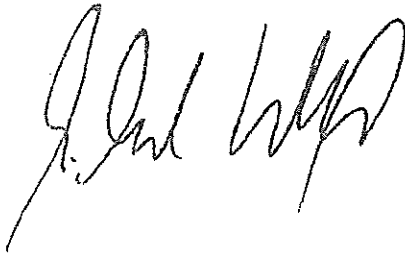
30 October 2015

Prish Govender  
Director Project Development  
Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sunninghill  
Sandton  
2157

Dear Prish,

Please find invoice 6377 for professional fees, out of pocket expenses and support services during October 2015 for the Eskom – Development design to cost strategy.

Yours sincerely,



Michael Kloss  
Director



## McKinsey&amp;Company

30 November 2015

Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sunninghill  
2157

Dear Anoj,

Please find invoice 6383 for professional fees, including out of pocket expenses and support services (excluding travel and lodging) during October and November 2015 for the support to the CFO Office on the Governance work.

Please find below an overview of our main activities for this workstream:

**Governance – October:**

- Developed P&G Committee submission and presentation
- Launch of a review of Eskom Governance processes focused on ExCO
- Analysis of Delegation of Authority best practices

**Governance – November:**

- Developed new Delegation of Authority
- Defined new ExCo structures and operating models
- Developed ExCo calendar for 2016
- Developed Governance implementation plan
- Created Governance masterclass documentation for Company Secretariat

Yours sincerely,

Alexander Weiss  
Director

McKinsey and Company Africa Propriety Limited  
Sandown Mews East 88 Stella Street Sandown Sandton 2196 PO Box 652767 Benmore 2010 South Africa  
Telephone +27 (0) 11 506 8000 Fax +27 (0)11 506 9000

Incorporated and registered in South Africa NO 2013/091251/07 Directors LJH Arwidi (Swedish) WA Russo (American) MM Halbye (Danish)



4502285514 line 60

SE:1682730922

GR:5005287129

## McKinsey&amp;Company

Eskom Holdings SOC Limited  
Megawatt Park  
Maxwell Drive  
Sunninghill  
Sandton  
2157  
VAT no: 4740101508  
Unique Identifier: 240-54568433

McKinsey and Company Africa  
(Pty) Ltd.  
VAT no: 4040268668

Tax invoice: 6383  
Charge code: ESK162

---

Payment due within 30 days of invoice date

30 November 2015

Professional fees and support services (excl.  
travel and lodging) \_ November 2015

ZAR 4 943 755.00

VAT @ 14%

ZAR 692 125.70

TOTAL

ZAR 5 635 880.70

Payment may be made by direct transfer to:

Account Name: McKinsey and Company Africa (Pty) Ltd  
Account Number: 421061812  
Branch: 019205  
Bank name and address: The Standard Bank of South Africa Ltd.  
Sandton Branch  
156 Fifth Street  
Sandton, 2196  
South Africa

RECEIVED

18 DEC 2015

Khethile Mkhabela

Please note:

Standard terms provide for invoice payment upon receipt.

Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.

99

## McKinsey&amp;Company

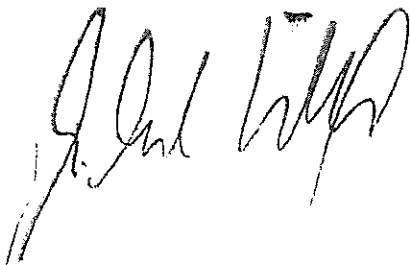
30 November 2015

Prish Govender  
Director Project Development  
Eskom Holdings SOC Limited  
Megawatt Park  
Maxwell Drive  
Sunninghill  
Sandton

Dear Prish,

Please find invoice 6383 for professional fees, including out of pocket expenses and support services for the period 01 October – 30 November 2015 on the 'Adapting Eskom's Governance' project.

Yours sincerely,



Michael Kloss  
Director



## McKinsey &amp; Company

30 October 2015

Mr Anoj Singh  
Chief Financial Officer  
Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sunninghill  
2157

Dear Anoj,

Please find invoice 6378 for professional fees, including out of pocket expenses and support services (excluding travel and lodging) during October 2015 for the support to the CFO Office on the Latest Estimate work.

Please find below an overview of our main activities for this workstream:

**Latest Estimate**

- Finalized position papers on Exxaro Coal Provision and Municipal Impairment
- Syndicated final position with relevant stakeholders
- Defined pre-requisites for redirection of Medupi coal

Yours sincerely,

Alexander Weiss  
Director

McKinsey and Company Africa Propriety Limited  
Sandown Mews East 88 Stella Street Sandown Sandton 2196 PO Box 652767 Benmore 2010 South Africa  
Telephone +27 (0) 11 506 8000 Fax +27 (0) 11 506 9000

Incorporated and registered in South Africa NO 2013/091251/07 Directors LJH Anwidi (Swedish) WA Russo (American) MM Halbye (Danish)



PO: 4502285514 line 40  
SE: 1082730914  
GR: 5005287123

**McKinsey&Company**

Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
SUninghill  
Sandton  
2157

Sandown Mews East  
88 Stella street  
Sandown  
Sandton  
2196  
Reg No: 1995/002398/10

VAT no: 4740101508  
Unique Identifier: 240-54568433

VAT no: 4710150048  
TAX Invoice: 6378  
Charge code: ESK161

---

30 October 2015

Professional fees and support services (excl.  
travel and lodging) \_ October 2015

ZAR 13 603 210.00

VAT @ 14%

ZAR 1 904 449.40

**TOTAL**

ZAR 15 507 659.40

**Please Wire Transfer to:**

Account Name: McKinsey Incorporated  
Account Number: 421061812  
Branch Code: 019205  
Bank name and address: The Standard Bank of South Africa Ltd.  
Sandton Branch  
156 Fifth Street  
Sandton  
Gauteng  
South Africa

Please quote invoice number and charge code reference on transfer and remittance.

Please note:

Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.

**Your invoice is incrypted in order to comply with SARS requirements that invoices and statements sent electronically should be tamperproof.**

GP

## McKinsey&amp;Company

30 November 2015

Mr Anoj Singh  
Chief Financial Officer  
Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sunninghill  
2157

Dear Anoj,

Please find invoice 6386 for professional fees, including out of pocket expenses and support services (excluding travel and lodging) during November 2015 for the support to the CFO Office on the Latest Estimate work.

Please find below an overview of our main activities for this workstream:

**Latest Estimate**

- Supported Divisional budget challenge sessions
- Supported Finance in preparing ExCo sessions on budget
- Prepared Finance Committee presentation

Yours sincerely,

Alexander Weiss  
Director

McKinsey and Company Africa Propriety Limited  
Sandown Mews East 88 Stella Street Sandown Sandton 2196 PO Box 652767 Benmore 2010 South Africa  
Telephone +27 (0) 11 506 8000 Fax +27 (0)11 506 9000

Incorporated and registered in South Africa NO 2013/091251/07 Directors L.H. Arwidl (Swedish) W.A. Russo (American) M.M. Halbye (Danish)





PO: 450228 5514 line 30

SE: 108273920

GR: 5005 287 125

## McKinsey &amp; Company

Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sunninghill  
Sandton  
2157

Sandown Mews East  
88 Stella street  
Sandown  
Sandton  
2196  
Reg No: 1995/002398/10

VAT no: 4740101508  
Unique Identifier: 240-54568433

VAT no: 4710150048  
TAX Invoice: 6386  
Charge code: ESK161

---

30 November 2015

Professional fees and support services (excl.  
travel and lodging) \_ November 2015

ZAR 13 603 210.00

VAT @ 14%

ZAR 1 904 449.40

**TOTAL**ZAR 15 507 659.40**Please Wire Transfer to:**

Account Name: McKinsey Incorporated  
Account Number: 421061812  
Branch Code: 019205  
Bank name and address: The Standard Bank of South Africa Ltd.  
Sandton Branch  
156 Fifth Street  
Sandton  
Gauteng  
South Africa

Please quote invoice number and charge code reference on transfer and remittance.

Please note:

Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.

**Your invoice is encrypted in order to comply with SARS requirements that invoices and statements sent electronically should be tamperproof.**



"EN 47"

---

**Prishothman Govender**

---

**From:** lorenz\_jungling@mckinsey.com  
**Sent:** Friday, 18 March 2016 22:47  
**To:** Prish Govender  
**Subject:** Fwd: Trillian Invoice  
**Attachments:** TMC - Corporate Plan work schedule.pdf; ATT00001.htm; TMC - Invoice ESK2016-MC01.pdf; ATT00002.htm

Will review tomorrow...

Dr. Lorenz Jüngling  
McKinsey & Company  
+27 82 3298178

Begin forwarded message:

**From:** "Tebogo Leballo" <tebogo@tcp.co.za>  
**Date:** 18 March 2016 at 13:29:36 GMT+2  
**To:** "Mosilo Mothepu" <mosilo@tcp.co.za>, Lorenz Jungling@mckinsey.com  
**Subject:** Fwd: Trillian Invoice

Good day Lorenz

As per your discussion with Mosilo, please find attached the invoice from Trillian for sign off.

Please forward the signed copy to Edwin.

Should you have any concerns, please revert back with comments.

Regards  
Tebogo Leballo  
Trillian CFO

---

This email is confidential and may be privileged. If you have received it in error, please notify us immediately and then delete it. Please do not copy it, disclose its contents or use it for any purpose.

