

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

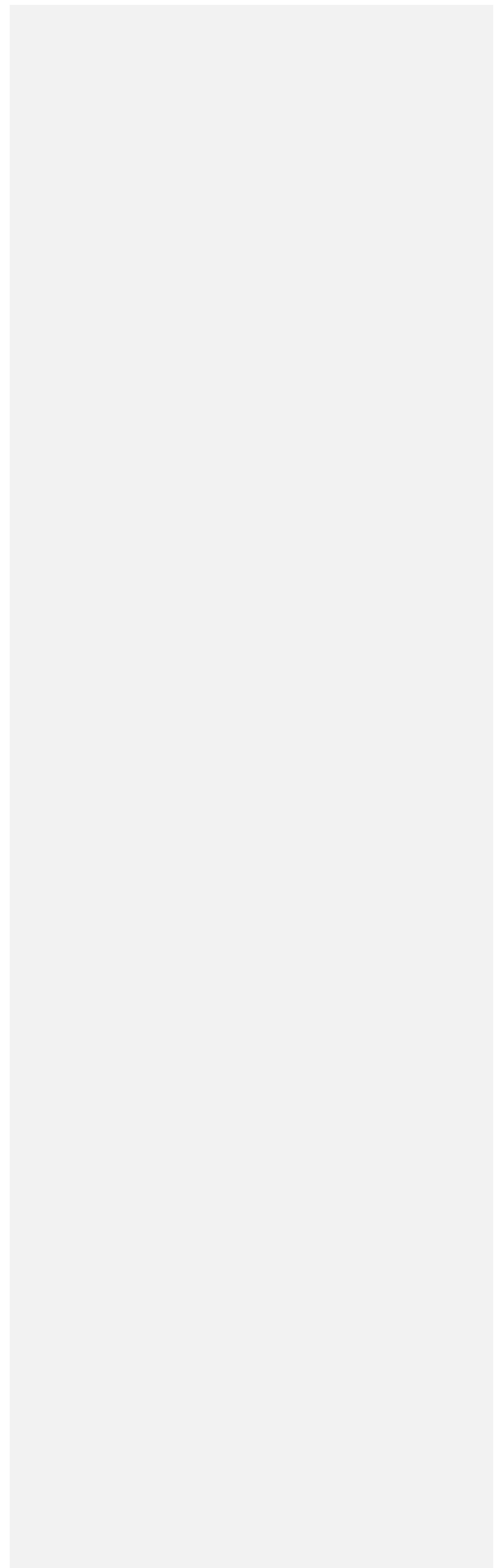
**PARKTOWN, JOHANNESBURG**

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**06 FEBRUARY 2020**

**DAY 208**

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06 FEBRUARY 2020 – DAY 208

**PROCEEDINGS RESUME ON 6 FEBRUARY 2020**

**CHAIRPERSON:** Good morning Ms Hofmeyr, good morning everybody.

**ADV KATE HOFMEYR:** Good morning Chair.

**CHAIRPERSON:** Are we ready?

**ADV KATE HOFMEYR:** We are indeed. Chair Mr Mbikiwa will be presenting the evidence of today's witness Mr Human but there are a few procedural aspects I would just like to deal with at the outset of today with your leave?

**CHAIRPERSON:** Yes.

10 **ADV KATE HOFMEYR:** Chair since yesterday we received three responses from implicated persons to the evidence of Mr Human and I indicated earlier in the week we would update you as and when that occurred. Chair they are responses from Ms Kwinana, Ms Memela and Swissport South Africa and I will deal with each of them in a little bit more detail in a moment. But there was an issue that was raised in the course of the hearings yesterday about the process for Rule 3.3 Notices and the types of responses that are received from implicated persons. And the question that was raised with us was, is it adequate that the response from the implicated person come on – as a statement  
20 as opposed to an affidavit deposed to under oath? Chair we looked at the various provisions of the Rules and we have also considered the practice that has been followed by the commission to date. I would like to address just both of them. The Rules themselves in Rule 3.3 which is the Rule that requires notice to be given to implicated persons is a Rule that requires the legal team to give notice to implicated persons

06 FEBRUARY 2020 – DAY 208

when they intend to present to the commission a witness whose evidence implicates or may implicate that person. And then what Rule 3.4 says – oh I should just add before I go on.

“That notice identifies for implicated person that they have certain rights and then they can also seek leave to do certain things. The rights are to attend at the hearing and to have a legal – have legal assistance.”

The – the opportunity offered subject to your leave is to present evidence themselves, to bring the evidence of another person or to  
10 cross-examine the witness. Now what 3.4 then says:

“Rule 3.4 is that an application in terms of Rule 3.3 that is an application to one of those three things must be submitted in writing to the Secretary of the Commission within 14 calendar days from the date of the notice referred to in Rule 3.3.”

And it goes on to read:

“The application must be accompanied by a statement from the implicated person responding to the witness’s statement insofar as it implicates him  
20 or her and the statement must make it clear what parts of the witness’s statement are disputed or denied and the grounds upon which those parts are disputed or denied.”

Chair the Rule 3.3 Notices that are sent out by the legal team of the commission replicate this language from Rule 3.4 and so in other words

06 FEBRUARY 2020 – DAY 208

what that notice does is it alerts the implicated person that in order to respond and to make such application they must do so in writing accompanied – an application in writing accompanied by a statement. Chair it is our submission today that insofar as implicated persons have previously received notices in respect of which they have been told that they must provide a statement as opposed to an affidavit deposed to under oath it would be appropriate that those statements be received and where it is useful because they have received in advance of witness's evidence to then use the opportunity in the hearing to put that version albeit on statement to the witness for comment. Chair it may well be – you raised in the course of the debate yesterday with my learned friend that there is that catch or general provision in the rules that is Rule 11 that talks about whenever the Rules – this is 11.3.

“Whenever the Rules make provision for a person to apply to the commission or the Chairperson the application must be a substantive application on affidavit with a Notice of Motion.”

Chair it may be that going forward it would be appropriate it is our submission for some revision to be made to the Rule 3.3 Notices that go out to make it clear that there – any application in terms of 3.4 should nonetheless be on affidavit because then I think as you were highlighting yes at least you have a deposed to version and a witness's version under oath. But it would be our submission for today's purposes and given the practice that has been followed previously that the commission acknowledges that it has received statements from

implicated persons and where relevant that those statements be put in the course of Mr Human's evidence today. But before I go there I would just like to make one further point in relation to the specific applications that have been received in relation to Mr Human. Because even if there was a remaining concern on your part about a version not under oath and a version under oath it actually does not arise in today's case and I would like to explain why. The first application – or at least the first statement received is not an application to cross-examine Mr Human. It is a statement received by Ms Kwinana in response to Mr Human's affidavit. Now Ms Kwinana deals briefly with some of the aspects. It is our proposal that we put those points where relevant to the matters that we will be focussing today to Mr Human. But I also think it is necessary to indicate that it is the intention of the legal team of the commission certainly in due course to present the evidence of Ms Kwinana in these hearings and I can indicate to you Chair that we are engaged with her at the moment about meeting with her and facilitating that. So in that respect there should be no risk of a situation where you have a version from her not under oath and a version from Mr Human under oath. Chair the same applies in relation to Ms Memela. Ms Memela does bring an application to cross-examine Mr Human but Ms Memela has been summoned to appear tomorrow. And depending on what happens in relation to any application she may bring it is certainly the intention that her version also be provided to this commission under oath. And so we advance in our submission the interchange between her and the disputed versions by putting them first

06 FEBRUARY 2020 – DAY 208

to Mr Human and then addressing them tomorrow with her in her evidence. Chair the final response was a response from Swissport South Africa. Now Swissport South Africa has indicated that it is still in the process of considering Mr Human's affidavit but they have drawn the commissions attention to the fact that the former CEO of Swissport South Africa Mr Cole who is not currently present in South Africa. I think he is now working for them in the United States has supplied an affidavit to the commission in the course of its investigations. I think we received it last week. And so all that they have done is that they  
10 have highlighted the parts of their affidavit previously supplied which they say are response to Mr Human's evidence and so it is on that basis that we propose to put their responses. I should also just note that their correspondence with the commission yesterday indicated that they will continue to consider his affidavit – they have not completed doing so yes and if necessary they will apply to supplement Mr Cole's first affidavit if they deem it necessary. Chair with that background in place we propose along the lines that I have described to conduct the proceedings today.

**CHAIRPERSON:** No that is fine. The one aspect that I want to raise  
20 with regard to the issue of statements that are not under oath or that are not affirmed is whether some of the statements you have received such as maybe from Ms Memela and Ms Kwinana and maybe from any implicated person that may have responded to 3.3 Notices before whether it is simply a statement without – it is simply a statement that is not an application for leave to accused's evidence or for leave to

06 FEBRUARY 2020 – DAY 208

cross-examine because there may be an argument that 11.3 maybe does not apply to a situation where somebody does not apply for leave to adduce evidence or to cross-examine or to call witnesses but simply says, here is my side of the story what you do with it is up to you.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** So to the extent that – that might be the position it may be necessary that the Rules be amended because I think that when somebody – when a witness has taken the trouble to go under oath in regard to what they tell the commission anybody who wants to  
10 challenge their evidence should take the same trouble and also go under oath.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** And not – we should not have a situation where the witness has gone to the trouble of going under oath and somebody just sends us a letter or just a statement.

**ADV KATE HOFMEYR:** Yes.

**CHAIRPERSON:** Where there would be no – no consequences if what is contained there is not true.

**ADV KATE HOFMEYR:** Hm.

20 **CHAIRPERSON:** You know.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** So we might need to amend the Rules to cover that situation.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** But all those implicated persons who responded to –

06 FEBRUARY 2020 – DAY 208

who have responded in the past and may continue to respond in the future to 3.3 Notices that do not call upon them to put their statements on affidavit. Those will be accepted and be dealt with.

**ADV KATE HOFMEYR:** Yes.

**CHAIRPERSON:** On the understanding that it is the 3.3 Notices that did not require them to put that under oath. But once the 3.3 Notices have been amended then everybody would need to make sure.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** That their statements are under oath.

10 **ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** So at least I think it is important that we have cleared it.

**ADV KATE HOFMEYR:** Yes.

**CHAIRPERSON:** Because it arose yesterday.

**ADV KATE HOFMEYR:** Indeed Chair.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Just on the factual question as to...

**CHAIRPERSON:** Yes.

20 **ADV KATE HOFMEYR:** The ones that we have received in relation to this evidence the only cross-examination applications are the ones from Ms Memela.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** In respect of Ms Sambo.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Yesterday and in respect of Mr Human.



06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** The rest are just statements.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** In response.

**CHAIRPERSON:** Yes okay.

**ADV KATE HOFMEYR:** Or in the case of Mr Cole an affidavit.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Previously provided in response.

**CHAIRPERSON:** Yes.

10 **ADV KATE HOFMEYR:** But given that Ms Memela has been summoned to testify tomorrow.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR:** It seems to me we can address those aspects.

**CHAIRPERSON:** No that is fine.

**ADV KATE HOFMEYR:** Given that she will be going under oath.

**CHAIRPERSON:** Ja that is fine.

**ADV KATE HOFMEYR:** Thank you Chair.

**CHAIRPERSON:** Okay thank you.

**ADV KATE HOFMEYR:** I will hand over to Mr Mbikiwa

20 **CHAIRPERSON:** Okay thank you. Mr Mbikiwa.

**ADV MICHAEL MBIKIWA:** Good morning Chair.

**CHAIRPERSON:** Good morning.

**ADV MICHAEL MBIKIWA:** Chair could I just have moment to get my files?

**CHAIRPERSON:** Yes. Hm.

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** Thank you Chair.

**CHAIRPERSON:** Thank you.

**ADV MICHAEL MBIKIWA:** Chair I am – we are ready proceed with the witness.

**CHAIRPERSON:** Yes. Please administer the oath or affirmation?

**REGISTRAR:** Please state your full names for the record?

**MR HUMAN:** It is Schalk Hendrik Human.

**REGISTRAR:** Do you have any objection to taking the prescribed oath?

**MR HUMAN:** No objection.

10 **REGISTRAR:** Do you consider the oath to be binding on your conscience?

**MR HUMAN:** Yes I do.

**REGISTRAR:** Do you swear that the evidence you will give will be the truth; the whole truth and nothing but the truth, if so please raise your right hand and say, so help me God.

**MR HUMAN:** So help me God.

**CHAIRPERSON:** Thank you. You may proceed.

**ADV MICHAEL MBIKIWA:** Thank you Chair. Chair may I ask that the files labelled – well the files containing Mr Human's affidavit and  
20 annexures be admitted as Exhibits DD22a to DD22g?

**CHAIRPERSON:** B up to G are they there?

**ADV MICHAEL MBIKIWA:** They should be Chair.

**CHAIRPERSON:** Okay are they all annexures to his statement?

**ADV MICHAEL MBIKIWA:** They are all annexures to his statement.

**CHAIRPERSON:** To his statement.

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** With – with a small section in G for additional documents such as the statements that we have received in response.

**CHAIRPERSON:** In G?

**ADV MICHAEL MBIKIWA:** In G.

**CHAIRPERSON:** But up to F it is annexures to his statement?

**ADV MICHAEL MBIKIWA:** And including most of G is annexures – yes.

**CHAIRPERSON:** Including most of G?

**ADV MICHAEL MBIKIWA:** Indeed.

10 **CHAIRPERSON:** Okay. The file containing Mr Schalk Hendrik Human's affidavit will be marked Exhibit DD22a together with the annexures contained in that file. The other files marked DD – Exhibit DD22b to g contain annexures to his affidavit and they will be marked accordingly but it is recorded that G – that is DD2g contains not only his annexures but also other documents. Ja.

**ADV MICHAEL MBIKIWA:** Thank you Chair.

**CHAIRPERSON:** Thank you.

20 **ADV MICHAEL MBIKIWA:** Mr Human can I ask you to open the file that should be in front of you labelled DD22a? Can I ask you to turn to the first page and you will see the red numbers in the top right hand corner. Those are the page numbers that I will be referring you to during the course of your evidence. We will for the most part be within this file but during the course of your evidence I will take you to other documents in the files that should be alongside you. Can I ask you to turn to page 54? Is this the affidavit that you provided to the

commission?

**MR HUMAN:** That is correct.

**ADV MICHAEL MBIKIWA:** And is that your signature?

**MR HUMAN:** Yes it is.

**ADV MICHAEL MBIKIWA:** And do you swear that the contents of the affidavit are true and correct?

**MR HUMAN:** I do.

**ADV MICHAEL MBIKIWA:** Thank you. Mr Human your – your affidavit deals in some detail with a variety of issues and the full chronology of events and it is not necessary for us to traverse most of those matters. Subject to the Chair's direction both because much of it is uncontentious background material and also because much of it was dealt with by yesterday's witness, Ms Sambo. Instead I intend to take you to particular aspects where your expertise and experience will help to shed some light on the process. Can you begin by telling us about your qualifications?

**MR HUMAN:** Yes Sir I hold a Bachelor's Degree and a Diploma in Financial and Administration. Public Financial Management and Administration.

20 **ADV MICHAEL MBIKIWA:** And what is your employment history?

**MR HUMAN:** I was employed at the Auditor General for 10 years. Thereafter joined the National Treasury in the office of the Accountant General for 5 years. Thereafter in the office of the Chief Procurement Officer and served as the acting Chief Procurement Officer for 18 months odd under Minister Gordhan and Nene respectively.

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** And – and tell us something about what that role involved?

**MR HUMAN:** The Chief Procurement Officer is responsible for the legal and regulatory framework in public sector procurement. It is responsible for the governance of those processes and it is responsible to ensure that transversal contracts applicable to the whole government are tendered, evaluated and adjudicated. The office manages approximately R80 Billion of transversal tenders.

**ADV MICHAEL MBIKIWA:** And what position do you currently hold?

10 **MR HUMAN:** I am currently the acting Head of Department in the Technical Materials Department at SAA Technical responsible for procurement, logistics, warehouse and storage and inventory management.

**ADV MICHAEL MBIKIWA:** And can you tell us what South African Airways Technical is and what it does?

**MR HUMAN:** South African Technical is a state owned company charged with the responsibility of maintaining aircraft. Its main customer is SAA and it is also 100% owned by the – by SAA. It specialises in maintenance, repair and overall activities, scheduled  
20 maintenance as well as unscheduled maintenance and it serves a number of customers. The main customer is South African Airways but we also have a healthy portfolio third party customers like Mango, ComAir and a few other airlines like Air Namibia to name a few.

**ADV MICHAEL MBIKIWA:** Now Mr Human you have – you have spoken in your affidavit about the approach you have taken to your evidence

06 FEBRUARY 2020 – DAY 208

and in particular those issues that you do and do not have personal knowledge of. Can you give us an overview of – of how – what approach you have taken to putting together a chronology of events?

**MR HUMAN:** Absolutely. Chair I was not employed at SAAT and the time of the award of these tenders. I started my employment on the 25 July 2018 and my approach was in compiling this affidavit to base the statements on written documentation available to me. The content of forensic reports and the Minutes of the Procurement and Board Committees. My approach was to capture the document – the sequence and chronology of events based on these documents and reports.

**ADV MICHAEL MBIKIWA:** Thank you. Can we then move to components tenders? And we can pick that up at your affidavit on page 5. Can you explain broadly speaking what a contract for the provision of component support services is?

**MR HUMAN:** Certainly. Chairperson in the maintenance of aircraft is quite expensive. So to hold excessive stock especially of what we call rotatable components it is quite expensive. Very few airlines in the world has the capital means or the monetary means to buy excessive stock. So a pool contract or a component contract is where inventory would be centralised by a service provider and those who would like to use the service pay a premium on a monthly basis usually a flight hour rate. That is every hour that the aircraft flies. A specific agreed upon rate would be paid for the use of components. The benefit for maintenance and repair organisation is that if there is a failure on a component you have the benefit to access a replacement part quite quickly within days.

06 FEBRUARY 2020 – DAY 208

While if you send it for a repair it might take up to three months or even longer depending on the complexity. So participating in a pool contract provides the opportunity to have spares available so that aircraft are serviceable and available to be deployed into service. There is usually three components Chair I have interrupted you I think.

**CHAIRPERSON:** No, no continue I will ask you after you are done.

**MR HUMAN:** Okay. There is usually three components. A base kit. That is a list of core components that the service provider would put on site – on the premises of the organisation so that you can access it  
10 within hours. The second would be advance exchange service. One would request a specific part. It will be shipped to your premises and you have to return a core unit, the unserviceable one, the one that is out of service. The third aspect is repair services. When you have a component that has become unserviceable it is sent to a repair shop of the supplier and once it is repaired it will be returned to the organisation.

**CHAIRPERSON:** Did you say this is a pool arrangement?

**MR HUMAN:** Yes Sir.

**CHAIRPERSON:** Does that mean that there would a supplier and this  
20 supplier would have arrangements or contracts with different airlines for example of companies and they all look to this supplier for parts whenever need arises? And the obligation of the supplier is to always have the parts that may be needed by the companies that are – that have contracts with them, is that right?

**MR HUMAN:** That is correct Chairperson.

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** Yes. And you say an airline would not like to keep its own stock because that is very expensive?

**MR HUMAN:** Hundreds of millions of Rand worth in stock.

**CHAIRPERSON:** Yes. Okay. Thank you.

**ADV MICHAEL MBIKIWA:** And just explain for us how the – how the pricing works? We heard from Ms Sambo yesterday reference to PBH or I think she said it was Power by the Hour. Just explain what that is?

**MR HUMAN:** That is correct it – Power by the Hour is a generally recognised term in the industry and that is a rate agreed between the supplier and the recipient in this case SAAT on how much you would pay in Dollars for every hour the aircraft flies. The incentive is there is no revenue when the aircraft is on the ground. So the incentive is on the supplier to make sure that quality components are delivered quite fast. It is despatched within very short space of time so that it enable revenue generating flight hours. The rate is usually determined with a couple of elements. It will be the pool access amount. There is a provision made for beyond economic repair. Chair it happens that spares just come to the end of life and even if it is possible to repair the cost thereof will well exceed the economic value thereof. So instead of replacing the full fair market value it is almost like insurance that you pay and in case it fails only a percentage would be applicable.