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"EN 48"



12 February 2016

Mr Anoj Singh  
Chief Financial Officer  
Eskom Holdings SOC Limited  
Megawatt Park  
Maxwell Drive  
Sunninghill  
2157

Dear Mr. Singh,

Please find invoice for professional fees including out of pocket expenses and support services during December for the support to the CFO office on the Eskom Procurement Turnaround and Defined Benefit Obligations.

Please find below an overview of our main activities for each of the two streams:

**Eskom Procurement Turnaround:**

- Licensing of a run-time version of the tool and embedment thereof
- Data extraction, load and report creation
- Detailed data analytics
- As-is assessment of Current SCM environment
- Identification of weaknesses and gaps that impede SCM efficacy
- Identification of preliminary costs savings opportunities
- Provision of empirical data to support base-lining initiatives
- Analysis of inventory to assess effectiveness of inventory investment
- Compilation of comprehensive findings report with attendant detail

CS

P



**Defined Benefit Obligations - Outline of investigations performed and reporting structure:**

The defined benefit obligations can be summarized in 3 different categories:

- Pension obligations – this obligation is funded through a separate fund. It is our understanding that the obligation is fully funded with no liability (or asset in the form of allocated surplus) on the balance sheet. This obligation was not part of the investigation.
- Leave pay obligations – this is an unfunded ongoing obligation with a current value of R1,206 million. A provision is made on the balance sheet.
- Post-retirement medical obligations - this is an unfunded obligation with a current value of R12,338 million. A provision is made on the balance sheet.

A detailed report will be presented setting out the investigation performed, scenario analysis and recommendations. The report will address the following matters regarding the unfunded liabilities (specifically the post-retirement medical liability):

- Risks associated with the subsidy/benefit policy
- Current valuation and main assumptions influencing the liability
- Long term projection of financial impact (balance sheet, expense and cashflow)
- Scenario analysis and impact assessment of:
  - Various changes in subsidy structure
  - Various changes in valuations assumptions
- The report will make recommendations on:
  - Investigation required to improve the accuracy of the valuation
  - Strategies to consider that will mitigate risks and limit the future impact associated with the obligation
  - Strategies to consider that may remove the liability from the balance sheet in a cost effective manner.

The report will be presented by the end of the week starting 15 February 2016.

Thanking you in advance.

Kind Regards,  
Bianca Smith

" EN 49 "

**Prishothman Govender**

---

**From:** Bernadine\_Soriano@mckinsey.com  
**Sent:** Friday, 18 March 2016 12:58  
**To:** Prish Govender  
**Cc:** Ashirvad Sookun; adam\_kolesa@mckinsey.com  
**Subject:** GCIA operating model  
**Attachments:** 20160310 GCIA operating model v14.pptx

Hi Prish,

Hope all is well. Attached is the latest GCIA operating model incorporating changes form our discussion yesterday. Please let me know if you have any questions.

Look forward to discussing it next Tuesday. Have a great break!

Best,  
Bernadine Soriano  
McKinsey & Company  
+1 (215) 500-8749(See attached file: 20160310 GCIA operating model v14.pptx)

+=====+  
This email is confidential and may be privileged. If you have received it  
in error, please notify us immediately and then delete it. Please do not  
copy it, disclose its contents or use it for any purpose.  
+=====+

S  
P

"EN50"

**Prishothman Govender**

---

**From:** Maya Bhana on behalf of Anoj Singh  
**Sent:** Wednesday, 30 March 2016 10:15  
**To:** Prish Govender  
**Subject:** FW: 20150316\_GCIA+Reorganisational+Design\_Final.pptx  
**Attachments:** 20150316\_GCIA+Reorganisational+Design\_Final.pptx

**From:** Mohammed Mahomed Transnet Corporate JHB [mailto:Mohammed.Mahomed@transnet.net]  
**Sent:** Friday, March 18, 2016 8:34 AM  
**To:** Anoj Singh  
**Subject:** 20150316\_GCIA+Reorganisational+Design\_Final.pptx

This is the detailed GcIA deck

If you need anything further, please shout

Thanks Chief  
Mo

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"EN51"

**Prishothman Govender**

---

**From:** Maya Bhana on behalf of Anoj Singh  
**Sent:** Wednesday, 30 March 2016 10:17  
**To:** Prish Govender  
**Subject:** FW: GCiA Draft Value Proposition\_V5\_010915.pptx  
**Attachments:** GCiA Draft Value Proposition\_V5\_010915.pptx

**From:** Mohammed Mahomed Transnet Corporate JHB [mailto:Mohammed.Mahomed@transnet.net]  
**Sent:** Friday, March 18, 2016 8:20 AM  
**To:** Anoj Singh  
**Subject:** FW: GCiA Draft Value Proposition\_V5\_010915.pptx

Howsit Anoj

Attached is a value proposition deck we prepared – highlights the key areas and achievements (value added) to date

Thanks

**From:** Mohammed Mahomed Transnet Corporate JHB  
**Sent:** Friday, November 27, 2015 7:09 AM  
**To:** Helen Walsh Corporate JHB  
**Subject:** FW: GCiA Draft Value Proposition\_V5\_010915.pptx

Hi Helen

As discussed yesterday

Regards  
Mohammed

**From:** Hiren Bhatt Transnet Corporate JHB  
**Sent:** Monday, September 14, 2015 11:38 AM  
**To:** Mohammed Mahomed Transnet Corporate JHB  
**Cc:** Hlumisa MaraQane Transnet Corporate JHB  
**Subject:** GCiA Draft Value Proposition\_V5\_010915.pptx

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"EN 52"

**Prishothman Govender**

---

**From:** Prish Govender  
**Sent:** Monday, 23 November 2015 08:47  
**To:** Lindi Petje  
**Cc:** Lorette Sauermann  
**Subject:** RE: Preparation for the Executive Lab

No prob 2-4 Dec will suit me better.

---

**From:** Lindi Petje  
**Sent:** 23 November 2015 10:46 AM  
**To:** Prish Govender  
**Cc:** Lorette Sauermann  
**Subject:** Preparation for the Executive Lab

Dear Prish,

On 8 December 2015, I will be participating in an Executive Transition Lab with Deloitte. The Lab is a facilitated work session set in a structured and confidential environment. During the Lab I will work with the Deloitte facilitation team to define priorities, assess relationships and develop a crisp, actionable plan for the next 180 days. As part of our preparatory efforts, the Deloitte team would like to conduct a brief interview with you to gain insights that will help enhance the Lab experience and ultimately enable me to have a clear plan of action. If the interview is agreeable then I will have the Deloitte team proceed with the coordination.

Please could you let me know when Deloitte can contact you on either of the following dates 30 November, or 2 - 4 December. Should you need further clarity please do not hesitate to let me know.

The meeting can be 40 minutes telephonically

Kind regards

Lindiwe Petje on behalf of Peter Sebola

Lindiwe Petje  
Secretary to Peter Sebola  
General Manager- Contract Management  
Tel:0118004554  
Fax: 0866071079





"EN 53"

**Prishothman Govender**

---

**From:** Du Plessis, Izak (ZA - Johannesburg) <izduplessis@deloitte.co.za>  
**Sent:** Wednesday, 10 February 2016 09:11  
**To:** Prish Govender  
**Cc:** Sivasanker, Shamal (ZA - Johannesburg)  
**Subject:** Setting up of Executive Lab

Hi Prish,

It was good to see you at the Nersa hearings.

We talked about arranging an Executive Lab for yourself. Shamal and I would like to meet with you to start this process.

What is your availability over the next two weeks?

Regards,

**Izak du Plessis**  
Associate  
Growth and Corporate Development  
Deloitte Consulting Pty Ltd  
Deloitte Place, Building 33, The Woodlands, 20 Woodlands Drive, Woodmead, 2052, South Africa  
Mobile: +27 (0)82 464 5912  
[izduplessis@deloitte.co.za](mailto:izduplessis@deloitte.co.za) | [www.deloitte.com](http://www.deloitte.com)

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"EN54"

**Prishothman Govender**

---

**From:** Du Plessis, Izak (ZA - Johannesburg) <izduplessis@deloitte.co.za>  
**Sent:** Monday, 14 March 2016 10:40  
**To:** Prish Govender  
**Cc:** Sivasanker, Shamal (ZA - Johannesburg)  
**Subject:** Setting up an Executive Discussion

Hi Prish,

Thank you for the discussion on Friday 11 March relating to the planned Executive Lab session. I have summarised the outcome of our discussion below:

1. Given your current position, this is not an ideal time to set up an Executive Lab based on the conventional Deloitte Executive Lab process design. We agreed to rather take the discussion in two parts.
2. Part 1:
  1. Conduct a session of about 4 hours to reflect on the anticipated portfolio with the aim of unpacking a future portfolio.
  2. The outcome of the discussion will be the shaping of an integrated portfolio, giving it a clearly defined value added role.
  3. Integrate specialist insight into the discussion relating to:
    - a. Contracting - Shaping of contracts with a specific focus on risk sharing
    - b. Delivery Unit - Delivery unit's leadership attributes required, operating model, processes and systems
    - c. Investment Assurance - Investment assurance scope and processes
  4. We will target a date from the week 28 March to 1 April for the session.
3. Part 2:
  1. A separate session will be set up at a later date (possibly towards late April) for an Executive Lab.
  2. The Executive Lab will be a full day session to reflect on your role, using the full Executive Lab process design.

I will appreciate if ask your PA to confirm the time slot for "Part 1", in order to get it in the diaries of all the relevant participants.

I am happy to discuss the above at any time.

Regards,

**Izak du Plessis**  
Associate  
Growth and Corporate Development  
Deloitte Consulting Pty Ltd  
Deloitte Place, Building 33, The Woodlands, 20 Woodlands Drive, Woodmead, 2052, South Africa  
Mobile: +27 (0)82 464 5912  
[izduplessis@deloitte.co.za](mailto:izduplessis@deloitte.co.za) | [www.deloitte.com](http://www.deloitte.com)

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"EN 55"

**Prishothman Govender**

---

**From:** Prish Govender  
**Sent:** Thursday, 29 September 2016 06:12  
**To:** Dave Gorrie; Charles Kalima; Mohamed Khan; Mary Anne Hendricks; Hanno Oostenbrink  
**Subject:** FW: Please send your final evaluation to Prish  
**Attachments:** Evaluation Scores SM002 - Finance business process and Capital integration & assurance FINAL.pdf

For approval at PCC today.

---

**From:** Sanjith Rampath  
**Sent:** 26 September 2016 12:57 PM  
**To:** Prish Govender  
**Cc:** Maya Bhana; Teresa Michael  
**Subject:** RE: Please send your final evaluation to Prish

Hi Prish  
Find attached

Regards

**From:** Prish Govender  
**Sent:** Monday, September 26, 2016 12:41 PM  
**To:** Sanjith Rampath  
**Cc:** Maya Bhana; Teresa Michael  
**Subject:** RE: Please send your final evaluation to Prish

Hi Sanjith,

Thanks for this, comments noted. Please PDF the evaluation and send to me, so that is cannot be tampered with.

---

**From:** Sanjith Rampath  
**Sent:** 26 September 2016 08:27 AM  
**To:** Prish Govender  
**Cc:** Maya Bhana; Teresa Michael  
**Subject:** RE: Please send your final evaluation to Prish

Hi Prish  
Find attached the final overall scores for the evaluation for the "Improvement of finance business process and capital integration & assurance establishment"

The one area that needs to be addressed is the costing from Deloitte which seems to be very excessive.

Regards  
Sanjith

**From:** Maya Bhana  
**Sent:** Monday, September 26, 2016 7:06 AM  
**To:** Ngoako Huma; Sanjith Rampath  
**Subject:** Please send your final evaluation to Prish



Hi guys

Can you please send the final evaluation to Prish?

A handwritten signature or set of initials, possibly 'GJ', written in black ink.

"ENG"

**Prishothman Govender**

---

**From:** Prish Govender  
**Sent:** Thursday, 29 September 2016 06:11  
**To:** Dave Gorrie; Charles Kalima; Mohamed Khan; Mary Anne Hendricks; Hanno Oostenbrink  
**Subject:** FW:  
**Attachments:** 20160926085833.pdf

For approval at PCC today.

---

**From:** Ngoako Huma  
**Sent:** 26 September 2016 09:06 AM  
**To:** Prish Govender  
**Cc:** Maya Bhana  
**Subject:** FW:

Hi Prish

Please find attached my rating for the various bids. I had not yet scored McKinsey as the detailed bid proposal was not attached.

Regards,  
Ngoako

**From:** [HumaN@eskom.co.za](mailto:HumaN@eskom.co.za) [mailto:[HumaN@eskom.co.za](mailto:HumaN@eskom.co.za)]  
**Sent:** Monday, September 26, 2016 8:58 AM  
**To:** Ngoako Huma <[HumaN@eskom.co.za](mailto:HumaN@eskom.co.za)>  
**Subject:**

9  
P

"EN 57"

**Prishothman Govender**

---

**From:** Dave Gorrie  
**Sent:** Thursday, 22 September 2016 11:35  
**To:** Prish Govender  
**Cc:** Charles Kalima; Lulu Njaza  
**Subject:** RE: PCC for Management consulting and financial advisory  
**Attachments:** PCC Terms of Reference Gx 3.docx

Prish  
Draft ToR attached – it hasn't been signed yet.  
The proposed members are included on page 3.  
The finance advisory panel ToR hasn't been drafted yet.  
Regards  
Dave

---

**From:** Prish Govender  
**Sent:** 22 September 2016 10:06  
**To:** Dave Gorrie  
**Cc:** Charles Kalima; Lulu Njaza  
**Subject:** PCC for Management consulting and financial advisory


Hi Dave,

Please send me the TOR for the above committees as well as the membership.

Regards



"EN 58"

 Eskom	Terms of Reference	Strategic Management Panel
---	--------------------	----------------------------

Title: Panel Control Committee  
Terms of Reference

Unique Identifier: 240-105684096

Alternative Reference Number: N/A

Area of Applicability: Commodity Sourcing

Documentation Type: TR

Revision: 1

Total Pages: 8

Next Review Date:

Disclosure Classification: CONTROLLED DISCLOSURE

Compiled by	Functional Responsibility	Authorized by
.....	.....	.....
N Gambushe Senior Advisor Commodity Sourcing	B MKhize Middle Manager Corporate Finance	M Khan General Manager Corporate Finance
Date: .....	Date: .....	Date: .....

97 /

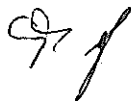


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1 CONSTITUTION/MANDATE

The Panel Control Committee (PCC) has a specific role to allocate requests for Strategic, Business and Professional services as mandated by the relevant committees to the panel of service providers.

2 COMPOSITION OF THE COMMITTEE/FORUM

The following members will be given delegation as follows:

Name and Surname	Position	Discipline	Alternative
Mohamed Khan	*Chairperson	Employer's Agent of NSA contracts	Trevor Myburg
Busi Mkhize	*Panel Manager	Employer's Agent of NSA contracts	N/A
Nokwanda Gambushe	*Member	Commercial Specialist,	Lulu Njaza
Ishmael Modiko	Member	SD&L member	N/A

2.1 CHAIRPERSON

The Chairperson or Alternate Chairperson shall preside at all meetings. The Alternate Chairperson shall be appointed by the Chairperson and will have full voting rights.

2.2 PRINCIPAL MEMBERS

Principal members shall include representatives from the following areas:

- Corporate Finance, Commercial and Supplier Development and Localisation.

2.3 ALTERNATIVE MEMBERS

Each principal member may nominate an alternative member to attend on his/her behalf. The use of alternative members is restricted to those occasions where a principal member is legitimately absent.

2.4 CO-OPTION OF MEMBERS

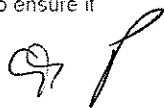
Individuals may be co-opted onto the forum for their specialist expertise on a temporary or permanent basis at the discretion of the Chairperson.

2.5 DEPUTIZING FOR THE CHAIRPERSON

If the Chairperson will not be present during a scheduled meeting, he or she will delegate to the alternate chairperson or one of the principal members to chair the meeting.

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Panel Control Committee (PCC)  
Terms of Reference

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2.6 SECRETARIAT

The Co-ordinator or Secretariat will be the commercial representative.

3 SCOPE

3.1 PURPOSE

This document is referred to as the Terms of Reference which shall be used by the Panel Control Committee, (hereinafter called the PCC), with the intent to:

- Allocate work Evenly
- Contract Changes
- Contract Contingency

3.2 APPLICABILITY

This document is applicable to the strategic Management Panel.

4 NORMATIVE/INFORMATIVE REFERENCES

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

4.1 NORMATIVE

[1] 240-63167197 Delegation of Authority & Responsibility Structure NEC (PSC) Form of Contract

4.2 INFORMATIVE

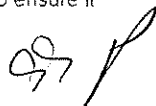
[2] 240-42385239 PCM for Sourcing and Contracting  
[3] Public Finance Management Act

5 ABBREVIATIONS

Abbreviation	Description
DCF	Delegation Consent Form
PSC	Professional Services Contract
NEC	New Engineering Contract

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**Panel Control Committee (PCC)**  
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## **6 RESPONSIBILITIES AND ACTIVITIES OF THE COMMITTEE**

### **6.1 RESPONSIBILITIES OF THE COMMITTEE**

- 6.1.1 Discuss the proposals received.
- 6.1.2 Approve or ratify the requests for the firms while ensuring the equitable distribution of work to Panel members.
- 6.1.3 Ensure Eskom's best interest and served while ensuring distribution work.
- 6.1.4 The task order modification form and budget letter where necessary to extend task orders where additional time and budget is required.
- 6.1.5 Any requests by the end user for additional fund that are required for the completion of the scope of work shall be considered by the PCC. Additional funds required by the end user for the task order shall be presented and complete task order modification and budget letter received. However the task order may either be extended or a new task order may be issues at the discretion of the PCC.
- 6.1.6 Should the PCC be approached to extend the period of a task order after the task order has expired, the PCC may only do so in exceptional circumstances. In such event the PCC shall request a written report from the senior manager of the requesting manager's section showing cause for failure to extend the task order timeously and informing the PCC what actions is being taken to prevent such a reoccurrence and what action has been taken against the person responsible for the breach.

### **6.2 FREQUENCY OF THE COMMITTEE**

- 6.2.1 PCC meeting shall be held weekly on Tuesday and as the PCC considers appropriate.
- 6.2.2 The chairperson or any member of the PCC may request an additional or special meeting of the PCC
- 6.2.3 Members and officials shall receive reasonable notice of meeting and of the business to be conducted.

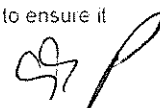
### **6.3 SECRETARIAT**

The Secretariat duties shall include:

- 6.3.1 Draw up agenda.
- 6.3.2 Book meeting venues.
- 6.3.3 Ensuring appropriate documentation is distributed to all members.
- 6.3.4 Taking of minutes during the meeting.