**CHAIRPERSON:** I guess that it happens but very rarely that a part that has not come to the end of its life just falls from the sky as the aeroplane flies. I heard something like that recently.

**MR HUMAN:** No comment Chair.



**CHAIRPERSON:** Yes.

**MR HUMAN:** Chair in rarest of occasions this might have happened before.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** Mr Human can you – can you tell us something about the procurement process within SAA Technical and the stages that need to be followed in order for a components contract to be entered into?

**MR HUMAN:** Absolutely. As a state owned entity – company we fall  
10 within the ambit of the provisions of the Public Finance Management Act as a Schedule 2 entity. The Act provides for differentiation between departments, municipalities, Schedule 3A and C entities and then big entities like SAA, Transnet, Eskom. It is based on the principles of the Constitution in Section 217 that all procurement should be open, fair, transparent, equitable and cost effective. Those are the principles that is also being adopted in the Supply Chain Policy of the Group and of the – of the companies that it owns. The policy therefore provides that tenders or acquisitions sourcing should happen  
20 by advertising bids on its website, on the Treasury's E Tender Porthole or in the states Tender – Tender Bulletin. It allows for a minimum number of days obviously to allow a fair chance for suppliers to prepare a quality, responsive bid and such publication is based on so called request for proposal or a request for bid and this document specifies the critical criteria. It is really articulating the needs of the organisation and discloses how scoring in this manner will be done.

06 FEBRUARY 2020 – DAY 208

The policy further states that there should be segregation of duty and by that I mean that those who are charged in compiling the specifications for such a bid should not be the persons that is also responsible for the evaluation thereof.

The rationale is basically that one does not design a tender for your own interest and for a specific - buyers for a product. The third compulsory committee is a Bid Adjudication Committee and also in this case the members are not the same with the intent that there is segregation of duty. As an extra governance measure the policy provides for a delegation of authority.

It is threshold driven. It is based on values of tender where high value tenders are referred to the Board - the relevant Board. In this case it will be South African Airways Technical Board for final approval. The process will then upon award result in the finalisation of a contract. This - stipulating the conditions that was advertised.

Typically a service level agreement depicting performance aspects would be included and then the process will progress to contract management and supplier performance.

**ADV MICHAEL MBIKIWA:** And within that process where - where does the Cross Functional Sourcing Team fit?

**MR HUMAN:** During 2016 the SAA and SAAT policies also provided for a so called Cross Functional Sourcing Team and in the case of SAAT this group of people were responsible for both compiling the specification as well as conducting the evaluation. In 2016 the National Treasury issued an instruction 3 of 2016 specifying the

06 FEBRUARY 2020 – DAY 208

segregation of duty in no uncertain terms and from there on this is a practice that the three committees is the legitimate committees in procurement to address the process required.

**ADV MICHAEL MBIKIWA:** So the - the CFST is a - is a 2016 and before phenomenon?

**MR HUMAN:** Yes.

**ADV MICHAEL MBIKIWA:** Thank you. Mr Human, you - you list in your affidavit five tenders that you then deal with. For - for the reasons I have given I do not intend to spend much time on - on most of those, 10 but just tell us before the first tender was issue in February 2013 who was the provider of component support services?

**MR HUMAN:** Air France.

**ADV MICHAEL MBIKIWA:** And can we go to the first tender? You deal with that from paragraph 29 on page 8 of your affidavit. What was the recommendation of the CFST in this tender?

**MR HUMAN:** After ...

**CHAIRPERSON:** I am sorry. Can I first hear what the tender was about? If - if ...

**ADV MICHAEL MBIKIWA:** Yes certainly Chair.

20 **CHAIRPERSON:** If you have covered that I must have missed it. If I can hear what the tender about was about first.

**MR HUMAN:** Chairperson, the - a component tender for SAAT was advertised five times consecutively. The first occurrence of this bid was the ... (intervenes).

**CHAIRPERSON:** Oh. Oh. Hang on. Is that the one I heard about

yesterday?

**ADV MICHAEL MBIKIWA:** Sorry Chair.

**CHAIRPERSON:** Is it the same tender about yesterday from ...

**ADV MICHAEL MBIKIWA:** This - this - the first one is the first one that ...

**CHAIRPERSON:** From Ms Sambo?

**ADV MICHAEL MBIKIWA:** From Ms Sambo indeed.

**CHAIRPERSON:** So - and when - when he talks about advertised five times. He is talking about exactly that one?

10 **ADV MICHAEL MBIKIWA:** In ...

**CHAIRPERSON:** That we said ...

**ADV MICHAEL MBIKIWA:** Indeed.

**CHAIRPERSON:** We said it is the same, but ...

**ADV MICHAEL MBIKIWA:** Indeed Chair ...

**CHAIRPERSON:** *Ja.*

**ADV MICHAEL MBIKIWA:** And - and each - on each occasion it had ...

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** It had a separate bid number. So it was ...

**CHAIRPERSON:** Okay. Okay.

20 **ADV MICHAEL MBIKIWA:** It was readvertised ...

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** Under - under a new - a new bid number.

**CHAIRPERSON:** Okay.

**ADV MICHAEL MBIKIWA:** So we have been referring to it as the first, second ...

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** Yes. Yes. Okay. Mr Human you do not have to go through that. I now understand.

**MR HUMAN:** Okay.

**CHAIRPERSON:** It is something that was dealt with yesterday, but it was a components tender?

**MR HUMAN:** Correct, sir.

**CHAIRPERSON:** Yes. Okay. Thank you. Mr Mbikiwa, you had asked question about cross section or something.

**ADV MICHAEL MBIKIWA:** Yes. I was just asking what the - what the  
10 recommendation was in that - by the CFST in - in that tender.

**MR HUMAN:** The - the ...

**CHAIRPERSON:** Well - well I am sorry. Mr Human, you might not understand this, but maybe for purposes of consistency. We - we may have to refer to them as first, second, third, fourth tender as we did yesterday ...

**MR HUMAN:** Yes. Okay.

**CHAIRPERSON:** Because your evidence has to link to yesterday's evidence.

**MR HUMAN:** Yes.

20 **CHAIRPERSON:** So that it is clear we are talking about the same thing.

**MR HUMAN:** Absolutely.

**CHAIRPERSON:** Okay. So this is the first tender.

**MR HUMAN:** Chairperson, the first tender was advertised and the recommendation by the Cross Functional Sourcing Team recommended

06 FEBRUARY 2020 – DAY 208

that the components support for the Boeing Fleet be awarded to Israel Aerospace or IAI as the abbreviation commonly used and for the Airbus Fleet to Air France.

**ADV MICHAEL MBIKIWA:** And - and what was the outcome of that tender?

**MR HUMAN:** The outcome was that eventually the Board approved that this tender be retracted in totality. That SAAT test the market by requesting quotations from other parties to test the relevance of pricing and then to allow SAAT to deviate from a competitive open tender  
10 process and rather confine the award to only one bid. Chair, I have tried to depict these facts in paragraph 41 of the affidavit.

**ADV MICHAEL MBIKIWA:** Before we get there and - and this - this maybe because of the - the way we are naming the tenders, but - but at paragraph 41 of the affidavit. You are talking about tender SP437/14 which is a ...

**CHAIRPERSON:** The second.

**ADV MICHAEL MBIKIWA:** What we might refer to as the second ...

**CHAIRPERSON:** Second tender.

**ADV MICHAEL MBIKIWA:** Second tender.

20 **CHAIRPERSON:** *Ja*. So his question Mr Human related to the first - what we call the first tender.

**MR HUMAN:** Oh. Yes.

**CHAIRPERSON:** Yes.

**MR HUMAN:** Chair, I apologise. The - the first tender was numbered in terms of the - the tender register at SAAT as SP401/2012. The first

06 FEBRUARY 2020 – DAY 208

tender. The - if I may confirm the CFST recommended the award for the Boeing Fleet to Israel Aerospace and for the Airbus Fleet to Air France.

**CHAIRPERSON:** Yes. Okay.

**MR HUMAN:** And then the recommendation from the - from the Board ...

**ADV MICHAEL MBIKIWA:** You deal with the BAC recommendation at paragraph 33.

**MR HUMAN:** Yes. The recommendation was in paragraph 33 and I  
10 have attached as an annex a copy of the BAC resolution. That it should be cancelled and retracted to - to allow an integrated approach.

**ADV MICHAEL MBIKIWA:** And what does that mean? An integrated approach.

**MR HUMAN:** Integrated approach would mean that the services for components and for logistics be combined in one tender and one award.

**ADV MICHAEL MBIKIWA:** Thank you; and - and - so now we can ...

**CHAIRPERSON:** I am sorry. Integrated approach is ....?

**MR HUMAN:** Sir, the two big ticket items in terms of cost drivers at  
20 SAAT is the cost of the - the component itself, but also the transportation. Most of these are flown from either America for Boeing parts or Europe for Airbus ...

**CHAIRPERSON:** Yes.

**MR HUMAN:** And represent significant amounts of money.

**CHAIRPERSON:** Hm.

**MR HUMAN:** So integration was the supply of the components plus the

06 FEBRUARY 2020 – DAY 208

transportation or logistics thereof.

**CHAIRPERSON:** Oh. So that the - the bid must not disregard transport costs and only add them later when they have got the - the tender?

**MR HUMAN:** Correct Chairperson. Is it a concentration of spend of two ...

**CHAIRPERSON:** Yes.

**MR HUMAN:** Cost drivers into one ...

**CHAIRPERSON:** Okay.

**MR HUMAN:** Very big tender.

10 **CHAIRPERSON:** Okay.

**ADV MICHAEL MBIKIWA:** Thank you. Mr Human we can now move onto the - the second tender. SP437/14.

**MR HUMAN:** Correct.

**ADV MICHAEL MBIKIWA:** Hm.

**CHAIRPERSON:** I am sorry. So what you said earlier on namely the Board decided that the tender be confined to one supplier. That related to the second tender not the first?

**MR HUMAN:** That is correct Chairperson ...

**CHAIRPERSON:** Okay.

20 **MR HUMAN:** And I do apologise for ...

**CHAIRPERSON:** Okay. Alright. Thank you.

**ADV MICHAEL MBIKIWA:** Mr Human do - do - sorry Chair.

**CHAIRPERSON:** Yes. No. I am - I am wondering whether your approach is to let him say something on each one of them before you take each one in terms of how far it went ultimately or whether you



06 FEBRUARY 2020 – DAY 208

would be saying okay. Let us finish with the first tender or I may be confused because there was a withdrawal.

So the second tender arose because there was a withdrawal of the first tender. Okay. So there would have been nothing done after - ja. Okay.

**ADV MICHAEL MBIKIWA**: That is right Chair.

**CHAIRPERSON**: Okay.

**ADV MICHAEL MBIKIWA**: That is ... (intervenes).

**CHAIRPERSON**: Alright. Thank you. Okay.

10 **ADV MICHAEL MBIKIWA**: And - and you have told us what - what happened with the - the second tender. What - what was your understanding of the reason for the retraction?

**MR HUMAN**: So I just want to confirm we are now on tender two?

**ADV MICHAEL MBIKIWA**: Now - we are now on tender two.

**MR HUMAN**: Okay.

**CHAIRPERSON**: Yes, but I think that question Mr Mbikiwa is going to explain if I - I misunderstand him. I think that question goes back to the first tender to say what your understanding was of why that tender was withdrawn or retracted.

20 **ADV MICHAEL MBIKIWA**: No Chair. Let me - let me try and ...

**CHAIRPERSON**: Unless I understood you.

**ADV MICHAEL MBIKIWA**: Clarify.

**CHAIRPERSON**: Okay.

**ADV MICHAEL MBIKIWA**: Mr - Mr Human, thought I was talking about the second tender when in fact I was talking about the first ...

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** And explained what he had said at paragraph 41 about the retraction of that tender ...

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** And what I am ask ...

**CHAIRPERSON:** And when you were talking about the first.

**ADV MICHAEL MBIKIWA:** On that occasion I was talking about the first one.

**CHAIRPERSON:** I thought you were talking about the second.

10 **ADV MICHAEL MBIKIWA:** As I understand Mr Human's evidence the first tender was advertised and was retracted in order for an integrated approach to be followed ...

**CHAIRPERSON:** Yes. Yes. Okay.

**ADV MICHAEL MBIKIWA:** And - and we are now moving on ...

**CHAIRPERSON:** We are done with the first one?

**ADV MICHAEL MBIKIWA:** We are now done with the first tender.

**CHAIRPERSON:** Okay. Alright.

**ADV MICHAEL MBIKIWA:** And we are moving on to the second tender.

**CHAIRPERSON:** Yes.

20 **ADV MICHAEL MBIKIWA:** Which - which he has already told us ...

**CHAIRPERSON:** Ja.

**ADV MICHAEL MBIKIWA:** There was a confinement to one bidder.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** There was a retraction and I am - and I am asking ...

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** Oh.

**ADV MICHAEL MBIKIWA:** Whether he ...

**CHAIRPERSON:** Oh. I think maybe what you do, because he said - he said that in - at a wrong time. Let us start afresh with the second tender.

**ADV MICHAEL MBIKIWA:** Indeed Chair.

**CHAIRPERSON:** Tell us about the second tender.

**ADV MICHAEL MBIKIWA:** Tell us about the second tender.

**MR HUMAN:** It is ...

10 **CHAIRPERSON:** Disregard what you said earlier.

**MR HUMAN:** Yes. Chairperson is it not every day that you have an opportunity to start afresh and I would certainly welcome it. Thank you for your indulgence. So the second tender was then advertised on 29 October 2014. It was evaluated and then the Board asked that this tender be put on hold and the reason for that was that there was a Memorandum of Understanding proposed with AAR under a supplier development framework proposal.

20 The Board then resolved that this tender be put on hold - the evaluation process. So it was advertised. Bids were received. The committee were busy evaluating the results and midway this evaluation the Board requested the SAAT Cross Functional Sourcing Team to put it on hold for three months while the possibilities of engaging on a Memorandum of Understanding with AAR are investigated.

**CHAIRPERSON:** Why was the Board getting involved in the second tender and in - in the first tender in the second tender? Was that

06 FEBRUARY 2020 – DAY 208

because the value of the tender required the Board to be involved or what was the reason?

**MR HUMAN:** Chairperson at the time SAA and SAAT developed a strategic partnership program as a vehicle to advance economic goals - empowerment goals and it was seen as an opportunity to explore localisation. Now if you allow me just to explain a little bit later. The Government has a number of instruments that it would like to use to attract foreign direct investment.

10 The National Industrialisation Participation Program is one of those tools. Supplier Establishment in South Africa is one of those tools and it is my understanding that the Board was considering using the strategic partnership framework to engage suppliers that would make these kind of investments in - in South Africa.

Their involvement was not to approve the tender. Their involvement was to say they consider the - the framework - supplier development framework to - to - as a vehicle for empowerment and for investment in South Africa.

**CHAIRPERSON:** Am I right to think that normally a Board of an SOE would not be involved in tenders, but that there may be tenders that are 20 above a certain value that have to go to the Board, but other than that reason normally a Board would not be involved in - in tenders. Am I right?

**MR HUMAN:** Chairperson that is correct. The PFMA Act makes specific provision for what is the roles and responsibilities of an accounting authority. In this case the accounting authority is the

06 FEBRUARY 2020 – DAY 208

Board. Their involvement is oversight and governance.

**CHAIRPERSON:** Hm. Hm, but the - the reason that you have forward why they were getting involved and you have said they were not getting involved to approach or not approach. As you understand it that would be in line with PFMA requirement or is that something you are not sure about?

**MR HUMAN:** Chairperson, the involvement of the Board would be to approve mechanisms within the legal framework and the legal framework in this case would be two very specific pieces of legislation.

10 It would be the Black Based Economic Empowerment Act plus the codes and secondly the Preferential Procurement Act plus its regulations.

Those two would form the legal framework. The partnership agreement in my understanding was a specific dispensation for Eskom and Transnet and it was based on a provision of the Act where those entities had to specifically apply for approval to deviate from the normal instruments. I am not - unaware and unsure what motivated the Board to use that specific instrument without applying for the approval to deviate from the two main frameworks.

**CHAIRPERSON:** Okay. Thank you.

20 **ADV MICHAEL MBIKIWA:** Thank you Chair. Mr Human, would it be fair to say that if the tenders had got to that stage Board approval would have been required?

**MR HUMAN:** Correct.

**ADV MICHAEL MBIKIWA:** But that the Board intervened before it got to that stage?

06 FEBRUARY 2020 – DAY 208

**MR HUMAN:** That would be correct, sir.

**ADV MICHAEL MBIKIWA:** In respect of what we are calling the second tender. Can you just confirm for us when it was issued and what the closing date for the bids was?

**MR HUMAN:** Certainly. The - the tender was published - I am going to make very sure Chairperson that I have number two as number two. If you allow me a minute ... (intervenes).

**CHAIRPERSON:** Yes. Okay.

**MR HUMAN:** The tender was advertised on 29 October and the closing  
10 date was 2 December 2014.

**ADV MICHAEL MBIKIWA:** And do you know when the suspension decision was made by the Board? The Board - the decision you referred to where the Board suspended the tender.

**MR HUMAN:** Yes Chairperson. The decision to suspend the Board - the - the tender for three months was made on 29 April 2015.

**ADV MICHAEL MBIKIWA:** And the date on which the Board finally resolved to retract the tender?

**MR HUMAN:** The tender - the Board at their meeting of 18 June 2015 made the decision to retract the tender.

20 **ADV MICHAEL MBIKIWA:** The - the reason I ask you those dates is because I would now like to turn to the - the portion of your evidence where you deal with the relationship between AAR and SAAT during the period between the issuing of the tender and the decision to retract it.

**MR HUMAN:** Yes sir.

**CHAIRPERSON:** And before you - you deal with that. These decisions

06 FEBRUARY 2020 – DAY 208

by the Board to suspend the tender for whatever period - three months. Would - would they normally fall within the function of - of a Board that kind of decision or should it be a decision of management and if the Board wants to suggest they suggest, but the decision should be taken by management?

**MR HUMAN:** Chairperson, it is usually the decision of management and the regulations - the PPPFA Regulations make it clear when you can cancel a tender.

**CHAIRPERSON:** Yes.

10 **MR HUMAN:** It is only when circumstances have changed or when there is no budget available or a tender is - is viewed that there was fraudulent or corrupt activities involved. That would be the three reasons that is currently provided for in The Public Sector Procurement Regulatory Framework for cancellation of a tender.

**CHAIRPERSON:** Okay. Thank you.

**MR HUMAN:** It is not common that a Board would take such a decision. It would be taken at management level.

**CHAIRPERSON:** Yes. Okay. Thank you.

20 **ADV MICHAEL MBIKIWA:** Mr Human, I would like to take you to a few aspects of the development of this relationship. If we can pick it up at - on - on page 13 of your affidavit at paragraph 49. You - you refer to Ms Jackson - Ms Cheryl Jackson approaching Mr Nico Bezuidenhout. Can you tell us about that approach?

**MR HUMAN:** Chair, I have attached an email to my affidavit.

**CHAIRPERSON:** I am - I am sorry. Mr - Mr Mbikiwa, I may have

06 FEBRUARY 2020 – DAY 208

missed this again. The resolution of the Board on 18 June as I - as I look at paragraph 41 of your affidavit - which was done by way of round robin - was:

“To approve the retraction of the tender to allow the finalisation of the strategic partnership.”

That strategic partnership did you say it was with - what organisation?

**MR HUMAN:** Chairperson, the intent was to enter into a strategic partnership with AAR.

10 **CHAIRPERSON:** That was the - the intention?

**MR HUMAN:** Correct, sir.

**CHAIRPERSON:** And then it says:

“The Board also approved that SAAT test the market by requesting quotations from other parties for a six month period.”