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- 6.3.5 Distribution of completed minutes for review and acceptance.
- 6.3.6 Recording of the meeting decisions and recommendations.
- 6.3.7 Documentation management.

7 AUTHORITY

7.1 DELEGATION OF AUTHORITY

- 7.1.1 The Committee is authorised by Excops in terms of the Approved commercial strategy.

8 MEETINGS OF THE COMMITTEE

8.1 MEETINGS

- 8.1.1 Meetings of the Committee will be held as once a week as the Committee considers appropriate.
- 8.1.2 The Chairperson or any member in consultation with the Chairperson of the Committee may request an ad hoc meeting of the Committee, as deemed necessary.
- 8.1.3 Notice of meetings, agenda and information on project changes shall be given to the members of the Committee at least 3 working days prior to the meeting or as agreed by the Committee.
- 8.1.4 The Committee shall develop appropriate templates to facilitate presentations and reporting.
- 8.1.5 The agenda for meetings shall be approved by the Chairperson of the Committee.
- 8.1.6 The minutes of the previous meeting shall be reviewed, corrected and signed before further proceedings will be allowed to proceed.

8.2 QUORUM

- The quorum for decisions of the Committee shall be:
- a) Chairperson or Alternate Chairperson.
  - b) At least one Committee members or alternate members.

8.3 MINUTES

- 8.3.1 Minutes of meetings shall be taken by the Committee Secretariat in accordance with the template set by the Committee and shall be reviewed and approved for signature of the Chairperson of the Committee.
- 8.3.2 Minutes will be distributed for comment to all members of the Committee within 5 calendar days after the meeting date for comments.
- 8.3.3 Amended minutes (minutes adjusted after review at the next Committee meeting) will be signed off by the Chairperson at the same meeting at which they are reviewed.
- 8.3.4 Actions arising from the meeting shall be noted in the minutes along with the name of the responsible person and due date.

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Panel Control Committee (PCC)  
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9 RECORD KEEPING

All records generated shall be kept on Hyperwave.

10 STANDARD DOCUMENTS

10.1.1 Approved minutes

11 CODE OF CONDUCT FOR MEMBERS

In order to ensure good ethical practice, the Chairperson and members of the forum shall:

- Always act in an ethical manner in accordance with Eskom's Code of Ethics.
- Ensure that there is no conflict of interest, or declare their interest, in relation to any matter discussed by the forum.
- Make every effort to attend all meetings.

12 REVISIONS

Date	Rev.	Remarks
July 2019	0	New document

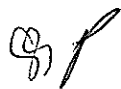
13 DEVELOPMENT TEAM

This document was influenced and supported by the following:

Name	Division Represented
Nokwanda Gambushe	Commodity Sourcing
Lulu Njaza	Commodity Sourcing
Busi Mkhize	Corporate Finance
Mohamed Khan	Corporate Finance

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"EN 59"

**Prishothman Govender**

---

**From:** Nokwanda Gambushe on behalf of SMPanel  
**Sent:** Tuesday, 04 October 2016 09:04  
**To:** Dave Gorrie  
**Cc:** Lulu Njaza  
**Subject:** FW: SM002-The improvement of finance business process and capital integration and assurance establishment - Deloitte Response  
**Attachments:** Deloitte Response - SM002 Improvement of business process and capital proposal.pdf; SM Task Order SM002 Finance and technical sheet.xlsx; Deloitte - SM002.docx

Hi Dave,

Please see attached task order marked as Deloitte- SM002.

I have concerns thought regarding the way they gave us their financial proposal. I did speak to Shamal and he will get back to me.

In the meantime please review the content of the task order.

Regards,  
Nokwanda Gambushe

---

**From:** Elliott, Daryl (ZA - Johannesburg) [mailto:delliott@deloitte.co.za]  
**Sent:** 15 September 2016 09:47 AM  
**To:** SMPanel  
**Cc:** Sivasanker, Shamal (ZA - Johannesburg); Mdluli, Sihle (ZA - Johannesburg)  
**Subject:** SM002-The improvement of finance business process and capital integration and assurance establishment - Deloitte Response

Dear Nokwanda

Attached please find the Deloitte response to the above mentioned request for quotation (SM002-The improvement of finance business process and capital integration and assurance establishment). There are two attachments to this email:

1. Our technical response – pdf
2. Our technical and financial spreadsheet submission – xlsx

Kindly confirm that you have successfully received our documentation.

Furthermore, we confirm that Deloitte will comply with the National Treasury Cost containment drive and that our proposed rates are the NEC rates negotiated under the Management Consulting Panel.

Please contact me should you have any queries.

Kind regards  
Daryl

**Daryl Elliott**  
Strategy & Innovation| Monitor Deloitte  
Deloitte Consulting Africa  
Building 33, The Woodlands, 20 Woodlands Drive, Woodmead, 2052, South Africa  
Mobile: +27 (0)73 195 5829 | Fax: +27 (0)11 252 8882 | Direct +27 (0)11 517 4346



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"EN GO"

**Prishothman Govender**

---

**From:** Nokwanda Gambushe on behalf of SMPanel  
**Sent:** Tuesday, 04 October 2016 09:05  
**To:** Dave Gorrie  
**Subject:** FW: SM004 - The establishment of the results management office for group finance and group IT supporting the DTC strategy as well as the MYPD4 submission - Deloitte Response  
**Attachments:** Eskom RFP SM0004 - Planning and results - Deloitte response.pdf; SM Task Order SM004 - Finance and Technical Sheet.xlsx; Deloitte - SM004.docx

Hi Dave,

Please see attached task order marked as Deloitte- SM004.

I have concerns thought regarding the way they gave us their financial proposal. I did speak to Shamal and he will get back to me.

In the meantime please review the content of the task order.

Regards,  
Nokwanda Gambushe

---

**From:** Elliott, Daryl (ZA - Johannesburg) [mailto:delliott@deloitte.co.za]  
**Sent:** 15 September 2016 09:40 AM  
**To:** SMPanel  
**Cc:** Sivasanker, Shamal (ZA - Johannesburg); Mdluli, Sihle (ZA - Johannesburg)  
**Subject:** SM004 - The establishment of the results management office for group finance and group IT supporting the DTC strategy as well as the MYPD4 submission - Deloitte Response

Dear Nokwanda

Attached please find the Deloitte response to the above mentioned request for quotation (SM004 - The establishment of the results management office for group finance and group IT supporting the DTC strategy as well as the MYPD4 submission). There are two attachments to this email:

1. Our technical response – pdf
2. Our technical and financial spreadsheet submission – xlsx

Kindly confirm that you have successfully received our documentation.

Furthermore, we confirm that Deloitte will comply with the National Treasury Cost containment drive and that our proposed rates are the NEC rates negotiated under the Management Consulting Panel.

Please contact me should you have any queries.

Kind regards  
Daryl

**Daryl Elliott**  
Strategy & Innovation | Monitor Deloitte  
Deloitte Consulting Africa  
Building 33, The Woodlands, 20 Woodlands Drive, Woodmead, 2052, South Africa  
Mobile: +27 (0)73 195 5829 | Fax: +27 (0)11 252 8882 | Direct +27 (0)11 517 4346



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"EN 64"

**Prishothman Govender**

---

**From:** Elliott, Daryl (ZA - Johannesburg) <delliott@deloitte.co.za>  
**Sent:** Friday, 14 October 2016 10:00  
**To:** Suzanne Daniels  
**Cc:** Prish Govender; Sivasanker, Shamal (ZA - Johannesburg)  
**Subject:** Letter from the DOE for Deloitte Funding model support  
**Attachments:** Energy's Nuclear Financial Model Letter.pdf

Dear Suzanne

Attached please find the letter from the DOE that I referred to in this morning's meeting, that gave Deloitte the permission to work with National Treasury more broadly with the financial model that was developed through engagement with the DOE. We would need a similar letter for this process to avoid any breach of non-disclosure / secrecy agreements in place with the DOE.

Kind regards  
Daryl

**Daryl Elliott**

Strategy & Innovation | Monitor Deloitte  
Deloitte Consulting Africa  
Building 33, The Woodlands, 20 Woodlands Drive, Woodmead, 2052, South Africa  
Mobile: +27 (0)73 195 5829 | Fax: +27 (0)11 252 8882 | Direct +27 (0)11 517 4346  
[delliott@deloitte.co.za](mailto:delliott@deloitte.co.za) | [www.deloitte.co.za](http://www.deloitte.co.za)

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"ENG5"



energy

Department:  
Energy  
REPUBLIC OF SOUTH AFRICA

192 Visagie Street, Cnr. Paul Kruger and Visagie Streets, Pretoria, 0001  
Private Bag X96, Pretoria, 0001

Enquiries: Tel: +27 12 406 E-mail

**Mr Andrew Donaldson (Acting Head)**  
Government Technical Advisory Centre  
240 Madiba Street  
Pretoria  
0002

Dear Mr Andrew Donaldson

Your letter of 28 January 2015 has reference.

**PERMISSION TO MAKE USE OF THE DEPARTMENT OF ENERGY'S NUCLEAR FINANCIAL MODEL**

The Department of Energy is pleased to receive the information that the Nuclear Financial Model is been useful to GTAC.

The Department is hereby given its support to GTAC to use the Nuclear Financial Model; including receiving training from Deloitte's to understand the model in a more holistic manner for future applications.