**MR HUMAN:** Yes, sir.

20 **CHAIRPERSON:** Do the two make sense? One, retract the tender to allow for the finalisation of the strategic partnership. Two, SAAT test the market by requesting quotations from other parties for a six month or maybe it does, because maybe the quotations that would be requested would include AAR or not - or not?

**MR HUMAN:** The rationale for inviting quotations Chairperson, is to make sure that the economic value is on par.

**CHAIRPERSON:** Yes.

**MR HUMAN:** So - so inviting a few quotations would get a field for



value for money ...

**CHAIRPERSON:** Okay.

**MR HUMAN:** Usually ...

**CHAIRPERSON:** Okay. Okay.

**MR HUMAN:** And then in item three - 41-3.

**CHAIRPERSON:** Ja.

**MR HUMAN:** The intent was to deviate from a competitive process and only award it to one bidder through a confinement process. Not through a competitive tender.

10 **CHAIRPERSON:** Yes. Well Mr Mbikiwa, when you deal with the relationship is that when you will deal with some of these aspects, because ...

**ADV MICHAEL MBIKIWA:** Indeed.

**CHAIRPERSON:** Or if you will deal with them. It is fine.

**ADV MICHAEL MBIKIWA:** We will. We will Chair.

**CHAIRPERSON:** Ja. Okay.

**ADV MICHAEL MBIKIWA:** In - in a sense Chair what we have done chronologically is we have dealt with the beginning of the second tender and its retraction ...

20 **CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** And the reason for the retraction is the relationship with AAR.

**CHAIRPERSON:** Which you are going to deal with now.

**ADV MICHAEL MBIKIWA:** And we are now going to move to the chronology ...

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** *Ja.*

**ADV MICHAEL MBIKIWA:** Of the development of that relationship up to the retraction.

**CHAIRPERSON:** Okay. Okay.

**ADV MICHAEL MBIKIWA:** The intervening period.

**CHAIRPERSON:** Okay. Thank you.

**ADV MICHAEL MBIKIWA:** Mr Human, I had asked you about the approach that Ms Jackson made to Mr Bezuidenhout in February 2015.

**MR HUMAN:** Correct. An email was sent by Ms Cheryl Jackson to  
10 Mr Nico Bezuidenhout. Mr Bezuidenhout was the Acting CEO of SAA at the time. She thanked him in this email for a meeting that he had with her and she attached a proposal - a partnership proposal. Chairperson that would be in line with the strategic partnership proposal that the Board intended to put on hold the running tender for three months ...

**CHAIRPERSON:** Yes.

**MR HUMAN:** To allow for the development of a strategic partnership ...

**CHAIRPERSON:** Okay.

**MR HUMAN:** Framework.

**CHAIRPERSON:** Okay.

20 **ADV MICHAEL MBIKIWA:** Except Mr Human in time the Board had not yet suspended the tender. Had it?

**MR HUMAN:** Correct.

**ADV MICHAEL MBIKIWA:** So there was an open tender in which bids had been submitted and there was an evaluation ongoing?

**MR HUMAN:** That is correct.

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** In your view is that - is that common practice to - to submit a partnership proposal as a tenderer while a tender is open and pending?

**MR HUMAN:** Not at all. It is commonly viewed in public sector procurement that when a tender process is running that interaction with suppliers are prohibited and it is explicitly stated like that in the Supply Chain Policy of SAA and SAAT.

**ADV MICHAEL MBIKIWA:** And then if we can move to - to paragraph 51? You - you speak about a proposed collaboration agreement that emerged thereafter. Can you tell us about that?

**MR HUMAN:** Based on the proposal that Ms Jackson has emailed to Mr Bezuidenhout. Mr Bezuidenhout then forwarded this proposal to the SAAT CEO - Mr Zwane - and this proposal from AAR proposed collaboration between the two organisations in the provisioning of - of components. The provisioning of components.

**CHAIRPERSON:** Maybe it is necessary Mr Mbikiwa to let Mr Human just deal with the main features of the proposal. So that one can - can follow the - the proposal that Ms Jackson sent to Mr Bezuidenhout.

**ADV MICHAEL MBIKIWA:** Indeed Chair.

20 **CHAIRPERSON:** *Ja.*

**MR HUMAN:** Chair, the - the proposal is attached as Annexure 9A. If you would allow me one sec ...

**ADV MICHAEL MBIKIWA:** Chair, it is at page 1-1-2-8.

**CHAIRPERSON:** 1-1-2-8. Thank you. Would that be in another bundle?

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** Sorry. My apologies Chair. That is in DD22C.

**CHAIRPERSON:** DD22C. Okay. Thank you. 11-28.

**ADV MICHAEL MBIKIWA:** 11-28 Chair. That is the - that is the email correspondence and then the collaboration agreement is on the next page as the attachment.

**CHAIRPERSON:** Hm.

**ADV MICHAEL MBIKIWA:** It is in draft form.

**CHAIRPERSON:** Yes. Just emphasising the main features might assist  
10 in understanding maybe why later on the Board decided to say the tender should be suspended for three months pending the finalisation of this.

**ADV MICHAEL MBIKIWA:** Certainly Chair.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** Mr Human can I ask you to turn page 1-1-3-4 and in particular to Clause 5.2. Sorry 5.1 under the heading of "Collaboration".

**MR HUMAN:** Certainly.

**ADV MICHAEL MBIKIWA:** Can you read that into the record?

20 **MR HUMAN:** Yes, Chairperson the agreement states the following:

"Collaboration

The parties agree to collaborate with each other for the purpose of negotiating this memorandum of understanding in accordance with the terms and conditions of this agreement.

For these purposes the parties record that the intent to

06 FEBRUARY 2020 – DAY 208

execute the MOU by 15 June 2015; the purpose of the MOU is to provide the following:

- (a) AAR is to be SAAT's major MRO equity partner through a joint venture.
- (b) AAR is to be the primary supplier of MRO and supply chain services including a power by the hour program to SAAT.
- (c) The parties will seek to strengthen the provisioning of SAAT of MRO and Aviation Services to South African Airways and currently third party customers;
- (d) The parties will seek to increase and develop through the JV the business in respect of the provision of MRO services to third party airlines."

10

**ADV MICHAEL MBIKIWA:** Thank you Mr Human. Can you give us a sense of how that collaboration, that proposed collaboration compares to the tender that was at the time under way?

20

**MR HUMAN:** It is virtually the same services Chairperson, the provisioning of power by the hour was the main component, the provisioning of supply chain and components, repairs, exchanges, modifications, exactly the same, the strengthening of MRO and Aviation Services in our contract, engineering services, reliability services, modifications on servers bulletins and airworthiness directives are included in the current tender.

**ADV MICHAEL MBIKIWA:** Thank you. If we return to your affidavit that's DD22A, unless Chair there is any aspect of the collaboration

agreement you would like us to go to?

**CHAIRPERSON:** Are you able to say that a reading of that draft does or doesn't give an indication that the later resolution by the Board to which we have – about which you have testified, indicate that the Board already at this stage of that resolution was looking at AAR being given the job. Is that something that you are able to say based on just reading this and having regard to the resolution or not really?

**MR HUMAN:** Chairperson it is the absence of any other proposals of equally or better service providers that gives me an indication that it  
10 was more or less the only option on the table.

**CHAIRPERSON:** Okay thank you.

**ADV MICHAEL MBIKIWA:** Chair perhaps we can go to the minutes of the Board Meeting which happened the very next day after the collaboration agreement was circulated.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** That Chair you will find also in DD22C and that's at page 1055, and if you turn to 105 – sorry Chair.

**CHAIRPERSON:** Is it under any particular ...[intervenes]

**ADV MICHAEL MBIKIWA:** Yes sorry, it is Annexure 4.

20 **CHAIRPERSON:** Oh, okay, yes.

**ADV MICHAEL MBIKIWA:** And if you turn to 1056 ...[intervenes]

**CHAIRPERSON:** Let us just say these are minutes of the board, is it the SAA Board or is it SAAT Board?

**ADV MICHAEL MBIKIWA:** Chair it is the SAAT Board.

**CHAIRPERSON:** Yes, of a meeting of 29 April 2015 at nine in the

morning, okay, yes, you may continue.

**ADV MICHAEL MBIKIWA:** Thank you Chair. If we turn to 1056 can you read the first portion of 4.2?

**MR HUMAN:** Chair it is recorded in the minutes, “

“evaluation of AAR proposal, the Board considered the AAR proposal in which AAR sought the partnership, including the option to invest in SAAT, to aggressively expand its regional footprint as well as diversify and increase the revenue. Also the proposed partnership would help SAAT revitalise its capabilities for jets shop, landing gears, APU’s and component repairs.”

Must I continue?

**ADV MICHAEL MBIKIWA:** Ja, please continue.

**MR HUMAN:**

“The Board propose that the following matters be included in the list of SAAT’s expectations from the AAR potential partnership, that the efficiency improvement or cost reductions led to lower maintenance costs for SAA Group Airlines [that would be SAA and Mango] that AAR expand into Africa with SAAT as its business partner. That the potential partnership be for a minimum of five years and reviewable every year and thereafter be reviewed by both parties every year and that AAR would make a cash contribution to the proposed partnership.”

**ADV MICHAEL MBIKIWA:** And then can you read for us the

resolution?

**MR HUMAN:**

"In conclusion the Board resolved that;

- 1) the process followed by SAAT in evaluating AAR as a potential strategic partner in the context of the approved strategic partnership framework be and hereby is noted.
- 2) The selection of AAR as one of SAAT's strategic partnerships be and is hereby approved and recommended to SAA.
- 3) The next steps to be taken by SAAT ahead of signing a memorandum of understanding or any other contract with AAR be and are hereby approved. This includes a May visit to AAR led by Board Chairperson. During this visit a collaboration agreement, which would be the basis in the memorandum of understanding would be signed."

10

**ADV MICHAEL MBIKIWA:** Can I pause you for one moment Mr Human?

20 **MR HUMAN:** Certainly.

**ADV MICHAEL MBIKIWA:** You referred above to AAR – sorry at the top of the page, at D, that AAR would make a cash contribution to the proposed partnership, is that normal practice?

**MR HUMAN:** Not in a procurement process, unless it was specified no it is not normal practice, not in a tender process sir.



06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** Now the heading to what you have just read Mr Human is evaluation of AAR proposal.

**MR HUMAN:** Yes sir.

**CHAIRPERSON:** This is being done by the Board, who is also – is that also normal or would the evaluation be normally done by management who will then if necessary bring the recommendation to the Board or was this based on the recommendation of the Board anyway, it is just that it might not have been put like that.

**MR HUMAN:** Yes, Chairperson evaluation is ordinarily done by  
10 management, if it falls within the delegation of authority the value of the contract it will be submitted to the Board for evaluation. This strategic partnership process was not put to tender, it was not an open process, this is a proposal that was submitted, evaluated and adopted.

In the procurement speak one would probably refer to this as an unsolicited bid, there wasn't an RFQ, there was no formal process of inviting bids or testing the market, it is a submission and evaluated and awarded.

**CHAIRPERSON:** The records that you looked at in preparation for your statement did it reveal whether this unsolicited proposal went – or  
20 it didn't go directly to the Board, it went to Mr Bezuidenhout is that right, we dealt with that earlier.

**MR HUMAN:** Correct.

**CHAIRPERSON:** Okay he was the CEO at the time of SAAT.

**MR HUMAN:** He was the Group CEO of SAA.

**CHAIRPERSON:** SAA.

06 FEBRUARY 2020 – DAY 208

**MR HUMAN:** SAA Airlines.

**CHAIRPERSON:** Yes okay.

**MR HUMAN:** And he referred this bid to the SAAT CEO at the time, Mr Zwane.

**CHAIRPERSON:** Who would then have referred it to the Board?

**MR HUMAN:** To the SAAT Board.

**CHAIRPERSON:** To the SAAT Board.

**MR HUMAN:** Yes sir.

**CHAIRPERSON:** Okay, thank you.

10 **ADV MICHAEL MBIKIWA:** Thank you Chair. I see we are close to the tea adjournment, there is just one further aspect of these minutes I would like to deal with. The collaboration agreement is dealt with as a separate item in the minutes, if you turn to 1058, can you just read for us the Board Resolution into the record, at the bottom of the page?

**MR HUMAN:** Chair in paragraph 4.3 in conclusion the Board resolved that Musa Zwane, the CEO of SAAT be authorised to sign on behalf of SAAT all necessary documentation to effect the collaboration agreement between SAAT and AAR, the SAAT components tender currently underway be placed on hold for three months to allow for the  
20 finalisation of the AAR partnership and three the current components contract with Air France be extended for three months from the expiry date to allow for the finalisation of the SAAT AAR partnership agreement.

**ADV MICHAEL MBIKIWA:** Thank you Mr Human. Putting to one side for the moment the relationship between SAAT and AAR the extension

06 FEBRUARY 2020 – DAY 208

of the contract with Air France what's the lawfulness of that and does that require a procurement process?

**MR HUMAN:** The current public procurement framework allows for the variation or extension of contracts but to avoid the so-called evergreen extension upon extension of extension Treasury Instruction 3 has curbed these extensions to a maximum of 15%, and the reason for that decision was to ensure that procurement agencies are allowed to go on an open tender process without disrupting services but to prohibit an extension for ever and ever after, so it is allowable but within that  
10 limits specified in instruction 3 of 2016.

**ADV MICHAEL MBIKIWA:** Thank you.

**CHAIRPERSON:** Mr Mbikiwa I was looking for the page which has got that resolution that Mr Human read earlier on before we came to 11.45, I thought it was 11.48 but 11.48 doesn't seem to be ...[intervenes]

**ADV MICHAEL MBIKIWA:** Chair when we were at 11.48 we were within – or 11.43 rather we were within the collaboration agreement itself, but are you talking about the resolution of – to do with the evaluation of the proposal.

**CHAIRPERSON:** I think so, I am not sure. No evaluation of the  
20 proposal is at 11 – 10.56. The one we dealt with just before we came back.

**ADV MICHAEL MBIKIWA:** Just before – is it not 1056, or 1057.

**CHAIRPERSON:** Let me just have a look. No 1057 is ...[intervenes]

**ADV MICHAEL MBIKIWA:** Not that one?

**CHAIRPERSON:** Ja, no I don't think ...[intervenes]

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** Chair it may have been Mr Human's reproduction of the resolution in his affidavit.

**CHAIRPERSON:** In his affidavit, okay.

**ADV MICHAEL MBIKIWA:** Yes but we can take you to the actual resolution, it is at 1079.

**CHAIRPERSON:** 1079. Yes I think I may have been looking at his affidavit reproducing this. The date for that resolution is 12 June 2015, but I see that in terms of the minutes at 1055 already in April it looks like the Board had effectively made similar decisions of more or less  
10 the same decisions, am I right, Mr Human?

**MR HUMAN:** Chairperson ...[intervenes]

**CHAIRPERSON:** I see there's a resolution at 1037, the process followed by SAAT in evaluating AAR as a potential strategic partner in the context of the approved ...[indistinct] framework be and is hereby noted. Two, the selection of AAR as one of SAAT's strategic partners be and is hereby approved and recommended to SAA, so that's already – that's April.

**ADV MICHAEL MBIKIWA:** Indeed Chair.

**CHAIRPERSON:** And on 12 June 2015 that resolution at 1079 seems  
20 to either repeat the same in essence or say something very similar that those resolutions, am I right, you have had more time to look at these documents than I have had.

**MR HUMAN:** Yes, correct Chairperson, the minutes in 1055 on page 1955 dated 29 April is the resolution where the Board instructed SAAT to put the open tender, that was the second tender we mentioned

06 FEBRUARY 2020 – DAY 208

earlier, on hold for three months to allow for the development of the tender and then on page 1079 the resolution pointed out here is after this framework has been developed and proposing to the Board now to enter into the agreement thereof.

**CHAIRPERSON:** Yes, but I guess that already in April one can see the thinking of the Board, is that right?

**MR HUMAN:** Correct sir.

**CHAIRPERSON:** Yes, okay.

**ADV MICHAEL MBIKIWA:** Thank you Chair, that would be a  
10 convenient time to break for lunch. For tea, sorry, that's optimistic.

**CHAIRPERSON:** We will take the tea adjournment, it is twenty past now, we will resume at twenty five to twelve.

We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON** Okay let us continue.

**MR HUMAN** Thank you Chair, before the tea adjournment we had  
20 concluded with the board meeting in April which had resolved to suspend the tender to allow for partnership with AAR to be explored. You deal at paragraph 55 Mr Human with a various SAAT personnel visiting the USA. Can you tell us what the documents revealed the purpose of that trip was?

**CHAIRPERSON** That is paragraph 55 of his affidavit.

**MR HUMAN** Of his affidavit, sorry Chair that is DD22A on Page 14.

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON** Yes.

**MR HUMAN** Yes Sir. The travel records in the position of SAAT indicates that Doctor Tami, Miss Kwinana, Mr Zwane and Advocate Memela visited the US from the 2<sup>nd</sup> to the 8<sup>th</sup> of May and we have attached as an annexed copy of the allowances for accommodation, transfers, daily allowances and hotel reservations to substantiate the statements [Intervenes].

**ADV MICHAEL MBIKIWA** Sorry, in your experience is it consistent with procurement and supply chain requirements to travel to and be  
10 hosted by a bidder while a tender is open?

**MR HUMAN** The supply chain policy allows for engagement of suppliers in two manners. One: when samples are required, then there is engagement and it is well defined in the SCM Policy or as part of the evaluation process, in this case this process was not at the evaluation stage and the members that attended this engagement were not part of the evaluation committee. They are of a other structure. Board members and the head of procurement, so no, it is not practice. There is a provision but under conditions well defined in the procurement policy to protect both supplies and the members involved in the  
20 evaluation.

**CHAIRPERSON** And the engagement that supply chain policy contemplates would not include the board, would they? Or members of the board? Or would they include them under certain circumstances, namely at, you said the one stage is when they look at samples and then another one as evaluation stage. Would a member of the board be

involved in those stages?

**MR HUMAN** Not at all Sir.

**CHAIRPERSON** Not at all.

**MR HUMAN** Yes.

**CHAIRPERSON** Okay.

**ADV MICHAEL MBIKIWA** Mr Human this is one aspect that Miss Kwinana has responded to in her statement in response to receipt of a Rule 33 notice. She responds to the implication that it was improper for her to have participated in the trip. It is not necessary to go to the  
10 statement. I can give you the nub of what she says. She says that supplier visits are not unusual and that SAAT would not sign a MOU without knowing exactly who they dealing with. What is your comment in response to that?

**MR HUMAN** If it was a evaluation of a service, the right person to maybe engage in such a visit would be the members of the cross functional sourcing team. Two: The policy makes it clear that during the evaluation process contact should be prohibited except if it was part of the evaluation. And thirdly Chairperson, the roles and responsibilities of board members or executive authorities are very  
20 clearly defined in the PFMA Act under public entities. And that certainly is not one of them.

**CHAIRPERSON** Just to take you back to the time when Miss Jackson sent their proposal to Mr Bezuidenhout. At that stage had AAR put in their bid already? Because that would have been before the board decided that the tender should be suspended for three months to allow

06 FEBRUARY 2020 – DAY 208

for the finalisation for the MOU. Is that something that you are able to clarify? Namely whether when Miss Jackson sent the proposal for this partnership, she was or AAR was one of the bidders who were expecting their bids to be considered?

**MR HUMAN** Correct Sir.

**CHAIRPERSON** Okay.

**ADV MICHAEL MBIKIWA** Indeed Chair, Mr Human's earlier evidence was that the closing date of the bid was the 2<sup>nd</sup> of December 2014 and Miss Jackson sent the proposal on the 26<sup>th</sup> of February 2015 so  
10 [Intervenues].

**CHAIRPERSON** Yes.

**ADV MICHAEL MBIKIWA** It was after the closure and during what would have been the evaluation stage.

**CHAIRPERSON** Yes, okay.

**ADV MICHAEL MBIKIWA** Mr Human there is then some correspondence that is attached to your affidavit that I would like to take you to. If you can turn to 1266 in Annexure DD22C. 1266. Are you there?

**MR HUMAN** Yes sir.

20 **ADV MICHAEL MBIKIWA** This is an e-mail from Ken Hein to Miss Noncasa Memela. Do you know who Mr Hein is?

**ADV MICHAEL MBIKIWA** Mr Hein is a senior manager or senior executive at AAR at the time.

**ADV MICHAEL MBIKIWA** And in this email Mr Hein indicates that he and Mr Fiddes will be arriving on Wednesday morning and staying at



06 FEBRUARY 2020 – DAY 208

the Inter-Continental Hotel and he asks if Miss Memela can fetch him. He then attaches some topics for discussion. If you go over to 1267, if you look under discussion topics.

**MR HUMAN** Yes Sir.

**ADV MICHAEL MBIKIWA** At the first bullet point, can you read that one?

**MR HUMAN** A full understanding of SAAT support requirements and needs versus the RFB.

**ADV MICHAEL MBIKIWA** Now this is at a stage when the tender will  
10 has not yet been retracted. Would that be an appropriate discussion for a bidder to be having with SAAT?

**MR HUMAN** Totally unappropriated.

**ADV MICHAEL MBIKIWA** Can I ask you then to turn to 1263, it is just a few [Intervenues].

**CHAIRPERSON** Well I am sorry, I am sorry Mr Mbikiwa. The second bullet point seems quite interesting. Current SAAT support; likes and dislikes of current support provided, do you know what that that is about? The 'likes and dislikes.'

**MR HUMAN** Sir, I have no written evidence of what that might mean. I  
20 will have to interpret but,

**CHAIRPERSON** Yes, okay, alright. Well you have dealt with a lot of correspondence and minutes of meetings, are you able - based on your understanding of various minutes and correspondence that relate to this – are you able to say what you think that meant?

**MR HUMAN** Yes.

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON** What did you, what do you think it meant?

**MR HUMAN** Chairperson, I am of the opinion that there is also evidence in the other documentation that a case was built that the service of Air France are unacceptable, and it is used as a motivation why this agreement should be further pursued. It is my notion that this formulation probably points to a performance services and operating models that will be better suited to SAAT than what the then provider Air France were able to do.

**CHAIRPERSON** So the current supplier at the time was Air France.

10 **MR HUMAN** That is correct.

**CHAIRPERSON** And the reference in that second bullet point to current SAAT support would be on your thinking would be a reference to Air France.

**MR HUMAN** That is correct Chair.

**CHAIRPERSON** And therefore when he says likes and dislikes of current support provided it effectively, you say, it refers to what it is that SAAT did not like about the current support and what it is they liked.

**MR HUMAN** Yes Chairperson.

20 **CHAIRPERSON** Which I think only logic says it would mean they want to emphasize on the likes for their purposes and magnify the likes it, you could criticize, maybe the current support.

**MR HUMAN** Absolutely Chairperson. It is probably a method to solicit information that would strengthen the proposal that the supplier then would have put forward.

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON** Yes. It is the kind of information that they would have wanted to use to strengthen their own either bid or if not bid the drive for this collaboration.

**MR HUMAN** Correct Sir. A common practice that is provided in the procurement legislation is so-called briefing sessions and then in an unbiased and manner that doesn't favour only a specific supplier this kind of information will be presented to all potential suppliers.

Government entities are given the opportunity to make it a compulsory briefing session and that would have been probably the correct vehicle  
10 to use to share information that bidders could use to strengthen their bid and prepare quality proposal during the evaluation phase. But it is certainly not practice and acceptable to share information with only one supplier and with constitute the unfair advantage.

**CHAIRPERSON** Yes, thank you.

**ADV MICHAEL MBIKIWA** Thank you. Can I ask you then to turn to Page 1263?

**MR HUMAN** I am on the 163

**ADV MICHAEL MBIKIWA** 1263

**MR HUMAN** Correct.

20 **ADV MICHAEL MBIKIWA** You will see at the bottom there is an email from Miss Lopez, Miss Sonya Lopez to Miss Mimela asking for transportation for various people from the Inter-Continental Hotel above that Miss Mimela forwards that to Mr Mike Kenny if I can ask you to then turn back to 1262.

Miss Mimela then say thanks Mr Kenny, could you please let me know

06 FEBRUARY 2020 – DAY 208

what when your guys go to fetch them so I can leave Premier Hotel to there further take note that we will be using operational purchasing board room and if I can ask you turn one page back to 1261. Mr Kenny informs Miss Memela that he will not make the meeting. Miss Memela above that ask him Why? If I can go one page back. Can I ask you to read Mr Kenny's email at the bottom of 1260?

**MR HUMAN** Certainly. Mr Kennys response to Advocate Memela I have a meeting with a customer regarding work in Uganda taking place in Kimberley and I am concerned about discussing component support  
10 issues with somebody who is a bidder in the process and the process is still ongoing. Operate governance issues. However, I would not be available for this meeting anyway due to prior arrangements which have been confirmed.

**ADV MICHAEL MBIKIWA** Thank you. And do you know who Mr Kenny is?

**MR HUMAN** Mr Kenny was the General Manger marketing or acting general manager marketing is his senior executive on the SAAT Exscope.

**ADV MICHAEL MBIKIWA** The concern that Mr Kenny is expressing  
20 there is that one that you would share?

**MR HUMAN** Absolutely

**CHAIRPERSON** And the e-mail is addressed to Miss Mimela.

**MR HUMAN** Yes Chairperson

**CHAIRPERSON** Yes

**ADV MICHAEL MBIKIWA** You will see Miss Memela's email above

06 FEBRUARY 2020 – DAY 208

that says the process has been put on hold to which Mr Kenny then replies and says I understand that it is on hold but that means it is still open and ongoing. Is that also a view you would share?

**MR HUMAN** I would subscribe to that, yes sir.

**CHAIRPERSON** So in other words that is on hold is no valid reason to have these kind of interactions with one of the bidders.

**MR HUMAN** Correct sir. There was a postponement or hold for three months but the bid was active.

**CHAIRPERSON** It had not been cancelled.

10 **MR HUMAN** Correct

**MR HUMAN** It means that it could be continued and finalised. So it would be inappropriate to engage with suppliers while there was an open bid under review.

**CHAIRPERSON** Would it be an answer to say, for what it is worth, could it be an answer to say the bids would. The closing date had come and gone the bids were in and whoever needs to evaluate them and consider them is bound to consider them on the basis of the information already put in and not on the basis of any information that they might get from other meetings. Would that be an answer at all?

20 **MR HUMAN** That would be correct Chairperson. The information to be evaluated during the bid process would be what is submitted on the official closing date.

**CHAIRPERSON** So, to the concern that Mr Kenny raises could Miss Mimela say there is nothing we are going to discuss that is going to find it is way back into the bid or find it is way to into the bid

documents? So therefore, there is no problem with me meeting with them.

**MR HUMAN** The argument that Mr Kenny tries to convey that it is contrary to the provisions of the supply chain policy. To engage suppliers while there is an open bid at hand. Even if Advocate Mimela would argue that any additional information would not be concerned during the bid it is still very exposed process for undue influence.

**CHAIRPERSON** If she was not going to be involved in any adjudication of it, be it would that make a difference? In other words,  
10 her meeting with her bidder in circumstances where the bids had, the closing date had come and gone and she was not in any way going to be part of the people who adjudicate the bids. Would that be answer to say well it cannot possibly affect the bids because I don't sit in the committees that decide and whatever they might discuss they cannot supplement their bid. Whatever they have put in that is how their bid would be judged?

**MR HUMAN** That would be a correct interpretation Chairperson. But Advocate Mimela was the Chairperson of the group BAC and can I just confirm the date.

20 **CHAIRPERSON** No, no it is enough if you say that she was a Chairperson of the BAC, do on your understanding she would be involved in the adjudication of the bids.

(Intervenes)

**MR HUMAN** As Chairperson

**CHAIRPERSON** So that argument would not be available to her

06 FEBRUARY 2020 – DAY 208

**MR HUMAN** Correct Sir.

**CHAIRPERSON** Okay. Thank you

**ADV MICHAEL MBIKIWA** Thank you Chair. The last piece of correspondence Mr Human I would like you to turn to is in the same file at Page 1278.

**CHAIRPERSON** So maybe just to complete what we are talking about a minute ago Mr Human, then the prohibition of any interaction with a bidder while a bid is a tender is pending and has not been decided the rational for a prohibiting that kind of interaction would apply to her fully  
10 because although this particular bidder could not add any document to its bid. Whatever was discussed here could well influence her thinking in making the decision even though it might be something that has not on the papers, on the bid.

**MR HUMAN** That would be correct sir.

**CHAIRPERSON** Yes, okay.

**ADV MICHAEL MBIKIWA** Thank you Chair. Mr Human at the bottom of 1278 is an email from Ms Jackson, Where she says, "Hi all, last week Chris Phedis ,Ken Hein and I SAA team and Leadership below the scope of work and listed initiatives that SAAT would like to work  
20 with AAR on or explore further as part of our partnership.

If I can ask you, in that scope of work just to turn to one two eight zero. And under timeline"

**CHAIRPERSON** That one two eight zero

**ADV MICHAEL MBIKIWA** Yes. Under timeline can you tell me what it says near June five?

06 FEBRUARY 2020 – DAY 208

**MR HUMAN** It reads SAAT powered by the LRFQ, RFP request for proposal cancellation becomes official.

**ADV MICHAEL MBIKIWA** Does it strike you as odd that AAR would be aware Ms Jacksons email is dated the fourth of June, would be aware that a cancellation of a tender of which it was a bidder was becoming official?

**MR HUMAN** That strikes me as odd, yes Chairperson.

**CHAIRPERSON** Do you read that item to mean that SAAR had been given information that on that date namely five June. The request for proposal would be cancelled officially. That is how you read it.

**MR HUMAN** Yes Chairperson. It appears irregular that a bidder is aware that there would be a cancellation prior to the date of that cancellation. It would suggest to me that information made available were made available to the supplier outside of the normal procurement process.

**ADV MICHAEL MBIKIWA** If you stay in the timeline and you go to June fifteen to seventeen it says PBH contract meetings during Pairs air show sign MOU BEE structured discussion June twenty two to twenty six SAAT MRO.

20 Then at June thirty what does it say there?

**MR HUMAN** Sign power by our contract with SAAT.

**ADV MICHAEL MBIKIWA** Does that strike you as unusual at all?

**MR HUMAN** Yes, because this would be a contract out of a normal procurement process in it would be quite strange to cancel a tender but then to sign a contract.



06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA** For what looks like, the same services that were the subject of the tender.

**MR HUMAN** Yes Chairperson

**ADV MICHAEL MBIKIWA** If we can then turn to your affidavit Mr Human. That is DD 22(a). And we pick it up from paragraph 68. Can you tell us whether an MOU was ultimately concluded?

**MR HUMAN** Chairperson a MOU was concluded and submitted for signature during the Paris air show.

**ADV MICHAEL MBIKIWA** And are you able to say what in broad terms  
10 it provided for?

**CHAIRPERSON** I am sorry, did you say paragraph six eight?

**ADV MICHAEL MBIKIWA** Sixty-eight Chair.

**CHAIRPERSON** Okay, yes.

**ADV MICHAEL MBIKIWA** It is from sixty-eight onwards Mr Human deals with the MOU.

**ADV MICHAEL MBIKIWA** Mr Human are you able to say in broad terms what the MOU provided for?

**MR HUMAN** The MOU provided for the collaboration between the AAR and SAAT concerning the provision of components the so called joined  
20 venture that was contemplated and I have the next to my affidavit Chairperson as SH twenty seven.

**ADV MICHAEL MBIKIWA** Chair I do not think it is necessary to go there.

**CHAIRPERSON** Yes, let me ask this question. They called this collaboration agreement. Is that right?

06 FEBRUARY 2020 – DAY 208

**MR HUMAN** Yes sir

**CHAIRPERSON** At that stage, did the collaboration agreement not already give AAR the right to provide the services or components that were the subject for the tender or it was just quick guesser to that kind of agreement.

**MR HUMAN** Chairperson, on this date the collaboration agreement was not yet formally signed it was only the MOU indicating the intent to end up in a formal signed contract. Later on in this affidavit we do elaborate a little bit more on how that process unfolds.

10 **CHAIRPERSON** Okay

**ADV MICHAEL MBIKIWA** On the, the further negotiation for a more definitive contract well I think let us go there Mr Human. You deal with that at paragraph 82.

**MR HUMAN** That is correct

**ADV MICHAEL MBIKIWA** Tell us what the agreement referred to there are.

**MR HUMAN** Chair, the intent was, the process of confirming the collaboration agreement was initiated by Mr Vedus by email by where he submitted draft letter of agreement and where requests clarification.

20 Now the main intent was to enter into negotiations for the acceptable definite written agreement in the provisions. That is the standard terms and conditions. Services, the scope thereof and obviously I anticipate pricing would be part of that. It specifically pertains to routable component services. Which was the intent of the original RFP in the first instance. Letter contains a reference to exclusivity that makes it

06 FEBRUARY 2020 – DAY 208

incumbent on SAAT not to engage with any other potential service providers.

So this agreement, the collaboration agreement is nothing else than the request for proposal in a different format called a Collaboration Agreement. In its intent and spirit it is exactly the services that was required from the RFP process.

**ADV MICHAEL MBIKIWA:** And Mr Human this is on the third of July so it is after the board is resolved to retract. Would it be fair to say then that SAAT and AAR are in negotiations to conclude a contract for the very services that had been the subject matter of the tender that was retracted?

**MR HUMAN:** Chairperson that would be an accurate articulation.

**ADV MICHAEL MBIKIWA:** I would like to jump ahead in the chronology a bit, two concerns that were raised about what we have been speaking about by one of the board members Mr Parsons. Are you able to articulate for us what concerns he raised?

**MR HUMAN:** Chair, Mr Parsons was a Non-Executive Director serving on the board and he had certain concerns. They relate to governance. They relate to the fact that the MoU were not made available to the board in time and that his commence on what he saw as fault lines or weaknesses in the MoU were not adequately addressed. He was also concerned that in terms of Section 54 of the PFMA an Executive Authority like SAAT needs to engage the National Treasury when it intends to enter into unincorporated joint ventures amongst other. He addressed his concern in writing to the company secretary at the time.

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** And what was done in response to his concerns?

**MR HUMAN:** A legal opinion was invited through the group legal services which solicited an opinion from a private firm called Cliffe Dekker Hofmeyr and the expert that was assigned was a Mr Arrie.

**ADV MICHAEL MBIKIWA:** And what further steps did Mr Parsons take?

**MR HUMAN:** Mr Parsons thereafter raised his concerns to the chair of the board Ms Kwinana where he expressed his concern that he is the MoU with the points that he indicated as served before the SAA board  
10 with any improvements or alterations that would address his concerns and mitigate what he has pointed out as governance- a break in governance.

**ADV MICHAEL MBIKIWA:** And what was Mr Parsons final step?

**MR HUMAN:** Mr Parsons then submitted his resignation with immediate effect. And that chairperson happened on- sorry, if you can just help me to get the exact date ... (intervenes)

**ADV MICHAEL MBIKIWA:** I am going to ask you to go to Mr Parsons resignation letter.

**MR HUMAN:** Sure.

20 **ADV MICHAEL MBIKIWA:** If we can go to DD22D.

**CHAIRPERSON:** What is the page number?

**ADV MICHAEL MBIKIWA:** 1676.

**MR HUMAN:** 17?

**ADV MICHAEL MBIKIWA:** 1676. Can I ask you to read the first two paragraphs of that?

06 FEBRUARY 2020 – DAY 208

**MR HUMAN:** Certainly. Chairperson the heading is,

Resignation from SAA Technical Board.

Please accept my resignation with immediate effect from the board of directors of SAA Technical SOC Limited. I feel I have made a strong contribution to the board finding governance in the business week after what had appeared years of neglect. Unfortunately, the value I can add seems no longer wanted and it is quite clearly due to the AAR Corporation strategic partnership. There is clearly a hidden agenda somewhere in this relationship and it requires urgent independent

10 investigation.

**ADV MICHAEL MBIKIWA:** Thank you. So, would it be fair to say that Mr Parsons soul reason for resigning is the proposed partnership with AAR?

**MR HUMAN:** That is correct sir.

**CHAIRPERSON:** It might be necessary to highlight some of the features or other features of the letter. I am not sure.

**ADV MICHAEL MBIKIWA:** Indeed Chair.

**CHAIRPERSON:** Ja.

**ADV MICHAEL MBIKIWA:** Chair the thrust of the letter is Mr Parsons  
20 is raising issues.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** The fact that the issues he had raised in the past have not been adequately addressed.

**CHAIRPERSON:** Ja. I think let Mr Human just read the whole of that letter.

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** Okay. Please go ahead.

**CHAIRPERSON:** It seems to be an important letter.

**ADV MICHAEL MBIKIWA:** Certainly Chair.

**MR HUMAN:** Chairperson, now the third paragraph reads as follows;

A memorandum of understanding was signed by SAA Technical Management with AAR on 16 June 2015 which based on the version finally distributed at both my insistence and persistence to the SAA Technical and SAA boards on the 1<sup>st</sup> of July is fundamentally flawed. I sought guidance on this matter from the SAA Technical Board chairperson on the 2<sup>nd</sup> of July however I have received only a poor and evasive explanation from management. And I was shocked to see the same version of the MoU submitted to the SAA Board the shareholder for the board meeting on the 10<sup>th</sup> of July over three weeks after the execution.

On 13 July the SAA Technical Board chairperson offered to meet to understand my concerns and this was scheduled for 17 July and then postponed to the 24<sup>th</sup> of July. My concerns are quite concise and summarised in the attached email read Annexure A. However there appears to be no hurry to ensure either SAA Technical or the SAA boards are either briefed or received the correct version of this MoU and are able to understand the full implications of the strategic partnership or any implementation steps already completed five weeks after the execution.

Apart from the lack of visibility of the precise nature of this relationship and the overall governance I have specific concerns whether the

06 FEBRUARY 2020 – DAY 208

requirement I raised at the last SAA Technical board meeting in May for the partnership to deliver lower maintenance cost to SAA and Mango is fully considered. Having cancelled the components tender to accommodate the exclusivity in the AAR relationship we are already adversely impacting both SAA and Mango's maintenance cost for the financial year 2016 from a position where the cost base of SAA Technical is already uncompetitive. This consequently impacts the cost compression targets committed to National Treasury in the 2015 SAA Corporate Plan.

- 10 My other specific concern is the identification and selection for BEE partners for the purpose of a joint venture. A process that needs to be highly transparent in a business that has already has uncompetitive cost base. The copy of the MoU received includes an implementation time table that suggest the process may already be significantly advanced and there is no visibility of this to either the SAA Technical board or to National Treasury.

I hope the company shares my concerns and appreciate I can have no confidence in the integrity of the SAA Technical board. And my membership of that board has become a reputational matter and it is a  
20 simple decision to submit my resignation.

Yours sincerely Larry Parsons.

**CHAIRPERSON:** Well I did not ask you a certain question that I thought I would ask you much earlier. When we were looking at one of the resolutions of the SAAT board that we looked at earlier there was a resolution that was approving the conclusion of I think memorandum of

06 FEBRUARY 2020 – DAY 208

understanding with AAR. And then towards the end the sentence said “and recommended to SAA”. Do you remember seeing something like that?

**MR HUMAN:** Yes Chair.

**CHAIRPERSON:** Was that in regard to the MoU or was it in regard to something else?

**MR HUMAN:** It was specifically to the MoU.

**CHAIRPERSON:** MoU. I wanted to find out what your understanding is of that last portion. That the SAAT board was recommending something to the SAA board and if it was the MoU, what is your understanding of what- how that came about? How do they- how does the board of one entity recommend something for the board of another entity even if they are in the same group?