We are valuing the good co-operation and assistance received from GTAC in this regard, as well as in other Energy related activities.

Yours sincerely,

**Acting Director-General**

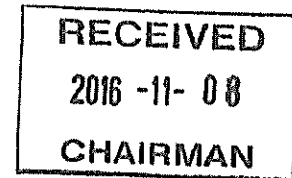
Department of Energy

Date: 24/2/15

cc: Mr Z Mbambo

**"EN 66"**

MINISTER  
ENERGY  
REPUBLIC OF SOUTH AFRICA



Private Bag X96, Pretoria 0001, 7<sup>th</sup> floor, 192 Visagie Street, C/o Visagie & Paul Kruger Street, Pretoria 0001. Tel: (+27 12) 406 7612, Fax: (+27 12) 323 5651  
Private Bag X9111, Cape Town 8000, Parliamentary Building, 7<sup>th</sup> floor, 120 Plain Street, Cape Town 8000. Tel: (+27 21) 469 6425, Fax: (+27 21) 469 5980

Dr Baldwin Ngubane  
Chairman  
Eskom  
P O Box 1091  
**Johannesburg**  
2000

Dear Dr Ngubane

**RE: NUCLEAR NEW BUILD**

Your letter dated 27 October 2016 refers,

The Department of Energy has, over the past 5 years led the preparations for the rollout of the Nuclear New Build Programme with other Departments and State Owned Entities through the Energy Security Cabinet Subcommittee. The DoE and the structures of the Energy Security Cabinet Subcommittee have developed various studies on the impact and implication of the procurement process on the fiscal arrangements, communities and the environment.

The work has informed pre-procurement, procurement activities. The Department further appointed Transactional Advisors to assess the Department's state of readiness for the procurement for the Nuclear New Build Programme of the Republic of South Africa.

In order to ensure proper transfer and to avoid delays in implementing the programme the information requested is therefore provided. These reports as attached in a file to Eskom have been sourced and include recently completed studies. The details of the contracts of Transactional Advisors and service providers are also attached. The studies are as follows;

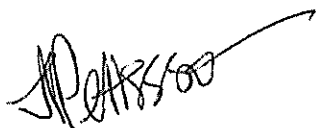
1. **Ingerop**: Cost of Nuclear Power,
2. **KPMG**: Procurement Framework,

3. **Ingerop**: Owner-Operator and Financing Structures,
4. **Deloitte**: Finance Options Models Solutions,
5. **Deloitte**: Deferred Return On Government Investor Approach,
6. **Ingerop**: Economic Impact of Localisation of Nuclear New Build Programme,
7. **Nathan Gift Nhlapho Incorporated**: Feasibility Study on Effective Independence of the National Nuclear Regulator.
8. **Nathan Gift Nhlapho Incorporated**: Requirements, Considerations and Necessary Arrangements by the Government in Order for South Africa to Accede to One of the IAEA Nuclear Liability Conventions.
9. **Zimkile Consulting**: The Development of Training Programme of First Responders for Nuclear and Radiological Emergencies
10. **University of Pretoria**: A Detailed Financing Model for the Radioactive Waste Management Fund
11. **Mzansi Energy Solutions and Innovations Pty**: Feasibility Study on the withdrawal of Safeguards Function from NECSA
12. **Mahlako-A-Phahla Investments** (with sub-contracting to **Ledwaba Mazwai Attorneys** and **WorleyParsons**): Pre-Procurement Readiness Assessment.
13. **Empire Technology**: Programme Management System
14. **KPMG**: Comparative Analysis to Power of Shale Gas versus Nuclear Power in South Africa.
15. **African Radiation consultant**: Review of South African nuclear safety legislation on training of nuclear emergency functionaries and national training infrastructure or facilities for such training; and a course outline and content requirements for Emergency 1<sup>st</sup> Responders
16. **Nathan Gift Nhlapho Incorporated**: A mechanism which will allow the National Nuclear Regulator to Enforce Implementation of Corrective Actions by the Municipalities, on Issues of Nuclear Emergency Preparedness and Response

As per your request I further nominate the following officials to provide guidance to Eskom on the work the Department has completed;

- Mr Zizamele Mbambo
- Mr Ndaba Ngwane
- Mr Katse Maphoto
- Ms Elsie Monale
- Ms Lerato Makgae
- Mr Zukile Zibi
- Mr Keshaw

Yours Sincerely,



(MS) TINA JOEMAT-PETTERSSON  
MINISTER OF ENERGY

DATE:

2/11/2016



"EN 67"

**Prishothman Govender**

---

**From:** Dave Gorrie  
**Sent:** Tuesday, 02 August 2016 07:01  
**To:** Prish Govender  
**Subject:** Emailing: Motivation of Consultants template 2-8-16.docx  
**Attachments:** Motivation of Consultants template 2-8-16.docx

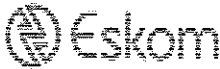
Your message is ready to be sent with the following file or link attachments:

Motivation of Consultants template 2-8-16.docx

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

SS

"EN 68"

	Professional Consulting Services Motivation	Unique identifier	240-59029853
		Revision	0
		Effective date	January 2013

To: [Name of Panel] Consulting Panel Control Committee

From:

Department:

Date:

Request: Include a brief heading explaining the request

1. INTRODUCTION

Include background and context of the requested project.

If this request is an extension of a current project, please include the following:

- the scope of the initial phase,
- the timelines thereof,
- amount already spent,
- the process followed to appoint the Consultant used,
- cost per level of skill,,
- number of consultants vs Eskom employees, as well as
- the detail of how skills were transferred during this phase.

2. SCOPE OF WORK AND DELIVERABLES

Include a detailed scope of work as well as the specific deliverables required from the Consultant. See point 5 below (ie. Include a skills transfer plan in the scope)

Where the project consists of a number of phases, please include the scope for all phases.

3. SKILLS GAP ANALYSIS

Include information about the skills gap analysis performed, that resulted in the conclusion that external consultants are required to perform the work, as per National Treasury Instruction.

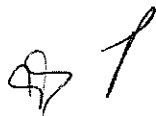
Results of the skills gap analysis must be clear.

4. TIMELINES


Include the timelines of the project. ie. Start and completion date.

Where applicable, show the deliverable against the timeline.

5. MOTIVATION FOR USING CONSULTANTS





	<b>Professional Consulting Services Motivation</b>	Unique identifier	240-59029853
		Revision	0
		Effective date	January 2013

*Include a motivation of why the use of external consultants is required and why Eskom employees cannot be used.*

## 6. MOTIVATION FOR PREFERRED SUPPLIER

*If a preferred supplier is required, please motivate the use of the preferred supplier vs going out to a range of suppliers instead.*

## 7. COST ESTIMATION

*Include the following:*

- the level of consultant,
- contract rate per level,
- the governing body of which the rates are used for the cost estimation, i.e. the professional body governing the specific consultants, or the methodology used to determine rates,
- estimated hours to be spent on project,
- estimated costs of any subsequent phase (where applicable),
- accommodation and subsistence cost estimate – the maximum to be R1300 per day (2014 Rands) including dinner, breakfast and parking, as per National Treasury Instruction,
- travel costs – air travel to be economy class only, road travel to be as per the rates approved by the Automobile Association of South Africa, as per National Treasury Instruction.

## 8. SKILLS TRANSFER

*Please provide detail on the following:*

- number of consultants vs Eskom employees ratio per skill level
- how skills transfer will take place
- designation of employees who will benefit from the skills transfer.
- What skills will be transferred

*Include a clearly defined skills transfer plan and explain how it will be incorporated in the scope of work for the Consultants.*

## 9. BUDGET CONFIRMATION

*Please indicate whether the budgeted expenditure for this request is of an Operating or Capital nature.*

*Where the expenditure is of an operating nature, please provide information about the following:*

- the value of the budgeted amount, and
- where the funds are being held.

*Where the expenditure is of a capital nature, please provide information about the following:*



	Professional Consulting Services Motivation	Unique identifier	240-59029853
		Revision	0
		Effective date	January 2013

- *where the Investment was approved (Committee),*
- *at what amount,*
- *over what period*
- *where the funds are being held, and*
- *how much is being requested in this motivation.*

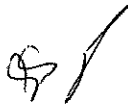
Compiled by: \_\_\_\_\_


Date \_\_\_\_\_

Supported by: \_\_\_\_\_

Date \_\_\_\_\_

GROUP / DIVISIONAL EXECUTIVE



	Meeting minutes			
	Document Identifier	240-54076329	Rev	5
	Document Type	Template		
	Next Review Date	February 2018		
	Effective Date	20 February 2015		


Meeting Name: Management Consulting Panel Control Committee			
Date: 14 November 2016	Time: 11H00-12H00	Venue: Core Boardroom, MWP	Meeting No.: 5

Name	Responsibility	Initials	Mark attendance or non-attendance using Present (P), Apologies (A), Absent (X)				
			1	2	3	4	5
Prish Govender	Panel Chair	PG	P	P	P	P	P
Dave Gorrie	Panel Member	DG	P	P	P	P	P
Mohamed Khan	Panel Member	MK	P	P	P	P	P
Mary Anne Hendricks	Panel Member	MH	P	P	P	P	A
Hanno Oostenbrink	Panel Member	HO	P	P	P	A	A
Lulu Njaza	Panel Member	LN		P	P	P	P
Ishmael Modiko	Panel Member	IM		P	A	P	P
Tanaka Chiimba		TC				P	P
Nokwanda Gampushe	Panel Member	NG				P	A
Rumbidzayi Chitsiku		RC					P