**MR HUMAN:** Yes. Chairperson, SAAT is 100% owned by the SAA main group and therefore the main shareholders so in their framework there is a requirement to report on material transactions. This would constitute a material transaction. And my understanding is that the board’s rationale to submit it to SAA was first for noting purposes but also because it represented a huge financial aspect of its annual turnover.

**CHAIRPERSON:** I may have misunderstood that portion of that resolution. I thought it meant something along the lines that the SAAT board was recommending that SAA should have a similar MoU with AAR. But probably that is not what it meant. It meant they were recommending that SAA should approve that they have this MoU with



06 FEBRUARY 2020 – DAY 208

AAR. Is that right?

**MR HUMAN:** That is correct. The intention was not for SAA to have a similar MoU.

**CHAIRPERSON:** Yes.

**MR HUMAN:** It was a submission for the noting and indorsement by the SAA board.

**ADV MICHAEL MBIKIWA:** Thank you. Mr Human if we can return to your affidavit, I would like to now move on to tender SP451/15 and 453/15. That is in DD22A, the file with your affidavit on page 28 from  
10 paragraph 98.

**CHAIRPERSON:** Before you do- you move on. The Mr Parsons letter of resignation says at the end of paragraph 2 that there should be an urgent independent investigation. Do you know whether the company secretary or the board either of SAA or SAAT took that suggestion and followed it up?

Commented [BD1]:

**MR HUMAN:** Chairperson yes, a legal opinion was requested from Cliffe Dekker Hofmeyr and I think we are going to deal with that shortly on ... (intervenes)

**CHAIRPERSON:** Did you say Advocate Hofmeyr?

20 **MR HUMAN:** Yes.

**CHAIRPERSON:** Not this one? Okay.

**MR HUMAN:** It was a slip of the tongue Chairperson.

**CHAIRPERSON:** Okay.

**MR HUMAN:** No pun intended.

**ADV MICHAEL MBIKIWA:** Chair, it is not clear to me that that was in

06 FEBRUARY 2020 – DAY 208

response to Mr Parsons resignation letter because the opinion that we have from CDH is a draft preliminary one which predates Mr Parsons resignation. I am not sure that we are aware of any other independent investigation that was undertaken post Mr Parsons resignation.

**CHAIRPERSON:** Mr Human, do you go along with that or do you know that there was some independent investigation that followed his resignation? Based on the correspondence and minutes that you have seen.

10 **MR HUMAN:** Chair I was of the opinion that the email dated 27 July on paragraph 97 of my affidavit is a response to Mr Parsons concerns and that Mr Arrie in his response to the legal department and Advocate Memela raised- says that Mr Parsons has mostly raised non legal issues.

**CHAIRPERSON:** Thank you.

**MR HUMAN:** But the only thing that he is- that needs to be corrected is the signing of the MoU and then to submit it to the board. I am referring to paragraph 97 of the affidavit and Annex 54A as a supporting document.

**ADV MICHAEL MBIKIWA:** Yes.

20 **MR HUMAN:** Is that correct. I think can we clarify just the timing? Mr Parsons resigned on 24 July.

**ADV MICHAEL MBIKIWA:** Indeed.

**MR HUMAN:** And then this email that was provided to me and that I have access confirms that on the 27 July this response has been forthcoming.

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** Chair we can go to the response from Cliffe Dekker Hofmeyr. I do not think it is an independent investigation.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** It is a response from ... (intervenes)

**MR HUMAN:** Correct.

**ADV MICHAEL MBIKIWA:** Mr Arrie to the internal legal person at SAAT simply saying that he cannot really deal with it because it raises some non-legal issues.

**CHAIRPERSON:** Okay.

10 **MR HUMAN:** I agree with that.

**CHAIRPERSON:** You agree with that?

**MR HUMAN:** Yes.

**CHAIRPERSON:** Okay.

**ADV MICHAEL MBIKIWA:** Chair of course the independent investigations that we do have in the record are those conducted by Open Water.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** But that of course occurs much later.

**CHAIRPERSON:** Yes okay.

20 **ADV MICHAEL MBIKIWA:** In 2017. Mr Human, can we then deal with tender SP451/15 and 453/15, what were these tenders and how did they differ from the previous ones?

**CHAIRPERSON:** We going back to his affidavit now?

**ADV MICHAEL MBIKIWA:** We are at his affidavit Chair at page 28.

**CHAIRPERSON:** Yes okay.

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** On paragraph 98.

**MR HUMAN:** Chairperson these two tenders are now number 3 and 4 of the 5 tenders that were published to solicit the component services. It was agreed that this should be a closed bid and that SAAT would only invite a number of suppliers. So, in tender number 3 (451/15) was a short-term tender to obtain services for five months and it was issued to only five suppliers, Air France, Israel Aerospace, Pegasus and Lufthansa. Later- I apologise.

**ADV MICHAEL MBIKIWA:** Continue. Please continue.

10 **MR HUMAN:** It later appeared from the advice also from CDH that SAAT would be at risk not to invite a bid from AAR. The reason why AAR was excluded from the closed bid is unbeknown to me. But it was remedied when this very same tender, the very same request for proposal was then issued under SP453/15 to AAR to make this process complete. So, 453 is really just a reissuing of the same tender also to AAR.

**ADV MICHAEL MBIKIWA:** And what is your understanding of why they were only a four or five month contract?

20 **MR HUMAN:** The reasons why it was only a four or five month contract is to allow enough time to finalise the agreement with AAR with collaboration partnership.

**ADV MICHAEL MBIKIWA:** So, in other words it is in pursuance of the board resolution retracting the previous tender.

**MR HUMAN:** Correct.

**ADV MICHAEL MBIKIWA:** Can you recall whether AAR did submit a

bid?

**MR HUMAN:** Yes, AAR did submit a bid after asking for extension in the response time.

**ADV MICHAEL MBIKIWA:** And do you remember who its BEE partner was?

**MR HUMAN:** The bid submission that was submitted indicates that AAR identified Nziza Aviation as its strategic partner.

**ADV MICHAEL MBIKIWA:** And who was this tender ultimately awarded to?

10 **MR HUMAN:** This tender was also not awarded. A decision was taken to extend it to Air France for a continuity of service, the rational being to conclude the agreement with AAR in the meantime.

**ADV MICHAEL MBIKIWA:** Your evidence at paragraph 114 is that the board in fact resolved to award it to Air France.

**MR HUMAN:** Correct.

**ADV MICHAEL MBIKIWA:** But that that was an award of the tender.

**MR HUMAN:** It award of the five month tender.

**ADV MICHAEL MBIKIWA:** So just to clarify from your previous evidence. Was it simply an extension of Air France as the incumbent or  
20 was it an award of a new tender to Air France?

**MR HUMAN:** It was an award to Air France not an extension.

**ADV MICHAEL MBIKIWA:** Alright. Much of what you have dealt with in respect of these two tenders we heard from Ms Sambo yesterday. So, I intend to proceed to what you have described as the 5<sup>th</sup> tender and to deal with some of the process issues in respect of that in some detail.

06 FEBRUARY 2020 – DAY 208

So, if we can turn to page 37 of your affidavit. Can you tell us what this tender was and how it differed from previously?

**MR HUMAN:** This tender is a request for services for 5 years for component tender and is in essence the very same as the previous tenders.

**ADV MICHAEL MBIKIWA:** I would like to take you to the bid invitation document just to focus on a few clauses in it. If I can ask you to go to Exhibit DD22E and page 2043. It is DD22E, 2043. Can you read for us what the date issued is?

10 **MR HUMAN:** The sender was ... (intervenes)

**ADV MICHAEL MBIKIWA:** Sorry, let me ... (intervenes)

**CHAIRPERSON:** Hang on.

**ADV MICHAEL MBIKIWA:** Let me pause. Chair, I see you have not yet got your file. It is 2043 Chair.

**CHAIRPERSON:** 2043.

**ADV MICHAEL MBIKIWA:** Exhibit 84.

**CHAIRPERSON:** What is this? Is this an RFB?

**ADV MICHAEL MBIKIWA:** This is the RFB for what we are describing as the 5<sup>th</sup> tender.

20 **CHAIRPERSON:** Yes okay. On the affidavit where does the 5<sup>th</sup> tender start?

**ADV MICHAEL MBIKIWA:** The 5<sup>th</sup> tender starts on page 37.

**CHAIRPERSON:** Well the heading is on 36.

**ADV MICHAEL MBIKIWA:** Yes, the heading is at the bottom of the page.

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** Ja.

**ADV MICHAEL MBIKIWA:** But there is no paragraph below it.

**CHAIRPERSON:** Okay.

**ADV MICHAEL MBIKIWA:** So, we start at page- paragraph 133. Mr Huma, can you tell us what the issued date and the closing date was of this tender?

**MR HUMAN:** Yes, so the issued date was 8 December 2015 and the closing date 19 January 2016.

**ADV MICHAEL MBIKIWA:** Thank you. And if I can take you just to a few clauses in this document. Can you turn first to 2062?

**CHAIRPERSON:** Well maybe let us first get the witness to confirm where the document ends. It starts at 2043 and ends at what page? Is it 2086?

**MR HUMAN:** That is correct Chairperson.

**CHAIRPERSON:** Okay alright.

**ADV MICHAEL MBIKIWA:** Thank you Chair. Are you at 2062?

**MR HUMAN:** Yes.

**ADV MICHAEL MBIKIWA:** And what is that table?

**MR HUMAN:** The table found on page 2062 is the critical criteria that suppliers are required to comply to, to qualify for this bid.

**ADV MICHAEL MBIKIWA:** What is the consequence of not complying?

**MR HUMAN:** If the critical criteria is not met this- the bid will not proceed to the next phase of evaluation.

**ADV MICHAEL MBIKIWA:** Can- in the table if you go ... (intervenes)

**CHAIRPERSON:** Well let him read all of them.

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** Okay. If you would read each of those critical criteria Mr Human.

**MR HUMAN:** The first one is, sufficient experienced and equipment.

**CHAIRPERSON:** Sufficiently experienced and equipped.

**MR HUMAN:** Equipped.

**CHAIRPERSON:** Ja.

**MR HUMAN:** Thanks Chair.

Is of sufficient sound financial standing to carry out satisfactory any contract that may be awarded pursuant to the tender.

10 Must be certified for FAA EASA as a repair station. FAA is the Federal Aviation Authority, the American equivalent of our Civil Aviation Authority and EASA is the European Aviation Authority.

Must offer and access pool or exchange bases. No fault found rate 20% BER rate ... (intervenes)

**CHAIRPERSON:** Do you know what that requirement relates to? No fault found rate? That is a rate for what?

**MR HUMAN:** Chairperson sometimes ... (intervenes)

**CHAIRPERSON:** If you know.

20 **MR HUMAN:** I know. A component might be removed, sent to a repair facility and when they test it, it is working perfectly. And to encourage MROs to do decent fault finding before spending excessive money, they charge a rate of 20% to deter this practice of just willy-nilly sending a component for testing.

**CHAIRPERSON:** Okay alright.

**MR HUMAN:** BER rate is Beyond Economic Repair rate of 70%.



06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** Can I just pause you there? What does it mean for the BER rate to be 70%?

**CHAIRPERSON:** And just remind me also what BER stands for.

**MR HUMAN:** Chairperson when a component is faulty and sent to a repair facility and the repair cost would eventually be more than the cost of a new one. Then it is not really worthwhile to ... (intervenes)

**CHAIRPERSON:** It is like a write-off if it was a car.

**MR HUMAN:** Yes sir.

**CHAIRPERSON:** Okay alright.

10 **MR HUMAN:** It is not worthwhile to ... (intervenes)

**CHAIRPERSON:** Repair it.

**MR HUMAN:** Correct. Ja and instead of then paying the full value of the repair this tender asks for that 70% will be covered and that SAAT will only pay 30% of the value. So this ... (intervenes)

**CHAIRPERSON:** So yes, at a practical level let us say a component was found to be a write-off as it were, what would that mean for SAAT? In the- what or for any service provider or any entity in its position, what did this mean? Did it mean that they would not- they would be charged 70% of what otherwise it would have cost them to have the component repaired? In other words, there is special dispensation that although normally you would not repair such a component because it is a write-off.

**MR HUMAN:** Correct.

**CHAIRPERSON:** You will repair it but you would charge us only 70%. Is that what it means?

06 FEBRUARY 2020 – DAY 208

**MR HUMAN:** Chairperson more or less. It means that if a component is found that the cost of repairing it would not really be worthwhile it should be written off that this supplier needs to carry 70% of the cost. So if the value was R100,00 – R70.00 would be for the account of the supplier and SAAT would need to pay R30.00 towards this component. It is almost like an insurance policy. Every month you pay insurance for your car and if it is written off there is an excess amount that you – that you need to pay to repair it. It is the same concept – principle.

**CHAIRPERSON:** So – so – but why would SAAT for example want –  
10 want a part that is supposed to be written off back and pay for it. Is it because the – a new one might be more expensive?

**MR HUMAN:** It will be actually cheaper to have a new one than to repair it.

**CHAIRPERSON:** So why would they want one that is old and has been used when they can get a new one cheaper?

**MR HUMAN:** Yes Chair...

**CHAIRPERSON:** Or am I missing something?

**MR HUMAN:** No it is very pertinent and relevant questions if I could –  
20 like to clarify. When a component becomes beyond economic repair it needs to be scrapped. It would be defaced, cut up into pieces and discarded. But to replace the unit in the inventory of the pool you need to contribute to buying a new one and we share the cost. So SAAT would pay 30% towards the purchase of a new one and the supplier 70%. It is a mechanism – these components are quite expensive. It is not uncommon to pay R3 or 4 or 5 million for a component and then the

06 FEBRUARY 2020 – DAY 208

cost is just not possible to bear for the airline. So this mechanism is possible to share the cost. The equivalent of insurance premiums would be the flight hour rate. So if I may give a practical example? At the moment SAAT pays more or less 100 000.00 Dollars every month towards possible BER occurrences. It is like the insurance policy. If a component fails – say it was a Adiro – Adiro is a component that is used to measure air speed, temperatures and the instruments on a – on a – it is linked to the instrumentation in the cockpit but it is quite expensive. It costs above R5 – R6 million then SAAT would only pay  
10 30% and the supplier must pay the remaining.

**CHAIRPERSON:** Okay. Okay. Thank you. Yes you were still going to finish just read into the record those – all those requirements?

**MR HUMAN:** The next one is AD – AD's mandatory. An AD is a airworthiness directive.

**CHAIRPERSON:** Hm.

**MR HUMAN:** Many times manufacturers would issue improvements. It is like maybe you get a new version of Microsoft on your computer. In this case it is a directive, it is compulsory to – to replace. AD's non-mandatory. Warranties. The sessions of warranties to reduce rates.  
20 Chairperson if you buy a new aircraft it comes under a warranty and any components that would be faulty will then fall under a warranty claim. This criteria is for the supplier to deal with those warranties. It can be sometimes quite complicated. Supplier Development must equal to 10% of the contract value and a proposal needs to be included. Reciprocal Work must equal to 10% of the contract value and must

06 FEBRUARY 2020 – DAY 208

include a proposal. It must be willing to enter into a partnership joint venture with SAAT which is equal to 10% of the contract value and must be a 24 hour, 360 days per year service.

**CHAIRPERSON:** Thank you.

**ADV MICHAEL MBIKIWA:** Thank you. If you can then turn to page 2064. And you will see the table at the bottom of that page. You refer to one of the requirements being supplier development. Just describe – it is not necessary to read the block but just describe for us what supplier development is?

10 **MR HUMAN:** Supplier Development would be initiatives that will empower local suppliers to become competitive in this industry. It also deals with a localisation SMME development, job creations and is aligned to the government's developmental objectives of empowerment described in the BEE Act and the BBBFA Act.

**ADV MICHAEL MBIKIWA:** Can I ask you to just read the last sentence of that block into the record?

**MR HUMAN:**

20 "A bidder to indicate what value they would place on each area of development based on the above and which they would be impacting – imparting to the local vendor."

**ADV MICHAEL MBIKIWA:** Thank you. And then lastly if we can go to 2085? This refers to something you spoke about earlier. The NIP obligation. Just tell us what – what a NIP obligation is?

**MR HUMAN:** A NIP obligation will be applicable to any contract that is

06 FEBRUARY 2020 – DAY 208

worth more than 10 million US Dollars over its term. It requires agreement with the DTI and the scope thereof and that at least 30% of that contract value be applied to NIP – to obligations back into the country.

**CHAIRPERSON:** Please remind me about what NIP stands for again?

**MR HUMAN:** Chairperson it is the National Industrialisation Participation Programme.

**CHAIRPERSON:** Okay thank you.

10 **ADV MICHAEL MBIKIWA:** Thank you. We will return to those aspects when we discuss the contract and its implementation. Before we get to the evaluation and adjudication of the bid you have dealt in your affidavit and we return...

**CHAIRPERSON:** We going back to the affidavit?

**ADV MICHAEL MBIKIWA:** We are going back to the affidavit, sorry Chair.

**CHAIRPERSON:** Yes. Just remember to announce.

**ADV MICHAEL MBIKIWA:** I will Chair sorry about that. We are back in DD22a.

**CHAIRPERSON:** Okay and what page must I go to?

20 **ADV MICHAEL MBIKIWA:** To page 37 please Chair.

**CHAIRPERSON:** Okay.

**ADV MICHAEL MBIKIWA:** Of the affidavit.

**CHAIRPERSON:** Okay.

**ADV MICHAEL MBIKIWA:** Sorry that is a mistake it is 38.

**CHAIRPERSON:** Okay.

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** And you deal from paragraph 137 onwards Mr Human with documents that reveal a property purchase and salary increases granted to Ms Memela. Can you tell us about that?

**MR HUMAN:** Chairperson I have been provided with documentation that demonstrates that Advocate Memela purchased a property in Bedfordview to the value of R3.8 million and that it was registered on the 11 July.

**CHAIRPERSON:** I am sorry which paragraph at 38 are you re?

**ADV MICHAEL MBIKIWA:** At – from paragraph 137 Chairperson.

10 **CHAIRPERSON:** Okay alright.

**MR HUMAN:** In addition we have documentation confirming a salary increase for Advocate Memela approved by the SAAT Acting CEO and Chair – SAAT Chairperson. We are not sure whether this was a performance related increase or what would have triggered the increase at this stage.

**CHAIRPERSON:** Does the increase in her salary coincide with the customary time when increases are effected on staff remuneration at SAAT or is that something you would not know?

20 **MR HUMAN:** Chairperson it is out of cycle salary adjustment which we – which I gathered from the documentation submitted referred to in paragraph 140.

**CHAIRPERSON:** Okay.

**MR HUMAN:** So it is definitely – it is not the normal ...

**CHAIRPERSON:** Annual.

**MR HUMAN:** Annual increments.

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** Yes.

**MR HUMAN:** Or increase percentages.

**CHAIRPERSON:** Okay alright. You might wish to raise your voice a bit. I think it might be going down so that everybody can hear you.

**MR HUMAN:** Certainly Chairperson.

**CHAIRPERSON:** Hm.

**ADV MICHAEL MBIKIWA:** Mr Human those facts were included in the Open Water investigation. Are you aware if the Open Water investigation discovered that JM Aviation R.5 million towards a house  
10 that Ms Memela bought in 2016?

**MR HUMAN:** Based on the report yes.

**ADV MICHAEL MBIKIWA:** Can we then turn to the evaluation and adjudication process in the tender? And that you...

**CHAIRPERSON:** That last bit is that in a page somewhere else in another document not in Mr Human's affidavit?

**ADV MICHAEL MBIKIWA:** No Chair it is not. In fact that was not in the Open Water investigation.

**CHAIRPERSON:** Yes. Okay. But Ms Memela has been notified about it?

20 **ADV MICHAEL MBIKIWA:** The fact – the fact that she bought the house.

**CHAIRPERSON:** ja.

**ADV MICHAEL MBIKIWA:** Is in the Open Water investigation. That is subject of the investigation.

**CHAIRPERSON:** Yes.

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** What I am asking Mr Human is whether he is aware.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** Whether Open Water discovered that JM Aviation paid R2.5 million towards the ...

**CHAIRPERSON:** Yes, no what I am asking is whether that report – she is aware that report will be part of what we will discuss here?

**ADV MICHAEL MBIKIWA:** Oh indeed Chair.

**CHAIRPERSON:** Oh okay.

10 **ADV MICHAEL MBIKIWA:** We have engaged with Ms Memela about that.

**CHAIRPERSON:** Okay alright.

**ADV MICHAEL MBIKIWA:** Yes.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** Can we then turn to the evaluation and adjudication process Mr Human. We pick that up at paragraph 141 on page 39. Can you talk us through what – what happened in the evaluation process of the fifth tender?

20 **MR HUMAN:** We have already Chairperson indicated that this tender was published in December 2015 and closed on – in 2016 – early 2016 after it was received across functional sourcing team convened and they embarked on the evaluation of the tender. They used the criteria that we have referred to earlier as the basis for evaluating compliant bidders and then the process to consider the financial offers. During this process Chair – I would just like to clarify the question is



06 FEBRUARY 2020 – DAY 208

specifically about evaluation or also including the adjudication?

**ADV MICHAEL MBIKIWA:** If we can just deal with the evaluation in the first instance.

**MR HUMAN:** Okay. Okay. The Chairperson of this committee was a Mr Roberts at the time he was responsible for chairing this committee and part of the procurement department. The evaluations took place and bidders were asked for best and final offers. Reduced bids were then returned during April where the – the bidders indicated reduced prices. Final submissions were then considered and the cross  
10 functional team signed off unfortunately it is undated document which I refer to in paragraph 146 of the affidavit.

**ADV MICHAEL MBIKIWA:** And what was the recommendation of the CFST? You deal with that at paragraph 47 – 147.

**MR HUMAN:** So Chairperson after this process the recommendation was that Lufthansa be – that Lufthansa is appointed for both the boeing and the airbus fleets. The CFST recommended the winning bidder or the recommended bidder to be Lufthansa.

**ADV MICHAEL MBIKIWA:** And tell us what happened next in the process?

20 **CHAIRPERSON:** And Lufthansa had offered the lowest price, is that right?

**MR HUMAN:** That is correct.

**CHAIRPERSON:** I am looking at 145.

**MR HUMAN:** Yes Chairperson.

**CHAIRPERSON:** And then the next lowest was JM/AAR Corporation

and then F – Air France, is that right?

**MR HUMAN:** Chairperson no. The next step was that after this recommendation the cross functional team was requested that they should ask the bidders to confirm whether they actual understood the scope well and they had to provide written confirmation to this effect and supply a list of their current customers before submitting yet another best and final offer. I am in 41 – 8.1 Chairperson.

**CHAIRPERSON:** Where are you?

**MR HUMAN:** 148.1 Chairperson at the top of page 0041.

10 **CHAIRPERSON:** Yes. I was asking you something that is at 145.

**MR HUMAN:** I apologise Chair.

**CHAIRPERSON:** Yes. Mr Mbikiwa.

**ADV MICHAEL MBIKIWA:** Yes.

**CHAIRPERSON:** Was this covered and I just missed it or...

**ADV MICHAEL MBIKIWA:** No Chair it was not.

**CHAIRPERSON:** Were you planning to come to that?

**ADV MICHAEL MBIKIWA:** I am grateful for you to – for going there.

**CHAIRPERSON:** Yes okay.

20 **ADV MICHAEL MBIKIWA:** Mr Human the – the question is, after the final submission you have spoken...

**MR HUMAN:** Yes.

**ADV MICHAEL MBIKIWA:** Spoken about the best and final offer process.

**MR HUMAN:** Correct.

**ADV MICHAEL MBIKIWA:** After those best and final offers my

06 FEBRUARY 2020 – DAY 208

understanding of Chair's question is, what was the ranking of the prices of the bidders?

**MR HUMAN:** Lufthansa offered the lowest price Chairperson.

**CHAIRPERSON:** Yes. And then?

**ADV MICHAEL MBIKIWA:** It was followed by JM Aviation or JM/AAR Aviation and then Air France.

**CHAIRPERSON:** Yes okay. Okay you can continue.

**ADV MICHAEL MBIKIWA:** I see that in response to the last of the best and final offer requests AAR reduced its price by R49 million. Is it – is  
10 it common practice to have best and final offers in a tender process like this?

**MR HUMAN:** It is a common practice to negotiate on price. Ja it is practice to ask for better price quotations.

**ADV MICHAEL MBIKIWA:** Thank you.

**CHAIRPERSON:** So when you – when you – when that is asked it is basically to get the bidders to give their final, final position or prices?

**MR HUMAN:** Yes Chairperson.

**CHAIRPERSON:** But it – it need not be prices only there could be other aspects of the bid in – that they put up which might be – which  
20 might enhance their prospects?

**MR HUMAN:** Chairperson usually evaluation committees finish their evaluations in totality and then would enter into negotiations with the winning bidder. And in that process price beneficial terms, quality standards and training or other benefits would be negotiated. In big tenders that is usually how the process is run. If it is following this in

06 FEBRUARY 2020 – DAY 208

this pattern. But to negotiate with all bidders is possible when there is the so called two envelope system when – when the bidders go through a functionality everybody that passes functionality the critical criteria then goes to the second phase.

**CHAIRPERSON:** But my – my question was, is it correct that when a request is made for a bidder's best offer that is not necessarily limited or confined to price?

**MR HUMAN:** Yes Sir.

**CHAIRPERSON:** It could include other terms and conditions or other  
10 aspects that the bidder thinks if they made some amendments on that could enhance their – the conclusion of an agreement.

**MR HUMAN:** Yes Chairperson that – that does happen that...

**CHAIRPERSON:** But mostly it is the price.

**MR HUMAN:** It is mostly price and then after award all the other conditions are negotiated.

**CHAIRPERSON:** Yes okay. Okay.

**ADV MICHAEL MBIKIWA:** Mr Human you were then after telling us the  
– the different prices after the final submission and the recommendation of the CFST for Lufthansa you were busy telling us  
20 about the meeting, the CFST meeting of 25 April which you deal with at 148. Do you want to finish telling us about that meeting?

**MR HUMAN:** Yes. So Chairperson after the evaluation and the submission of the cross-functional team recommending Lufthansa on the 25 April the cross-functional sourcing team once again met and based on the Minutes of this meeting it is disclosed that the – that all

06 FEBRUARY 2020 – DAY 208

suppliers were requested to confirm that they understood the scope correctly and provide a list of their current customers with a second best and final offer. The rationale for this decision Chairperson was that the prices were regarded as ...

**CHAIRPERSON:** Too low?

**MR HUMAN:** Or quite low yes. In the industry it is called low balling.

**CHAIRPERSON:** Yes.

**MR HUMAN:** Where a bidder may be under quotes but then later the – the service is comprised due to financial constraints.

10 **CHAIRPERSON:** Yes.

**MR HUMAN:** Or possibly a compromise in quality.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** Chair this might be an appropriate time at which to take the lunch break.

**CHAIRPERSON:** I wonder whether it might be convenient to finish what he has to say about that meeting.

**ADV MICHAEL MBIKIWA:** Yes.

**CHAIRPERSON:** Unless you think it is going to take quite some time?

**ADV MICHAEL MBIKIWA:** No I think we – I think that makes sense.

20 **CHAIRPERSON:** Let us finish that meeting ja.

**ADV MICHAEL MBIKIWA:** Let us – let us finish the meeting. What else happened at that meeting?

**MR HUMAN:** At the meeting Advocate Memela also joined and she emphasised the urgency to finalise this project. The meeting took note the cross-functional sourcing team meeting took note of the feedback

06 FEBRUARY 2020 – DAY 208

on pricing of the three bidders that being Lufthansa, Air France and AAR and the risks that was identified were considered at this meeting. The meeting also noted that although Lufthansa is the lowest bidder there was still outstanding NIP obligations and that should be a concern to the team.

**ADV MICHAEL MBIKIWA:** And what was the conclusion of the meeting?

**MR HUMAN:** The cross-functional team then changed its recommendation to award the contract to Air France.

10 **ADV MICHAEL MBIKIWA:** And just one last question. Is it – is it normal practice – you said earlier that Advocate Memela was the Chair of the Bid Adjudication Committee is it standard practice for the Chair of the Bid Adjudication Committee to chair – to attend a meeting of the CFST?

**MR HUMAN:** No it is normal practice Chairperson.

**CHAIRPERSON:** I am sorry. It is – what is not normal practice?

**MR HUMAN:** The principle of adjudication committee and of evaluation committee is segregation of duties so it is not common that the Chairperson of the BAC would attend the proceedings of a cross-  
20 functional team.

**CHAIRPERSON:** Because the – the one is higher than the other?

**MR HUMAN:** Yes.

**CHAIRPERSON:** And they have different functions?

**MR HUMAN:** They have different functions and the intent is that there should be checks and balances that is a way to keep each other

accountable.

**CHAIRPERSON:** Yes. Well the – you say here Advocate Memela that is 148.2 Advocate Memela joined the meeting at this stage. Do the Minutes reflect that – do the minutes reflect the basis upon which she joined – she joined the meeting? Was she invited by anybody in that meeting? Did she come on her own?

**MR HUMAN:** No Chair it is not clear to me whether she was invited. The minutes we will have to refer back to the minutes if you allow it.

**CHAIRPERSON:** Yes.

10 **ADV MICHAEL MBIKIWA:** Chair perhaps I can refer you to the minutes just before we adjourn.

**CHAIRPERSON:** Yes, yes. Ja.

**ADV MICHAEL MBIKIWA:** It is in DD22f.

**CHAIRPERSON:** Hm.

**ADV MICHAEL MBIKIWA:** At page 225 – page 2245.

**CHAIRPERSON:** Okay. 225 you said.

**ADV MICHAEL MBIKIWA:** 2245.

**CHAIRPERSON:** 2245

**ADV MICHAEL MBIKIWA:** In –

20 **CHAIRPERSON:** You want him to repeat the bundle number?

**ADV MICHAEL MBIKIWA:** DD22f.

**CHAIRPERSON:** Do you not have that page?

**ADV MICHAEL MBIKIWA:** 2245.

**CHAIRPERSON:** 2245. Bring here.

**ADV MICHAEL MBIKIWA:** I think it is E. Sorry Chair. Sorry Chair it is

– it must be DD22e. My apologies for that.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** Yes. 2245 and if you look in the minutes three lines down in the table it says NM joined the meeting.

**CHAIRPERSON:** That is the third column, horizontal column, is that right?

**MR HUMAN:** Yes Chair.

**ADV MICHAEL MBIKIWA:** Third row ja.

**CHAIRPERSON:** Yes. So and that NM would refer to Ms Nontsasa  
10 Memela. So she was not at the meeting when it started but joined it when it was in progress. Would that be your understanding Mr Human as well?

**MR HUMAN:** Chairperson in the – the present column it just indicates present. It is unclear to me when – at what stage of the meeting the Advocate joined the meeting.

**CHAIRPERSON:** Yes. Well – well it seems to me that if she was there from the beginning there would have been no need for them to say she joined if she was there from the beginning. So it must be that she joined when the meeting was in progress. Yes.

20 **MR HUMAN:** That would be a fair comment Chairperson.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** Chair perhaps I can just read into the record.

**CHAIRPERSON:** es.

**ADV MICHAEL MBIKIWA:** What the minutes reflect.



**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:**

“NM joined the meeting to emphasise the urgency on completing this project and to give guidance where necessary. She also stated that the Board will be sitting this week and a submission needs to be ready by Tuesday [26.04.2016] to be tabled at the Board Meeting.”

**CHAIRPERSON:** Yes thank you.

10 **ADV MICHAEL MBIKIWA:** Thank you Chair.

**CHAIRPERSON:** Okay. We will take the lunch adjournment at this stage and we will resume at five past two. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay. Let us continue.

20 **ADV MICHAEL MBIKIWA:** Thank you Chair. Mr Human, we had just before the lunch adjournment dealt with the CFST Meeting which resolved that SAAT should award the contract to Air France and we spoke - we were speaking about the fact that Ms Memela had joined that meeting and we - we referred to the minutes.

Can I ask you to take us through what happened at the BAC and Board level after that CFST recommendation?

**MR HUMAN:** So sir ...

**CHAIRPERSON:** Maybe - maybe before you do that it seems odd to me

06 FEBRUARY 2020 – DAY 208

that if they had a problem with Lufthansa for one reason or another which provided the lowest price. They should skip the next lowest price and go to Air France. Is there something you picked up in the minutes or correspondence that explains that?

**MR HUMAN:** Yes Chairperson. The question of lowballing or unrealistically low price has been cited as one of the reasons why it was passed over.

**CHAIRPERSON:** Oh. So - so even with Air - Air France it was lowballing that was the concern or there was more than that?

10 **MR HUMAN:** Hm.

**CHAIRPERSON:** Even with Lufthansa. I am sorry. Even with Lufthansa. The reason why they did not give it to Lufthansa was because of lowball - balling only or because of lowballing and other concerns?

**MR HUMAN:** Chairperson, the - the recommendation why Lufthansa was passed over was because of their outstanding NIP obligation.

**CHAIRPERSON:** Yes.

**MR HUMAN:** As a first reason and then the recommendation to award to Air France as the more expensive one was put forward by the Cross

20 Functional Support Team.

**CHAIRPERSON:** Yes. So J - J - was it JV or J - JM. JM and ...

**ADV MICHAEL MBIKIWA:** J ...

**CHAIRPERSON:** AAR.

**MR HUMAN:** Yes, sir.

**CHAIRPERSON:** Were seen to have done lowballing?

06 FEBRUARY 2020 – DAY 208

**MR HUMAN:** Correct Chairperson.

**CHAIRPERSON:** And the implications of that as you said is that if they were to take JM/AAR there could be problems about the quality of the products or service later on arising from the fact that the price they - they offered was just too low.

**MR HUMAN:** Yes Chairperson.

**CHAIRPERSON:** That would be the fear.

**MR HUMAN:** That - that seems to be from the documentation the reasoning of the Cross Functional Team ...

10 **CHAIRPERSON:** Okay.

**MR HUMAN:** At that stage.

**CHAIRPERSON:** Okay. Thank you.

**ADV MICHAEL MBIKIWA:** Thank you Chair.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** Mr Human, can you then take us through the - the BAC and Board process that followed?

**MR HUMAN:** Certainly. So ...

**CHAIRPERSON:** And - and we will get that from where in the affidavit?

20 **ADV MICHAEL MBIKIWA:** Sorry Chair. We are on page 41 of the affidavit ...

**CHAIRPERSON:** Huh-uh. Okay.

**ADV MICHAEL MBIKIWA:** And we dealt with the meeting in the subparagraphs in one - in paragraph 148.

**CHAIRPERSON:** Thank you.

**MR HUMAN:** Hm.

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** Yes Mr Human.

**MR HUMAN:** Chairperson, so the Chair of the Cross Functional Team Mr Robbertse prepared a draft recommendation and he requested on 26 April Advocate Memela to review the submission. Thereafter it was further processed with a recommendation as Air France as the - as the - to be awarded.

A submission was submitted for adjudication and on 6 May 2016 as per paragraph 1-5-2 of the affidavit Chairperson the BAC resolved on a round robin process the - the intention to award this  
10 to Air France. Due to the value of this tender and the delegation of authority the recommendation from the BAC was to the SAAT Board for a final recommendation.

So there was a Special Board Meeting Chair arranged for 9 May.

**CHAIRPERSON:** Before that just to go back again. Mr Robbertse was Chairperson of the CFST. Is that right?

**MR HUMAN:** That is correct Chair.

**CHAIRPERSON:** So after they had made the decision that they made at the meeting dealt with under 1-4 - at paragraph 1-4-8 to award the  
20 contract to Air France. Did he then send Air France's submission to Advocate Memela for review of the submission?

**MR HUMAN:** Correct.

**CHAIRPERSON:** Huh-uh; and - and would that be normal or would that have been because subsequent to the meeting he picked up something or became uncertain of their decision? Is that something you could tell

06 FEBRUARY 2020 – DAY 208

from the documentation?

**MR HUMAN:** Yes. Chair from the documentation it appears if this was a quality review. It was a - a staff member asking a superior to do a quality review on the submission and take inputs.

**CHAIRPERSON:** Yes and that would be normal?

**MR HUMAN:** That I think is fairly normal to - to give guidance and advice.

**CHAIRPERSON:** Okay. Alright.

**MR HUMAN:** Hm.

10 **CHAIRPERSON:** Well we - we - with regard to guidance I remember that in the minutes of the meeting of the CFST that we dealt with before lunch where the minutes say Ms Memela joined the meeting. It does say for guidance or something like that. If I remember ...

**MR HUMAN:** Correct.

**CHAIRPERSON:** I think I saw something like that.

**MR HUMAN:** Yes.

**CHAIRPERSON:** So could it be that she would have been permitted then to even come into a meeting to give guidance if she is allowed to give guidance outside of the meeting?

20 **ADV MICHAEL MBIKIWA:**

**MR HUMAN:** Chair, I think the distinguishing difference would be in an evaluation process one allows the committee to follow the terms of reference and conclude their work. The recommendation was still firm Air France and there was a recommendation the difference is it is - it is for a technical review on the - on the completeness and accuracy of the

submission not to alter the award or outcome.

**CHAIRPERSON:** Okay. Thank you.

**ADV MICHAEL MBIKIWA:** Thank you. Mr Human, there is just two documents that you have actually referred to that I would like to go to. Can we start with the minutes of the BAC Meeting on - of 6 May? You will find that in DD22E at page 2-3-0-2.

**CHAIRPERSON:** 2-0 ...?

**ADV MICHAEL MBIKIWA:** 2-3-0-2.

**CHAIRPERSON:** 2-3-0-2.

10 **ADV MICHAEL MBIKIWA:** It is behind Tab 95. Sorry Chair. I have - I have made an error again.

**CHAIRPERSON:** Hm.

**ADV MICHAEL MBIKIWA:** We are in F.

**CHAIRPERSON:** Okay.

**ADV MICHAEL MBIKIWA:** DD22F.

**CHAIRPERSON:** Is the tab number correct or is ...?

**ADV MICHAEL MBIKIWA:** The tab number is correct. It is 95 -Tab 95.

**CHAIRPERSON:** Okay. Yes.

20 **ADV MICHAEL MBIKIWA:** So if you start on page 2-2-9-9. You will see that this document is the minutes of the SAA Bid Adjudication Council Meeting held on 6 May and if you then go to 2-3-0-2. Mr Human, can I ask you to read 11 - paragraph 11.2 into the record?

**MR HUMAN:** Chair, the heading is:

"Aircraft Component Support 80A Chapter Coverage  
SP462/15. The BAC considered the request and

06 FEBRUARY 2020 – DAY 208

notes SAAT intention to award the tender for aircraft components support to - on 80A Chapter Coverage for both Boeing and Airbus Fleet to Air France Industries for a period of five years as per Chapter 25 of the SEN Policy. The value of the contract for the five year period for Air France Industries is estimated at R1.346 billion.”

**ADV MICHAEL MBIKIWA:** Thank you. You can read the BAC Resolution.

10 **MR HUMAN:** “The BAC resolved to round robin the submission as there - as there was no sufficient quorum to make a decision on it.”

**ADV MICHAEL MBIKIWA:** Now Mr Human, the - the first sentence you read said:

“The BAC considered the request to note SAAT’s intention to award the tender ...”

Does that accord with your understanding of what a BAC’s role is?

20 **MR HUMAN:** The - the capturing of the sentence is because there was no quorum and according to the terms of reference of the BAC if there is not a minimum number of - of members they do not have the mandate to take - make an award decision. So all that they could do in terms of their mandate was to note and defer it to a round robin process.

**ADV MICHAEL MBIKIWA:** And can we then go to the minutes of the Board which considered it on referral from the BAC and that is at 2-3-0-5? Well it starts at 2-3-0-4.