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"EN 69"


	<div>Meeting minutes</div>	Document Identifier	240-54076329	Rev	5	
		Document Type	Template			
		Next Review Date	February 2018			
		Effective Date	20 February 2015			

Item	Description	Action	Responsible Person	Target date
1.	<b>Opening, Welcome and Apologies:</b> The chair opened the meeting and welcomed everyone		PG	
2.	<b>Safety and Emergency Evacuation Procedure:</b> The evacuation procedure in case of an emergency was noted		PG	
3.	<b>Adoption of Agenda and Declaration of Interest</b> No conflict of interests declared		PG	
4.	<b>Verification of minutes of previous meetings</b> Minutes of meeting number 04/2016 held on 20 October 2016 accepted		ALL	




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	Meeting minutes				
	Document Identifier	240-54076329	Rev	5	
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	Next Review Date	February 2018			
	Effective Date	20 February 2015			


Item	Description	Action	Responsible Person	Target date
5.	Action items from previous minutes  Action items from previous minutes were reviewed and updated. Committee members were requested by the Chair to close out all open action items		ALL	
6.	Matters for approval		ALL	
6.1	Prior Approvals  DTC2 – Status update: Subcontracting negotiated up to 27.5% for DTC2 and task order issued.  SD&L (for ratification): Subcontracting increased to 27.5% and price negotiated and reduced by R2m. Task order drafted and is out for signatures.  It was noted that the price was reduced from R18m to R16m, however, the quote from McKinsey did not include expenses. The quote comes back to R18m once expenses are added. This is however still within the approved budget of R20m.			

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	Meeting minutes				
	Document Identifier	240-54076329	Rev	5	
	Document Type	Template			
	Next Review Date	February 2018			
	Effective Date	20 February 2015			

Item	Description	Action	Responsible Person	Target date
	Ratification decision approved by all panel members.  Risk Appetite (for ratification): Committee noted and approved ratification of Risk Appetite  Capital Scrubbing – feedback on addendum and task order issuance: Addendum has been approved, purchase order and acceptance letter issued. Task order and addendum to be circulated for signatures			
6.2	New approvals  Appointment of consultant for Key supplier review SM009 (for ratification): Task order signed off by Prish and Mohamed. Approved by all committee members  Re-advertisement of Procurement and Supply Chain SM008 (for ratification): RFP re-issued with closing date of 15 November. PCC meeting to be held at the end of the week to approve evaluation recommendation.			

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	Meeting minutes			
	Document Identifier	240-54076329	Rev	5
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	Next Review Date	February 2018		
	Effective Date	20 February 2015		

Item	Description	Action	Responsible Person	Target date
	<p>Clarification was conducted with suppliers on the 10<sup>th</sup> of November. Feedback was provided and it was indicated that questions were raised regarding the subcontracting level as the presentation indicated 40%. The suppliers were advised to continue with 25% subcontracting which is in the contracts until official communication is provided. The Chair expressed his concern with the slow pace at which the subcontracting discussion was happening</p> <p>Dave indicated that the subcontracting remains at 25% until the addendum has been issued. It was proposed that the subcontracting be negotiated up with the recommended service provider after the evaluations</p> <p><b>Issuance of mini RFP for Financial and technical due diligence study of an existing coal supplier to Eskom:</b> The committee rejected this item as it is not part of the panel scope. To be issued to the Financial Advisory Panel.</p>			


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					Next Review Date	February 2018			
					Effective Date	20 February 2015			

Item	Description	Action	Responsible Person	Target date
6.3	<p>Upcoming approvals</p> <p>Procurement and Supply Chain Management (Closing 15 November 2016): Noted</p> <p>Pending budget letters from CFO</p> <ul style="list-style-type: none"><li>MSA: PED</li><li>MSA: CMO</li><li>MSA: Gx Station turnaround</li><li>MSA: Gx Advanced analytics</li><li>MSA: Procurement and Inventory</li></ul> <p>Rumbi to follow up on budget letters</p> <p>Pending approval of Financial Advisory panel</p> <ul style="list-style-type: none"><li>Asset valuation – It was highlighted that this submission is linked to the MYPD4 submission and hence has time constraints. The end user is requesting feedback as it is getting urgent</li><li>Financial controls</li></ul>			

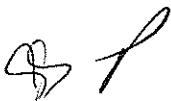
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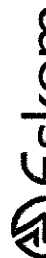


	Meeting minutes				
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Item	Description	Action	Responsible Person	Target date
7.	<p><b>General</b></p> <p>Questions were raised on how the budget is allocated with risk based contracts, also looking at the possibility that the fees paid could take us beyond the approved panel amount as the actual savings are not known.</p> <p>It was highlighted that the risk based contracts have a zero budget and a budget is allocated where there are down payments required. Possibility of netting off the benefit against payment made was noted and is to be considered and discussed further</p> <p><b>Financial advisory panel:</b> Issue of validity of Panel C to be taken to EXCOPS</p> <p>Financial Advisory panel to be taken to the R300m Tender Committee for approval of Panel A and B. This will be done via round robin. Panel C will be presented at the next EXCOPS, including the price increase. Scopes pending the financial advisory panel should be sent out as soon as this is finalised</p>			

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	<div>Meeting minutes</div>				Document Identifier	240-54076329	Rev	5	
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Item	Description	Action	Responsible Person	Target date
	<p>Review of overall PCC dashboard: Dashboard to be sent to all committee members to review and note any concerns for the next meeting</p> <p>Discuss National Treasury approval for modification of panel budget: Request was deemed justifiable by National Treasury and more information was requested. This is with the CPO for sign off, Dave to follow up</p> <p>It was noted that ~R516m has been awarded to date on the panel. This will need to be monitored as additional task orders come through and before the National Treasury approval is received.</p>			
8.	<p>Closure</p> <p>Meeting adjourned at 14h35.</p>	Chairman		

Minutes submitted by: Rumbidzayi Chitsiku

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	<b>Meeting minutes</b>			Document Identifier	240-54076329	Rev	5	
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Minutes approved: \_\_\_\_\_

Chairman \_\_\_\_\_ Date \_\_\_\_\_

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ACTION ITEMS ARISING FROM PREVIOUS MEETING/S


TO BE TABLED AT MEETING 06/2016

No.	Meeting No. & Date	Action Item	Responsible Person	Due Date For Response	Response
1.	02/2016 5 Oct 2016	Upload to Hyperwave - Mandate to negotiate, initial strategy and decisions by Board and EXCOPS  -Final list of suppliers	DG	21 Oct 2016	Outstanding (documents to be uploaded to Hyperwave and not Sharepoint for final documents)  Ongoing, list not finalised (waiting for Panel C to be finalised)
2.	04/2016 20 Oct 2016	SD&L to develop policy framework. Once signed off by CPO, framework will be implemented across all Eskom Panels.	IM	TBD	Discussions still to be held with Andile, Mandla, Monkwe and then CPO  Ongoing

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3.	05/2016 14 Nov 2016	Addendums to be sent out to all service providers for 40% subcontracting	LN	14 Nov 2016	
4.	05/2016 14 Nov 2016	Follow up on all outstanding budget letters	RC	16 Nov 2016	
5.	05/2016 14 Nov 2016	Capital Scrubbing Addendum and task order to be circulated for signatures	NG/ RC	15 Nov 2016	
6.	05/2016 14 Nov 2016	Issuance of mini RFP for Financial and technical due diligence study of an existing coal supplier to Eskom	DG	TBD	

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7.	05/2016 14 Nov 2016	To be issued to the Financial Advisory Panel Follow up on National Treasury submission with office of CPO	DG		
8.	05/2016 14 Nov 2016	Conduct round robin for approval of Financial Advisory panel A and B to the R300m Tender Committee Panel C to be presented at the next EXCOPs, including the price increase	LN/ DG		



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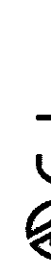
	Meeting minutes				Document Identifier	240-54076329	Rev	5	
					Document Type	Template			
					Next Review Date	February 2018			
					Effective Date	20 February 2015			

Meeting Name: Management Consulting Panel Control Committee										
Date: 28 November 2016		Time:11H00-12H00		Venue: PAC Boardroom, MWP		Meeting No.: 6				
Name	Responsibility	Initials	Mark attendance or non-attendance using Present (P), Apologies (A), Absent (X)							
			1	2	3	4	5	6		
Prish Govender	Panel Chair	PG	P	P	P	P	P	P		
Dave Gorrie	Panel Member	DG	P	P	P	P	P	P		
Mohamed Khan	Panel Member	MK	P	P	P	P	P	P		
Mary Anne Hendricks	Panel Member	MH	P	P	P	P	P	A	P	
Hanno Oostenbrink	Panel Member	HO	P	P	P		A			
Lulu Njaza	Panel Member	LN		P	P	P	P	P		
Ishmael Modiko	Panel Member	IM		P	A		P	A		
Tanaka Chiimba		TC				P	P	P		
Nokwanda Gambushe	Panel Member	NG				P	A	A		
Rumbidzayi Chitsiku		RC					P	P		

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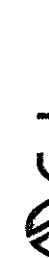
EN 70