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** Based on what - is it 2-3-0-2 - the resolution. I would expect us to go to the round robin resolution before going to the minutes of the Board. So that we know what the outcome of that round robin was before we go to the Board.

**ADV MICHAEL MBIKIWA:** Indeed Chair.

**CHAIRPERSON:** Hm.

**ADV MICHAEL MBIKIWA:** Chair, Ms Hofmeyr has just helping me to see if we have got - if we have got that resolution. I am not - I am not sure that we do have the round robin resolution of the BAC?

10 **CHAIRPERSON:** *Ja.* If we do not it. At least we must just know what - what the outcome was. So that the - the story can connect properly, because the - 2-3-0-2 ends with a resolution to do a round robin.

**ADV MICHAEL MBIKIWA:** Indeed.

**CHAIRPERSON:** Hm. Or ...

**ADV MICHAEL MBIKIWA:** Chair, we - we do not have it ...

**CHAIRPERSON:** You do not have it.

**ADV MICHAEL MBIKIWA:** And so we are going to have to ...

**CHAIRPERSON:** Oh.

**ADV MICHAEL MBIKIWA:** Do some further investigations ...

20 **CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** To find it.

**CHAIRPERSON:** Do you by any chance know Mr Human what happened or you do not know?

**MR HUMAN:** Chair, unfortunately I do not have a document close by hand.



06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** Okay. Alright. Huh-uh.

**ADV MICHAEL MBIKIWA:** Can we then go to page 2-3-0-4 - Mr Human? This is the minutes of the Special Meeting of the SAAT Board and if we go over the page to 2-3-0-5 ...

**CHAIRPERSON:** 2-3-0-4 is the one that has got 95 written by hand on it or something?

**ADV MICHAEL MBIKIWA:** 95A chair. That is the ...

**CHAIRPERSON:** 95A.

**ADV MICHAEL MBIKIWA:** That is the annexure number. It  
10 corresponds with the blue Tab 95.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** Ja.

**CHAIRPERSON:** I just wish somebody could write somewhere. Not on top of the page number ...

**ADV MICHAEL MBIKIWA:** Indeed Chair.

**CHAIRPERSON:** Because it makes it difficult to see if it is - what - what the number is - page number is. Okay. Alright. You say we go to 2-3-0-5?

**ADV MICHAEL MBIKIWA:** 2-3-0-5.

20 **CHAIRPERSON:** Okay. Oh. These - these are minutes of ...

**ADV MICHAEL MBIKIWA:** Hm.

**CHAIRPERSON:** A meeting of the Board of ...

**ADV MICHAEL MBIKIWA:** Of South African Airways Technical.

**CHAIRPERSON:** SAAT held on - it is 9 May 2016? That is what - ja.

**ADV MICHAEL MBIKIWA:** Indeed Chair.

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** The 29<sup>th</sup> - not the 29<sup>th</sup>. 9 May 2016.

**ADV MICHAEL MBIKIWA:** 9 May.

**CHAIRPERSON:** At half past eight in the morning. Yes. Okay.

**ADV MICHAEL MBIKIWA:** Can I ask you Mr Human to read 4.1 of those minutes?

**MR HUMAN:** “The submission was tabled and considered according to the submission. Management recommended that the tender be awarded to Air France. A decision on the matter ensued and the Board made the following comments.”

10

**ADV MICHAEL MBIKIWA:** Can I pause you there Mr Human? Why would it say that management recommended?

**MR HUMAN:** It was customary that the Exco of SAAT would also review and endorse recommendations. The referral to the word “management” therefore would represent Exco.

**ADV MICHAEL MBIKIWA:** Okay. Continue.

**MR HUMAN:** “A, management’s rationale for recommendations that Air France be awarded the tender was not substantive considering the bidders resistance to align itself to SAAT’s development agenda. In other words supply development. Furthermore the benefits as outlined by the submission as a result of selecting Air France were not compelling enough to position the latter as the preferred bidder. The concerns regarding JM/AAR

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06 FEBRUARY 2020 – DAY 208

especially management's view that this bidder was lowballing could be mitigated by reducing each party's obligation as well as the terms and conditions to writing. Resolved: that the request for approval of the award of the tender for the aircraft components support ..."

**CHAIRPERSON:** I am sorry Mr Human. I am sorry. Please do not forget where were you - you were. Do you understand that last part under result? I just want to make sure I understand it. No. Not under  
10 resolved. The one which says:

"The concerns regarding JM (coughing - excuse me) AAR especially management's view that this bidder was lowballing could be mitigated by reducing each party's obligations as well as terms and conditions to writing."

How would putting - putting those obligations in writing make any different to the concerns of lowballing?

**MR HUMAN:** Chairperson, in such an assistance mitigating results would be for instance to increase the number of units in the main base  
20 kit. If one is worried that it is to - the price is - is below market rates and that you would not get your - your components on time. A mitigation would be put 10 units instead of five. Then you at least know you have access.

The concern here was if the price is so low does that not suggest that the company would not have the ability to deliver the parts

06 FEBRUARY 2020 – DAY 208

as and when needed. Secondly, it is standard practice that once a contract is - a tender is awarded. There is a formal contract management process where the Service Level Agreement, standard terms and conditions, pricing, performance indicators are recorded in a contract.

It is reviewed by the Legal Department and once that process is concluded both parties sign. So the intention was to document specific mitigating measures as part of the contract to address the concern that because of the low cost the quality and turnaround of the  
10 service would not be compromised.

**CHAIRPERSON:** I am not sure that you understood my question or maybe we understand this part differently. You have told me what lowballing is and what the concern is with regard to lowballing and what the concerns would have been about lowballing. I am concerned that what the Board is saying here in this part is those concerns which are - you are saying it is going to cost you R100,00 in your bid, but in all probability it is going to cost you R500,00.

So you are going to have a problem giving us what we expect. So you might end up lowering the standards. Giving us low -  
20 poor quality of a product or something. That is the concern about lowballing.

**MR HUMAN:** That is correct.

**CHAIRPERSON:** Now my difficulty is when the Board says here those concerns can be addressed or can be mitigated by reducing the obligations to writing, because how does that mitigate my concern that

06 FEBRUARY 2020 – DAY 208

this service provider is going to end up not providing quality service, because they did not do justice to themselves by quoting too low a price. Did you understand what my concern is?

**MR HUMAN:** Yes. Yes Chair person.

**CHAIRPERSON:** Or - or do you - do you read this part as meaning something other than what I understand it to mean? As I understand it. It seems to say put the obligations of the parties in writing. Where my concern is not that they are not - the obligations are not in writing, because the obligations are going to be in writing anyway.

10 **MR HUMAN:** Yes. That - that is correct Chairperson.

**CHAIRPERSON:** They are going to be in writing. My concern is those obligations insofar as the price is so low. Are going to put us into a problem, because when this supplier ...

**MR HUMAN:** Hm.

**CHAIRPERSON:** Faces a problem of not being able to acquire A, B, C, D at this type of price. They are going to compromise on other things and then I will suffer. Is - is that how you understand this or do you understand it differently?

**MR HUMAN:** I understand it in the same manner Chairperson.

20 **CHAIRPERSON:** In the same way?

**MR HUMAN:** Yes.

**CHAIRPERSON:** Ja.

**MR HUMAN:** And the ...

**CHAIRPERSON:** And - and is it your understanding to that putting the obligations in writing will not really mitigate anything? What would

06 FEBRUARY 2020 – DAY 208

mitigate is if you go to the supplier and say let us increase your price. This thing - this price you have put on the table is not going to work or something like that.

**MR HUMAN:** Chairperson that is certainly a - a correct interpretation. In this case ...

**CHAIRPERSON:** Hm.

**MR HUMAN:** The intent was a little different.

**CHAIRPERSON:** Hm.

**MR HUMAN:** It was to guarantee reliability of components.

10 **CHAIRPERSON:** Hm.

**MR HUMAN:** It was to ensure that any modifications that is issued by the manufacturers will be implemented. It is to ensure that there will be delivery as per the required timeframe, because the argument if it is so cheap. Obviously one has to source wide and it might compromise the turnaround time. While a more expensive unit might be more readily available.

A new one for instance. So - so those mitigating - the Board's request to document firmly how are you - how - how SAAT would ensure that the turnaround time is not compromised and  
20 document roles and responsibilities was the Board's view of how to address the low cost.

According to the evidence there was no further price adjustment as part of risk mitigation in any - any shape or form that I am aware of.

**CHAIRPERSON:** But we will move away from the point just now, but it

06 FEBRUARY 2020 – DAY 208

just seems to me that it is not a substantive addressing of the concerns. If I - if you offer to get me a suit for R100,00 and I am concerned that you are not going to get a quality suit for R100,00. How does it help for me to say let us write it down that you say you will get me a suit for R100,00, because you might just come back and say I am not getting it.

Then I am back to square one. Maybe it is after quite some time. Then I must say. Okay. Let us look for one that is R500,00, but we have lost time in the meantime or I say let me look for somebody  
10 else who can - who knows what they are doing, because I think you do not know what you are doing.

If you think you can get me a suit for R100,00 and the fact that you have - you did not get it. Proves it. You - you understand that - that concept? The fact that we - we write it down does not seem to - for me - seem to address the substantive concern.

**MR HUMAN:** I read you ...

**CHAIRPERSON:** I understand?

**MR HUMAN:** Low and clear Chair person. You will get a T-shirt at most for 100 bucks these days.

20 **CHAIRPERSON:** Yes. Thank you. Mr Mbikiwa, you may continue.

**ADV MICHAEL MBIKIWA:** Thank you chair. I think Mr Human you were in the middle of reading the resolution. Do you want to just complete that?

**MR HUMAN:** Chair the resolution reads:

“The resolve at the request for approval of the

06 FEBRUARY 2020 – DAY 208

award of the tender for the aircraft component support services on 80A Chapter for both Boeing and Airbus Fleet for a period of five years to AAR; b, and is hereby approved subject to the mitigation of risks highlighted in the submission.”

**ADV MICHAEL MBIKIWA:** Thank you. Mr Human do you think that this

...

**CHAIRPERSON:** I am sorry. The - the mitigation of - of the risks highlighted in the submission. Is that what we have just been talking  
10 about or is it something else?

**MR HUMAN:** It is the very same thing Chairperson.

**CHAIRPERSON:** Yes. Okay. Thank you.

**ADV MICHAEL MBIKIWA:** Mr Human, is this in your view the role that a Board should be playing in a tender?

**MR HUMAN:** Yes. A Board's role is not just to rubberstamp a submission. The Board's role is to apply their mind in three ways. Has due process being followed? Does the outcome represent value for the company and thirdly, if this is the best offer, but not ideal what should be done to address those risks. That is definitely one of the roles of  
20 the Board ...

**ADV MICHAEL MBIKIWA:** And ...

**MR HUMAN:** When it comes to procurement matters. At least.

**ADV MICHAEL MBIKIWA:** And - and what would a Board ordinarily do when it concludes that the CFST or the BAC has erred?

**MR HUMAN:** The process defined in the Treasury Regulations and -



06 FEBRUARY 2020 – DAY 208

and legislative framework is that they have to refer it back to the BAC with their concerns listed and the BAC will then take a decision whether they would refer back to the Evaluation Committee or reassess the - the tender and once that is done. They would return to the Board Chairperson the revised recommendation.

**ADV MICHAEL MBIKIWA:** So it is - it is unusual in other words for the Board itself to reverse a decision and - and award a tender to a party never recommended by either the - the CFST or the BAC?

**MR HUMAN:** Correct. The - the Board would recommend back to the  
10 BAC to perform an adjudication. They would not do it themselves.

**CHAIRPERSON:** So what is usual is that if the Board cannot see its way clear on certain issues. It would refer the matter back to the BAC and say consider these concerns that we have raised and leave it to the BAC how to fix that. Is that right?

**MR HUMAN:** Correct Chairperson.

**CHAIRPERSON:** It - it is unusual for them to go a step further and say this is the one who must be awarded the tender?

**MR HUMAN:** That is correct Chairperson.

**CHAIRPERSON:** Yes. Okay.

20 **ADV MICHAEL MBIKIWA:** This is an aspect which Ms Kwinana has addressed in her Rule 3.3 Notice. She has responded to say that the Board's function is not to rubberstamp, but to apply its mind and she also says that Air France was more expensive than AAR and that components support was not Air France's core business and she goes on to say that this was one of the best decisions that the Board made

06 FEBRUARY 2020 – DAY 208

at the time. Do - do you have a response to that?

**MR HUMAN:** I fully agree with Ms Kwinana that the Board is not just there to rubberstamp decisions, but according to the evaluation just from a process perspective the Board should have referred it back to the BAC to consider its concerns and to come back with a proposal how to adequately address it before it was submitted to the Board again.

Whether it was the best possible decision I would not be able to comment on that. Given the time. It is easy in retrospect to - to make pronouncements, but no. I think the Board might - might have  
10 had to refer it back to address the - the concerns raised.

**CHAIRPERSON:** Is it possible that considerations of urgency - if there was some urgency - may have justified the decision of the Board not to refer the matter - the tender back to the BAC and may - decided to make the decision itself? Would that - would those kinds of considerations justify this kind of conduct on the part of the Board?

**MR HUMAN:** Chairperson I am convinced there was a certain amount of pressure to conclude this matter, however, this has been going on for three years already, advertising, cancelling, advertising, cancelling another week would certainly have not been material in any way.

20 **CHAIRPERSON:** Yes okay.

**ADV MICHAEL MBIKIWA:** Ms Memela has also responded to this aspect of your evidence insofar as there was an implication that she, improperly influenced the decision through her attendance at the CFST, she says that she's simply not that big a fish and that she has no power to oppose the appointment of any particular person to the Board, do

you have any comment to that?

**MR HUMAN:** Influence is a difficult thing to define in this instance, I would agree with Advocate Memela that the role of the BAC is to do their work independently and make a recommendation, the nuances of influence is very difficult for me to pronounce, I would not be able to comment on that.

**ADV MICHAEL MBIKIWA:** Thank you Mr Human I'd now like to move on to the contract itself that was concluded pursuant to this Board resolution and do I understand correctly that while, for most of your affidavit you've relied on documents in order to put together the chronology at least in so far as the management of the contract today, is concerned, are you able to speak with some degree of personal knowledge?

**MR HUMAN:** That's correct Chairperson.

**ADV MICHAEL MBIKIWA:** Can you begin by telling us about the issue of a payment of an upfront...[intervenes].

**CHAIRPERSON:** Where do we go to now?

**ADV MICHAEL MBIKIWA:** Sorry Chair, page 44.

**CHAIRPERSON:** Which bundle?

20 **ADV MICHAEL MBIKIWA:** In the affidavit it's Bundle DD22A.

**CHAIRPERSON:** Okay and you say what page?

**ADV MICHAEL MBIKIWA:** 44.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** And we're at paragraph 161, can you tell us about the issue of the payment of an upfront deposit Mr Human?

06 FEBRUARY 2020 – DAY 208

**MR HUMAN:** Yes the contract provides...[intervenes].

**CHAIRPERSON:** Hang on one second, lets connect the two properly. The Board makes a resolution that AAR must be awarded, was it awarded?

**MR HUMAN:** Yes Chairperson it was awarded.

**CHAIRPERSON:** And when was that?

**MR HUMAN:** It was at the Board's meeting dated ...[intervenes].

**CHAIRPERSON:** Is that a separate one or the one where we have just looked at the minutes?

10 **MR HUMAN:** It's the one that we just looked at the minutes.

**CHAIRPERSON:** But wouldn't that be simply a resolution but subsequent to the resolution, somebody needs to do the actual awarding of the contract, is it – would the resolution amount to the awarding – decision to award or was the position that the Board makes a resolution to say, this is the entity which must be awarded and somebody else within the company must then give effect to that resolution by doing the actual awarding?

20 **MR HUMAN:** Chairperson that's spot on, the Board approved the award and then it's standard practice that a letter of award would be issued by the head of Supply Chain, it's basically a one-pager informing the successful bidder that they were successful and it will then ensue in a formal contract process where the contract is formulated, reviewed by the legal department and both parties sign with an effective date.

**CHAIRPERSON:** Yes after the letter awarding the contract, there

06 FEBRUARY 2020 – DAY 208

would be negotiations to then conclude the contract and then the contract gets concluded and signed and thereafter you get to the stage of implementation and management of the contract, is that right? Is my understanding of the process correct?

**MR HUMAN:** The contract will be based on the conditions that were advertised that becomes core to the content of the contract and to the performance [indistinct] thereafter. In Government we are bound by the so-called General Conditions of Contract, it's published and regulated by the National Treasury, it's been reviewed from time to time and it  
10 deals with all aspects from Supplier Management to disputes, payments and the core concepts in contract law. In this case it's a very specialised environment Chairperson. Aviation and components requires ...[intervenes].

**CHAIRPERSON:** Specialisation.

**MR HUMAN:** Specialisation and the contract articulated those specialisms.

**CHAIRPERSON:** Yes but am I right to say, after the letter of the award, there is no written contract?

**MR HUMAN:** Correct Chair.

20 **CHAIRPERSON:** Their discussion is aimed at settling the contract or putting together a contract that accords with the general terms and conditions that you are talking about.

**MR HUMAN:** Correct Chair.

**CHAIRPERSON:** And whatever else may be added by the parties.

**MR HUMAN:** That's correct Chairperson.

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** Yes okay so let's hear when the letter of the award was, what date and then we move from there.

**MR HUMAN:** Chairperson, the letter of award was issued on the 13<sup>th</sup> of May and it's documented in paragraph 155 of the affidavit supported by Annexure 96.

**CHAIRPERSON:** Okay no, that's fine, that's fine.

**ADV MICHAEL MBIKIWA:** And Chair it may be a convenient time because you've raised the issue of contract negotiations and so before we get to the contract itself, we do have an affidavit from Mr Mike  
10 Kenny, Chair it's been provisionally included in the Bundle at this stage subject to your direction in due course if it became contentious. It is in Annexure 22G.

**CHAIRPERSON:** That's Exhibit 22G, what page.

**ADV MICHAEL MBIKIWA:** And the page – it starts at 3150.

**CHAIRPERSON:** I guess it wouldn't – oh that's the last Bundle.

**ADV MICHAEL MBIKIWA:** That's the last bundle.

**CHAIRPERSON:** Which you said...[intervenes].

**ADV MICHAEL MBIKIWA:** There's some additional documents...[intervenes].

20 **CHAIRPERSON:** Yes okay.

**ADV MICHAEL MBIKIWA:** Indeed Chair and if you turn to 3154 at paragraph 20 – and sorry Chair just to clarify, Mr Kenny was the Head of Department Technical Sales at South African Airways Technical and at paragraph 20 he says,

“After the Board's decision to award the tender to AARJM

06 FEBRUARY 2020 – DAY 208

Aviation joint venture, I was part of the team that negotiated the contract with the joint venture. I recall there being a number of meetings being held during the contract negotiations, probably between five and ten meetings. I recall that I attended all or at least most of them and that Ms Memela was also in attendance at the meetings, she and Ms Mbeki were responsible for the legal aspects during these negotiations with Ms Mbeki taking the lead on drafting. Ms Mbeki took an active role in the negotiations and would not just accept what AAR said. She was always trying to ensure that SAAT was protected under the agreement. I recall that at one point AAR became unhappy about all the issues she was raising. At paragraph 23, at one of the Exco meetings after the agreement with AARJM Aviation had been signed I asked to be provided with a copy. Ms Memela told me that I could not be given a copy of the full contract and would only be given a part of it. I took issue with this and asked why I could not be given the whole contract and Ms Memela said that it was to protect me. I did not understand what that meant at the time and I still don't understand what she was conveying, I have never seen the full contract. It was highly unusual for my request to see a contract that I was responsible for implementing to be refused".

**CHAIRPERSON:** Well I see the – I see Ms Mbeki – a reference to Ms Mbeki here and there's been a reference to Ms Mbeki in another context by other witnesses and I was looking for her name to see but it

06 FEBRUARY 2020 – DAY 208

looks like this affidavit doesn't have her name. Under Law Enforcement there was a Ms Mbeki, who was acting director of IPID at a certain stage, so I was wondering whether it was the same person.