	<div>Meeting minutes</div>				Document Identifier	240-54076329	Rev	5	
					Document Type	Template			
					Next Review Date	February 2018			
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Item	Description	Action	Responsible Person	Target date
1.	<b>Opening, Welcome and Apologies:</b> The chair opened the meeting and welcomed everyone. It was noted that a quorum was present		PG	
2.	<b>Safety and Emergency Evacuation Procedure:</b> The evacuation procedure in case of an emergency was noted		PG	
3.	<b>Adoption of Agenda and Declaration of Interest</b> No conflict of interests declared		PG	
4.	<b>Verification of minutes of previous meetings</b> Minutes of meeting number 05/2016 held on 14 November 2016 accepted		ALL	

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	<div>Meeting minutes</div>	Document Identifier	240-54076329	Rev	5
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Item	Description	Action	Responsible Person	Target date
5.	Action items from previous minutes Action items from previous minutes were reviewed and updated.		ALL	
6.	Matters for approval		ALL	
6.1	Prior Approvals DTC2 – Status update: Task order awarded SD&L – Status update: Task order returned by CPO with no signatures. To discuss further with CPO Capital Scrubbing – Status update (addendum and task order issuance): Addendum issued to PWC, awaiting response before issuing task order. Lulu to follow up with PWC Appointment of consultant for Key supplier review SM009 (for ratification): Supplier is on site. Budget letter is required for the additional budget of ~R1m required for the task order			


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	Meeting minutes			
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Item	Description	Action	Responsible Person	Target date
	(original budget is R4.5m and task order is for R5.4m). Budget letter and memo to be drafted and circulated for signature			
6.2	<p><b>New approvals</b></p> <p><b>Procurement and Supply Chain Management SM008:</b></p> <p>Feedback was provided on the evaluation recommendation and the following was noted:</p> <ul style="list-style-type: none"><li>o The evaluation team recommended that EY and Deloitte proceed to price negotiations</li><li>o Both EY and Deloitte passed the technical threshold of 80% and proceeded to step 2 – pricing negotiation</li><li>o Both firms are Level 2 BBEE</li><li>o EY bid ~R15m, has a senior team and assumes part time resourcing whereas Deloitte bid ~R85m and has a bigger team of full time resources</li><li>o It was highlighted that the end user thinks that EY was conservative in their approach as they probably viewed this scope similarly to an Eskom operating model review they previously did and which had a smaller budget. The end user does not believe that</li></ul>			

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Item	Description	Action	Responsible Person	Target date
	<p>the work can be conducted with R15m and within the number of hours indicated by EY. However, the proposal, approach, methodology and CVs of resources provided by EY are done well</p> <ul style="list-style-type: none"><li>o The bid prices were as follows:<ul style="list-style-type: none"><li>o EY – ~R15m for 9270 man-hours</li><li>o Deloitte – ~R87m for 68322 man-hours</li><li>o McKinsey – ~R88m for 49119 man-hours</li><li>o KPMG – ~R59m for 6268 man-hours</li><li>o PWC – ~R35m for 21580 man-hours</li></ul></li></ul> <p>Tanaka to confirm that the man-hours and average man-hour costs for KPMG are captured correctly</p> <ul style="list-style-type: none"><li>o All bidders were deemed technically compliant when the panel was put in place. It was therefore raised as a concern that some firms are not meeting the technical threshold for this scope and that it could be worth including the firms that miss the threshold by a small margin in the negotiations.</li></ul>			


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	<ul style="list-style-type: none"><li>It was indicated that the rotation of work for the panel members was approved in EXCOPS in October 2016 and this would initially be done with the Engineering and SHEQ panels</li><li>Deloitte has been allocated a lot of work with the panel and the main concern with EY is that they cannot complete the scope with identified resourcing</li><li>Negotiations cannot be conducted with EY as they cannot be afforded another opportunity to provide an alternative quote</li></ul> <p>Decision made to re-issue the scope to Panel A members due to insufficient number of valid tenders. RFP to be out for 5 days. The technical threshold should be reduced to 75%. It was proposed that resource loading (extent of man-hours committed to perform the task) be added to the evaluation grid with the following weights: Team structure – 10% Experience – 5% CVs – 5% Resource loading – 25%</p>			


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6.3	<p><b>Upcoming approvals</b></p> <p><b>Growing the business SM000 modification of time and value:</b> End user would like to extend the task order with Deloitte by ~4 months to March 2017 and has also indicated that the cost estimate is R1.5m to R3m. Signed budget letter and scope have not yet been provided. Item to be brought for approval once all documents are submitted.</p> <p>It was noted that the current task order ends 7 December making the extension urgent.</p> <p>The chair advised that the growth strategy be looked at more holistically than is being done currently and scope of work that covers all the areas of the business put together for the second phase</p> <p><b>Pending budget letters from CFO</b></p> <ul style="list-style-type: none"><li>o MSA: PED</li><li>o MSA: CMO (motivation signatures outstanding)</li><li>o MSA: Gx Station turnaround</li><li>o MSA: Gx Advanced analytics</li><li>o MSA: Procurement and Inventory</li></ul>			

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	<p><b>Communications support next steps:</b> Brunswick has not yet been mobilised. There are no process steps for the PCC at this point as it is end user driven. Complete pending end user effecting the emergency or requesting assistance</p> <p><b>Review of allocation of work to panel members:</b> Slide showing current distribution of work to panel members presented (Marsh 1.4%, McKinsey 27.8%, KMPG 0.2%, PWC 24.8%, Deloitte 45.7%)</p> <p>It was highlighted that a number of Panel A members have not been awarded any work. Panel B needs to be considered/ brought in more going forward and MSA scopes could possibly be sent out to panel B</p> <p><b>Discuss McKinsey proposed rates:</b> Dave and Tanaka to discuss with McKinsey the artificial rates put in their proposals</p> <p><b>Discuss total panel approved value with respect to risk based task orders:</b> Mary Anne to set up a meeting with the</p>			

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Item	Description	Action	Responsible Person	Target date
	CPO to discuss the SD&L task order and approach for risk based task orders			
8.	Closure Meeting adjourned at 11h45. Next meeting 8 December 2016.	Chairman		

Minutes submitted by: Rumbidzayi Chitsiku

Minutes approved: \_\_\_\_\_  
Chairman Date

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TO BE TABLED AT MEETING 07/2016


No.	Meeting No. & Date	Action Item	Responsible Person	Due Date For Response	Response
1.	02/2016 5 Oct 2016	Upload to Hyperwave - Mandate to negotiate, initial strategy and decisions by Board and EXCOPS - Final list of suppliers	DG	21 Oct 2016	Outstanding (documents to be uploaded to Hyperwave and not Sharepoint for final documents)  Update: File taxonomy has been created on Hyperwave, Rumbi to upload all final signed documents  Ongoing, list not finalised (Panel A and B received, waiting for Panel C to be finalised. SHEQ still reviewing Panel C submissions). Feedback with respect to timelines to finalise Panel C to be provided 28 Nov 2016
2.	04/2016	SD&L to develop policy framework. Once signed off by CPO, framework will be	IM	TBD	Discussions still to be held with Andile, Mandla, Monkwe and then CPO

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	20 Oct 2016	implemented across all Eskom Panels.			Ongoing
3.	05/2016 14 Nov 2016	Addendums to be sent out to all service providers for 40% subcontracting	LN	14 Nov 2016	Addendums sent out to all Panel A and B members. Responses received from Mac, EY and KPMG. To follow up on other responses
4.	05/2016 14 Nov 2016	Follow up on all outstanding budget letters	RC	TBD	Budget letters still outstanding
5.	05/2016 14 Nov 2016	Capital Scrubbing Addendum and task order to be circulated for signatures	LN	30 Nov 2016	Addendum issued to PWC, awaiting response before issuing task order. To follow up on responses
6.	05/2016 14 Nov 2016	Issuance of mini RFP for Financial and technical due diligence study of an existing coal supplier to Eskom  To be issued to the Financial Advisory Panel	DG	TBD	

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7.	05/2016 14 Nov 2016	Follow up on National Treasury submission with office of CPO	DG		Submission was done to National Treasury, clarification questions have been received and will be responded to
8.	05/2016 14 Nov 2016	Conduct round robin for approval of Financial Advisory panel A and B to the R300m Tender Committee Panel C to be presented at the next EXCOPs, including the price increase	LN/ DG	1 Dec 2016	Signatures on documents to be obtained 28 Nov from Maya and approval received through a round robin process. The report will be tabled at the R300m tender committee on 1 Dec 2016
9.	06/2016 28 Nov 2016	Draft budget letter/ memo for approval of additional budget for Key Supplier Contract Review SM009	RC/ MH	29 Dec 2016	
10.	06/2016 28 Nov 2016	Confirm resource numbers for KPMG for SCM proposal	TC	29 Dec 2016	
11.	06/2016	Set up meeting between Prish, Dave and the CPO to discuss the SD&L task order and	MA	1 Dec 2016	

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	28 Nov 2016	approach for risk based task orders		
12.	06/2016 28 Nov 2016	Re-issue SCM RFP	NG/LN	29 Nov 2016

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Meeting Name: Management Consulting Panel Control Committee			
Date: 12 December 2016	Time: 13H30-14H30	Venue: Core Boardroom, MWP	Meeting No.: 7

Name	Responsibility	Initials	Mark attendance or non-attendance using Present (P), Apologies (A), Absent (X)						
			1	2	3	4	5	6	7
Prish Govender	Panel Chair	PG	P	P	P	P	P	P	A
Dave Gorrie	Panel Member	DG	P	P	P	P	P	P	P
Mohamed Khan	Panel Member	MK	P	P	P	P	P	P	P
Mary Anne Hendricks	Panel Member	MH	P	P	P	P	A	P	P
Hanno Oostenbrink	Panel Member	HO	P	P	P		A		
Lulu Njaza	Panel Member	LN		P	P	P	P	P	P
Ishmael Modiko	Panel Member	IM		P	A		P	A	P
Tanaka Chiimba		TC				P	P	P	A
Nokwanda Gampushe	Panel Member	NG				P	A	A	
Rumbidzayi Chitsiku		RC					P	P	P


\*

"EN71"

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Item	Description	Action	Responsible Person	Target date
1.	<b>Opening, Welcome and Apologies:</b> The chair opened the meeting and welcomed everyone. It was noted that a quorum was present with the presence of SD&L		DG	
2.	<b>Safety and Emergency Evacuation Procedure:</b> The evacuation procedure in case of an emergency was noted		DG	
3.	<b>Adoption of Agenda and Declaration of Interest</b> No conflict of interests declared		ALL	
4.	<b>Verification of minutes of previous meetings</b> Minutes of meeting number 06/2016 held on 28 November 2016 accepted		ALL	


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Item	Description	Action	Responsible Person	Target date
5.	Action items from previous minutes Action items from previous minutes were reviewed and updated		ALL	
6.	Matters for approval		ALL	
6.1	Prior Approvals  Planning and Results SM004 – RMO (Clarity on allocation of hours): Clarity has been sought from Group IT regarding the task order end date, as well as allocation of hours between the Group IT RMO and Group RMO  Request to be sent through to Nokwanda to correct the discrepancy on the end date in the task order. For allocation of hours, Group IT/ involved parties can decide how they want to allocate the hours to the scope  SD&L SM006 – Status update: Task order has been signed and issued to McKinsey			

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Item	Description	Action	Responsible Person	Target date
	<p><b>Capital Scrubbing SM003 – Status update (addendum and task order issuance – response on addendum from PWC):</b> Response on the addendum has been received from PWC, meeting to be held on 13<sup>th</sup> Dec to discuss further</p> <p><b>Key Supplier Review SM009 – Status update (issuing of contract number):</b> Contract number is still outstanding, Lulu to follow up</p>			
6.2	<p><b>New approvals</b></p> <p><b>Procurement and Supply Chain Management SM008:</b> Feedback was provided on the evaluation recommendation and the following was noted:</p> <ul style="list-style-type: none"><li>○ RFP was issued to panel A members, and six responses received from Deloitte, McKinsey, Ernst and Young (EY), BCG, KPMG and PWC</li><li>○ Four suppliers passed the technical evaluation and all their prices are within budget</li><li>○ BCG and McKinsey did not pass the technical evaluation due to resource loading issues in their proposals</li></ul>			

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Item	Description	Action	Responsible Person	Target date
	<ul style="list-style-type: none"><li>The bid prices were as follows:<ul style="list-style-type: none"><li>Deloitte – ~R49m for 33474 man-hours</li><li>EY – ~R79m for 54104 man-hours</li><li>KPMG – ~R67m for 43781 man-hours</li><li>PWC – ~R54m for 42528 man-hours</li></ul></li><li>Evaluation team recommend PWC as Deloitte assumed 7 full time resources from Eskom in their proposal. Negotiating with them to replace the Eskom resources with their resources would result in an increase in pricing</li><li>It was noted that to date, McKinsey has been allocated ~R106m, Deloitte ~R175m, PWC ~R95m and KPMG ~R1m. EY and KPMG have been allocated very little or no work on the panel. Based on this, the work should ideally be allocated to either EY or KPMG with KPMG being preferred as they have the lower pricing of the two companies</li></ul> <p>Decision made by PCC to appoint KPMG for SM008, with negotiations to be conducted with the supplier on pricing (~6% discount based on average man-hour cost for the 4 suppliers).</p>			


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Item	Description	Action	Responsible Person	Target date
	<p>Ishmael will review and determine level of subcontracting to each panel B member and negotiate with KPMG on their proposed subcontractor pending the review outcome</p> <p>It was noted that the subcontracting levels and the suppliers subcontracted needs to be tracked</p> <p><b>Growing the Business SM000 - Modification of time and value:</b> Modification request and budget letter were submitted to PCC. The request is for an extension of 3 months for R3m and the scope will include development of value propositions. There were no objections to the extension. Modification was approved by the meeting.</p>			
6.3	<p><b>Upcoming approvals – No changes</b></p> <p><b>Pending budget letters from CFO</b></p> <ul style="list-style-type: none"><li>o MSA: PED</li><li>o MSA: CMO (motivation signatures outstanding)</li><li>o MSA: Gx Station turnaround</li></ul>			

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Item	Description	Action	Responsible Person	Target date
	<ul style="list-style-type: none"><li>MSA: Gx Advanced analytics</li><li>MSA: Procurement and Inventory</li></ul> <p><b>Pending approval of Financial Advisory panel</b></p> <ul style="list-style-type: none"><li>Asset valuation</li><li>Financial controls</li><li>Financial and technical due diligence study of an existing coal supplier to Eskom</li><li>PED: Valuations of Unmined Coal Reserves</li></ul>			
7.	<p><b>General</b></p> <p><b>Review of overall PCC dashboard: No major changes</b></p>			
8.	<p><b>Closure</b></p> <p>Meeting adjourned at 14h40</p>	Chairman		

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Minutes submitted by: Rumbidzayi Chitsiku

Minutes approved: \_\_\_\_\_  
Chairman \_\_\_\_\_ Date \_\_\_\_\_

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TO BE TABLED AT MEETING 08/2016


No.	Meeting No. & Date	Action Item	Responsible Person	Due Date For Response	Response
1.	02/2016 5 Oct 2016	Upload to Hyperwave - Mandate to negotiate, initial strategy and decisions by Board and EXCOPS  - Final list of suppliers	DG  MM	21 Oct 2016	Outstanding (documents to be uploaded to Hyperwave and not Sharepoint for final documents)  Update: File taxonomy has been created on Hyperwave, Rumbi to upload all final signed documents - <b>Complete</b>  Ongoing, list not finalised (Panel A and B received, waiting for Panel C to be finalised. SHEQ still reviewing Panel C submissions).  <b>Preliminary time line to finalise Panel C - end January 2017. Negotiations underway</b>

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No.	Meeting No. & Date	Action Item	Responsible Person	Due Date For Response	Response
2.	04/2016 20 Oct 2016	SD&L to develop policy framework. Once signed off by CPO, framework will be implemented across all Eskom Panels.	IM	TBD	Discussions still to be held with Andile, Maadla, Monkwe and then CPO  Ongoing.  Ishmael to put together something in writing to inform and advise the meeting regarding the SD&L policy framework  Ishmael to clarify role of SD&L in the PCC
3.	05/2016 14 Nov 2016	Addendums to be sent out to all service providers for 40% subcontracting	MM	14 Nov 2016	Addendums sent out to all Panel A and B members. Responses received from Mac, EY and KPMG. To follow up on other responses  28 Nov - 5 suppliers from Panel A have submitted, 6 still outstanding

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No.	Meeting No. & Date	Action Item	Responsible Person	Due Date For Response	Response
					8 submitted from Panel B, 11 still outstanding. Nokwanda is following up on outstanding addendums  Signed addendums received from PWC and EOH  Contract with Marsh is not finalised yet as they would like amendments to the NEC contract. Legal is reviewing and will advise on way forward
4.	05/2016 14 Nov 2016	Follow up on all outstanding budget letters	RC	TBD	Budget letters still outstanding  Re-submitted to CFO office, to follow up
5.	05/2016 14 Nov 2016	Capital Scrubbing Addendum and task order to be circulated for signatures	LN	30 Nov 2016	Addendum issued to PWC, awaiting response before issuing task order. To follow up on responses

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No.	Meeting No. & Date	Action Item	Responsible Person	Due Date For Response	Response
					Signed addendum received from PWC.
6.	05/2016 14 Nov 2016	Issuance of mini RFP for Financial and technical due diligence study of an existing coal supplier to Eskom  To be issued to the Financial Advisory Panel	DG	TBD	To be issued once panel is finalised.  Item to be taken out of minutes for SBM Panel
7.	05/2016 14 Nov 2016	Follow up on National Treasury submission with office of CPO	DG		Submission was done to National Treasury, clarification questions have been received and will be responded to  National Treasury approval received. Complete
8.	05/2016 14 Nov 2016	Conduct round robin for approval of Financial Advisory panel A and B to the R300m Tender Committee	LN/ DG	1 Dec 2016	Signatures on documents to be obtained 28 Nov from Maya and approval received through a round robin process. The report

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		Panel C to be presented at the next EXCOPs, including the price increase			will be tabled at the R300m tender committee on 1 Dec 2016  Panel A and B approved. Panel C and value increase to be presented at Feb 2017 EXCOPS  Item to be taken out of minutes for SBM panel
9.	07/2016 12 Dec 2016	Follow up on issuance of contract number for Marsh	MM		Contract for Marsh still not signed due to issues from supplier's side. Legal to review and advise on way forward
10.	07/2016 12 Dec 2016	Correct the discrepancy on the end date/ duration in SM004 task order	NG		Discrepancy corrected in SAP.  Complete
11.	07/2016 12 Dec 2016	Conduct negotiations with KPMG for SM008	LN		Negotiations conducted.  Complete

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No.	Meeting No. & Date	Action Item	Responsible Person	Due Date For Response	Response
12.	07/2016 12 Dec 2016	Review and determine level of subcontracting to each panel B member and negotiate with KPMG on their proposed subcontractor pending the review	IM		



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