**ADV MICHAEL MBIKIWA:** I don't believe so Chair, I've been conferring with my colleagues and I don't think so.

**CHAIRPERSON:** Okay, yes thank you.

**ADV MICHAEL MBIKIWA:** Mr Human do you have any comment on that?

**MR HUMAN:** No sir.

10 **ADV MICHAEL MBIKIWA:** Can we then turn to the contract itself, you deal with it's conclusion at paragraph 160, can you tell us about the conclusion of the contract?

**CHAIRPERSON:** That's paragraph 160 of his affidavit?

**ADV MICHAEL MBIKIWA:** Of his affidavit on page 44 Chair.

**CHAIRPERSON:** Yes the contract will be in the Bundle that we have just used?

**ADV MICHAEL MBIKIWA:** Indeed Chair, not G no.

**CHAIRPERSON:** But for now you want me to look at the affidavit?

**ADV MICHAEL MBIKIWA:** Indeed.

20 **CHAIRPERSON:** Okay alright.

**MR HUMAN:** Chairperson an agreement was eventually reached on the content after it was negotiated and it was signed by the then Acting CEO, Mr Pirrie and the President of AAR, a Mr Holmes on the same date, that was 7 July 2016. Upon signature...[intervenes].

**CHAIRPERSON:** What paragraph is that, I'm looking for where



you...[intervenes].

**MR HUMAN:** Paragraphs 160 Chairperson.

**CHAIRPERSON:** Okay, alright.

**MR HUMAN:** Upon signature of the contract implementation phase started.

**ADV MICHAEL MBIKIWA:** Alright, can I ask – Chair now I'd like you please to go to the contract, it's in Exhibit DD22F.

**CHAIRPERSON:** Okay.

**ADV MICHAEL MBIKIWA:** At page 2325.

10 **CHAIRPERSON:** Just give me the page number again?

**ADV MICHAEL MBIKIWA:** Chair the contract begins at 2318 behind tab 98.

**CHAIRPERSON:** Okay found it.

**ADV MICHAEL MBIKIWA:** And I'd like you to go to 2325, will you please read that clause for us Mr Human...[intervenes].

**CHAIRPERSON:** Let's just confirm first, this is the contract number 30310, it says Component Support Agreement between JM Aviation SA Pty Ltd, in conjunction with AAR Supply Chain Incorporated and SAA Technical Ltd, what is it dated?

20 **ADV MICHAEL MBIKIWA:** On page 2333, it's dated 7<sup>th</sup> of July Chair.

**CHAIRPERSON:** What is the year, 2015?

**ADV MICHAEL MBIKIWA:** 2016.

**CHAIRPERSON:** 2016, Ja just before he reads we just need to identify it so that the reader of the transcript understands what document it is, yes.

**ADV MICHAEL MBIKIWA:** Thank you Chair.

**CHAIRPERSON:** What clause did you want him to read?

**ADV MICHAEL MBIKIWA:** 4.26 Chair on page 2325.

**MR HUMAN:** Chair the clause 4.26 reads as follows,

10           “Prior to the commencement date JMAAR will invoice SAAT for the deposit. SAAT will pay the deposit by way of an irrevocable standby letter of credit from a bank acceptable to JMAAR and inform agreed by JMAAR. The parties agree that JMAAR will have the right to set off any SAAT invoices not paid by it’s due date against deposit and SAAT shall, when necessary, throughout the term of this agreement replenish the deposit and maintain the amount invoiced by JMAAR prior to the commencement date and at the time of expiration of the termination of this agreement JMAAR will arrange for the release of the deposit to extend that SAAT has paid all outstanding invoices”.

**ADV MICHAEL MBIKIWA:** Thank you, what’s your understanding of that clause?

20           **MR HUMAN:** Credit arrangement usually by letter of credit by an acceptable bank must be furnished to guarantee that in the instances of non-payment JMAAR could present such credit letter to the bank to make good on outstanding invoices.

**ADV MICHAEL MBIKIWA:** And – sorry Chair.

**CHAIRPERSON:** Would that be a normal practice for these kinds of agreements?

06 FEBRUARY 2020 – DAY 208

**MR HUMAN:** Yes Chairperson.

**CHAIRPERSON:** Okay.

**ADV MICHAEL MBIKIWA:** And tell us how that clause was implemented?

**MR HUMAN:** In this instance an actual cash payment was paid, not just the letter of credit. JMAAR invoiced SAAT for the value of three month's power by the hour costs and that Chairperson amounted to 4.382million US Dollars at the time.

**CHAIRPERSON:** So in rands that would have been ...[intervenes].

10 **MR HUMAN:** Just over R60million more or less if we accept the exchange rate at fourteen and a half.

**CHAIRPERSON:** Yes okay, so you say this was given to them in cash?

**MR HUMAN:** Correct, cash meaning transfer – a wire transfer to the bank account.

**CHAIRPERSON:** Yes as opposed to giving them a letter, which is the normal practice.

**MR HUMAN:** Correct Chairperson.

**CHAIRPERSON:** Okay.

20 **MR HUMAN:** I was just worried that you were interpreting this as maybe small bills, small denomination Dollar bills.

**CHAIRPERSON:** [Laughter], yes and what was said to be the justification for departing from the norm in this regard if you have been able to gather any justification from the documentation?

**MR HUMAN:** Chairperson I was unable to determine from the documentation any logical argument. To the contrary, my interpretation

06 FEBRUARY 2020 – DAY 208

is to part with valuable cash would certainly put a strain on the cash flow, secondly my understanding...[intervenes].

**CHAIRPERSON:** When there was no need.

**MR HUMAN:** Correct Chairperson. The contract certainly provides for acceptable means making a cash payment does not really make a lot of sense.

**CHAIRPERSON:** But would it also not put SAAT at risk in case JMAAR fail to perform and they already have cash, I mean they've been paid it's not just a letter. If they fail dismally to perform then SAAT will be  
10 prejudiced.

**MR HUMAN:** That's correct Chairperson.

**CHAIRPERSON:** Okay.

**ADV MICHAEL MBIKIWA:** Thank you. Mr Human have there ever been any draw downs from that deposit in order to off set outstanding invoices?

**MR HUMAN:** Chairperson to my knowledge there has never been an off set against the deposit for unpaid invoices, during the duration of this contract.

**ADV MICHAEL MBIKIWA:** You refer, in your affidavit to a review that  
20 was done of the contract in 2018.

**MR HUMAN:** Correct.

**ADV MICHAEL MBIKIWA:** That's at page 45 of your affidavit at paragraph 166, can you tell us what the purpose of that review was and what it found?

**MR HUMAN:** Certainly, Chair the intention of the joint contract review

06 FEBRUARY 2020 – DAY 208

was to assess performance and these spoke specifically to matter that SAAT found not to be beneficial. The first instance, if I may expand a little bit on it, forgive me Chair, I just want to make sure if it's not listed, was the long turnaround times for repair of components. We keep statistics and so does the service provider and we noted that some repairs were outstanding for longer than 600 days. Now for a maintenance organisation it's virtually unheard of that you will be without a spare for almost two years, 600 days is just short of two years. So we addressed performance related matters like this. At the

10 time there was just over 930, I believe items outstanding for excessive time that would be for six months or longer. Secondly incorrect invoicing, the contract provides for 35% of, beyond economic repair cost but we've noted that on several invoices the amount were charge at 100% plus a mark-up plus a handling fee and the intention of this review as to correct that, cancel the invoices, give us a credit note and bill 35% as per the contract terms. The next issue that we raised was the excessive penalties, SAAT has been sloppy in their administration of this contract in the sense that it has a determined return date and if a core unit is not returned within that date, a penalty is raised. Up to

20 now SAAT has paid R69million in penalties – R69.6million in penalties for late return of cores. Our intention was to point out to JM Aviation that the same kind of penalty does not apply when components take 600 days to come back SAAT and we would like to have some kind of a equalisation of the terms and conditions. Also we noted that there has not been any NIP obligation benefits, we wanted to address the matter

06 FEBRUARY 2020 – DAY 208

that the NIP contribution needs to be addressed, be accelerated since the contract was already halfway through it's term and then another items was the...[intervenes].

**ADV MICHAEL MBIKIWA:** Can I just pause you there Mr Human and just confirm that the NIP obligation was a requirement in the RFP.

**MR HUMAN:** Correct the NIP obligation was per standard bidding document number 5 it's a standard part of the RFP pack.

**ADV MICHAEL MBIKIWA:** Thank you, continue.

**MR HUMAN:** And then Chairperson, the reciprocal work that was a  
10 part of the critical criteria in the award was that AAR would provide work to SAAT to be performed at it's workshops and up to now no such reciprocal work has come to the fore. These, in short, Chairperson was the main discussion points that we thought was stipulated in the contract and we wanted the performance in these areas to be addressed.

**ADV MICHAEL MBIKIWA:** Can you also just explain the issue of BER costs?

**MR HUMAN:** The discrepancy between the RFP was that the ask was  
20 for a 30/70 percent – it was advertised in the bid as the BER ratio would be 30% and 70%, yet in this contract it is 65/35 percent and the issue that we addressed is that the charges thereof were made at 100%, this issue was then addressed at this meeting.

**ADV MICHAEL MBIKIWA:** And was that also one of the critical criteria, the 70/30 ratio?

**MR HUMAN:** It was a critical criteria that the bid published on the

06 FEBRUARY 2020 – DAY 208

beginning of December 2015.

**CHAIRPERSON:** Whose responsibility would it have been on SAAT's side to make sure that SAAT's rights in terms of this contract were properly enforced against JM/AAR?

**MR HUMAN:** Chairperson the contract implementation is the responsibility of the contracts unit in SAAT and then on the practical side, to return a core unit would be the business unit, it would be workshops.

**CHAIRPERSON:** Yes.

10 **MR HUMAN:** But enforcing the terms and conditions is the responsibility of the procurement – the Supply Chain unit.

**CHAIRPERSON:** So that's the unit that Ms Memela was heading?

**MR HUMAN:** Yes sir.

**CHAIRPERSON:** Yes okay. Now you said that with regard to penalties the contract made provision for penalties to be applied against SAAT when there were delay on it's part but the contract did not have similar penalties to be applied when there were delays on the part of JM/AAR, do you know whether, having that kind of situation was something quite unusual to be allowed by SAAT in other contracts that it does, do you  
20 know whether, usually there would be reciprocal provisions relating to penalties?

**MR HUMAN:** Chairperson I know that from my experience at Treasury, that the general conditions of contract, specifically specifies penalties for poor deliver and it is therefore strange that this is a very one-sided contract applying penalties on SAAT but not on the other side. I'm

used to contracts that protect the interests of the procuring agency and not in this fashion.

**CHAIRPERSON:** And it seems that it would be something quite easy to pick up for anybody that would be looking after the interest of SAAT. If they see that there are penalties that would be applicable to SAAT in certain circumstances, logically they would think what about JM/AAR when they have delays and therefore it's difficult to understand how they could see these in regard to SAAT but not think about ensuring that there were similar penalties against AAR.

10 **MR HUMAN:** That's correct Chairperson.

**CHAIRPERSON:** Okay.

**ADV MICHAEL MBIKIWA:** Thank you Chair. Mr Human, what, in your understanding are the services that are provided by JM Aviation?

**MR HUMAN:** JM Aviation the partner?

**ADV MICHAEL MBIKIWA:** Indeed.

**MR HUMAN:** Yes, Chair my understanding is that JM Aviation is responsible for the supply, development, component or – that was part of the tender that JM Aviation would have a full-time representative on premise to support the day-to-day operations and to ensure that the  
20 NIP obligations are met that were stipulated in the contract.

**ADV MICHAEL MBIKIWA:** And to what extent has that happened?

**MR HUMAN:** Up to now we have received no, like in zero, supply development beneficiation. Also no agreement were on NIP has been signed with the DTI and we have had zero reciprocal work on the contract. All three of those are – have not been delivered on, in any



06 FEBRUARY 2020 – DAY 208

shape or form.

**ADV MICHAEL MBIKIWA:** And what's the total amount that SAA Technical has spent so far under this agreement?

**MR HUMAN:** Chair I did attach an Annex with the exact amount and from memory I believe we are just about at the billion rand – just past the billion rand, at this rate, over the duration the contract will probably end at R1.8billion if I project the current rate of expenditure.

**CHAIRPERSON:** Yesterday Ms Sambo, I think, told me what the value of the contract was, does that accord with the value of the contract as  
10 you understand it?

**MR HUMAN:** Chairperson the contract value is stipulated at R1.3billion.

**CHAIRPERSON:** Yes.

**MR HUMAN:** But at the current rate we will end at R1.8billion, we will overshoot with at least half a billion.

**CHAIRPERSON:** What would you say is largely responsible for that, that you will go so far above what let me say is it.

**MR HUMAN:** Chairperson, let me say three reasons. When this contract was signed it excluded the Airbus 330's. Six aircraft was  
20 added about a year into the contract as a contract amendment that increased the value.

Secondly, the fact that SAAT has lost a lot of its capability at workshops and their number of repairs is increased. A third aspect is the incorrect pricing, and fourthly, the harsh penalties that was imposed on SAAT will contribute to the half a billion Rand increase.

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON** Bearing in mind or remembering the concerns which management had expressed about giving the contract to J.M. & A.A.R. and looking at the fact that it's been what, two, three, four years, two, three years of implementation, are you able to say whether those concerns have materialised, or actually no things as far as those concerns were concerned have worked fine? I am now talking about concerns relating to low balling and so on.

**MR HUMAN** Yes. Compared to, Chairperson, no, I cannot really comment in a scientific way, but I can give you a gut feel if that will  
10 satisfy in any way.

**CHAIRPERSON** Yes. Okay. For what it is worth.

**MR HUMAN** For what it is worth. If this contract was implemented as intended, it would have been an excellent contract so two consideration is SAAT's ability to be disciplined. To avoid the penalties would have been beneficial. The concerns about low balling I think is valid if I look at the incorrect charges, and I hope it is really administrative error and not intentionally incorrectly invoiced.

**CHAIRPERSON** Would you be able, given time, to go back and do the homework of seeing whether those concerns have materialised or not  
20 because it might be helpful. Would that be something that you could do, or is it difficult to do?

**MR HUMAN** No, Chair. We have gone far with that analysis and I do have a calculation of the B.R. difference in cost that I could certainly finalise and submit to you in the next two or three days to comply to your request.

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON** Okay. I think that would be helpful.

**ADV MICHAEL MBIKIWA** Thank you, Chair. Just on the issue of cost, you said that SAAT has spent just over a billion Rand. How much would have been paid to JM Aviation?

**MR HUMAN** According to the contract provisions, 5 percent of all revenue would be accruing to JM Aviation. 5 percent would therefore be around R53 Million.

**ADV MICHAEL MBIKIWA** Thank you. Chair, we have also received an affidavit from a representative of the DTI and I would like to take  
10 you there, Mr Human. [Intervenues]

**CHAIRPERSON** That is Department of Trade and Industry?

**ADV MICHAEL MBIKIWA** Yes, indeed.

**CHAIRPERSON** Okay.

**ADV MICHAEL MBIKIWA** It is in file DD22(g) and it starts at Page 2972. There are three aspects I would like to draw your attention to.  
[Intervenues]

**MR HUMAN** Sorry, just the page number again, Sir?

**ADV MICHAEL MBIKIWA** It starts at 2972.

**MR HUMAN** Thank you.

20 **ADV MICHAEL MBIKIWA** It is an affidavit from Mr Lionel October who is in employ of the Department of Trade and Industry in the capacity as director general. If I can ask you to turn to 2976, at Paragraph 16, Mr October says that SAAT had a duty to not only inform the DTI of the agreement between it and JM Aviation but had a duty to do so within 5 working days after award of a contract.

06 FEBRUARY 2020 – DAY 208

The SAAT in the present instance failed to act in accordance with this requirement since we understand that the agreement between SAAT and JM Aviation was entered into in 2016. Does that accord with your understanding?

**MR HUMAN** That is correct, Sir.

**ADV MICHAEL MBIKIWA** And if we go to Paragraph 19, the first paragraph spoke about SAAT's obligation. 19 says, "In the present instance, despite the fact that there was a duty on JM Aviation to immediately inform the DTI that the particular contract was awarded to it, it failed to inform the DTI." So, does that too accord with your understanding?

**MR HUMAN** Correct. Yes.

**ADV MICHAEL MBIKIWA** The last aspect I would like to take you to is on page 2977. The following page. Paragraph 27. That paragraph reads, 'I should also place on record that Mr Kirkland – that is the investigator of the commission – requested information in relation to Lufthansa's performance of the duty, of its duties, flowing from the obligation agreement which was entered into between the DTI and Lufthansa.

20 This agreement was signed on 17 February 2013 and is attached hereto marked as Annexure I. According to the DTI's nip records, there is no indication that Lufthansa is non-compliant in relation to its current nip obligation. In this regard, I have attached hereto a printout of Lufthansa's performance status as at 30 September 2019 and have attached same hereto as Annexure J. The DTI has never received

06 FEBRUARY 2020 – DAY 208

correspondence from SAAT in relation to Lufthansa's non-compliance with its current nip obligation. Does that come as a surprise to you?

**MR HUMAN** I take it as fact from the director general of DTI.

**ADV MICHAEL MBIKIWA** Thank you. The last matter on the contract, Chair, is that we have managed to locate the Round Robin solution that you referred to. If I could beg leave to hand up a copy and to hand one to the witness. [Intervenes]

**CHAIRPERSON** Yes.

**ADV MICHAEL MBIKIWA** It is to be inserted in file, in exhibit DD22F  
10 at 2302.1.

**CHAIRPERSON** Okay. Thank you.

**ADV MICHAEL MBIKIWA** This reads that it is an excerpt from the Round Robin approval process of the SAA bid adjudication council held on 6 May 2016 and it reads that the BAC resolved to note SAAT's intention to award the tender for aircraft component support services on 88 chapter coverage for both Boeing and airbus fleet to Air France Industries for a period of five years as per chapter five of the SCM policy. The value of the contract [Intervenes]

**CHAIRPERSON** Chapter 25.

20 **ADV MICHAEL MBIKIWA** Sorry, as per chapter 25 of the SCM policy. The value of the contract for a five-year period with Air France Industries is estimated at just over one point three billion rand. True excerpt of the Round Robin.

Mr Human, I asked you earlier about the fact that the BAC had decided simply to note the intention to award the contract. Your

06 FEBRUARY 2020 – DAY 208

response then was that all they could do was note it because they did not have quorum. This is the Round Robin resolution and it still says that they note the intention to award. What is your view of that?

**MR HUMAN** My view is that their duty was to recommend this to the board and not just note it as their function is to adjudicate and if it is within their delegation of authority, at the moment that is fifty million rand, anything less than fifty million they can award. More than fifty million needs to go to the next structures.

10 Let me first ask, why is that resolution on SAA letterheads as opposed to SAAT?

**MR HUMAN** Chair, SAA and its subsidiaries share a central BAC so all tenders for Air Chefs, SAAT, and Mango, and SAA are adjudicated at one service. It is called the global or group BAC and it is another form of oversight to make sure that there is at least line of sight of what is tendered, evaluated and then, for adjudication.

**CHAIRPERSON** You may or may not be able to comment on this. I would have expected them never the less to use SAAT letterheads when it's a tender related to SAAT and use an SAA letterhead when it is a tender related to SAA and so on and so on.

20 **MR HUMAN** Chairperson, I believe the reason why it is on a SAA letterhead is because the secretariat of the BAC is based in SAA.

**CHAIRPERSON** Yes, so it may be that for them it is not a big issue, but probably what they should be doing is using letterheads for the particular entity if the tender relates to a particular entity even if the composition of the committee is the same for all the different entities,

06 FEBRUARY 2020 – DAY 208

but for them, maybe it is not a big issue. But we must take it as the relevant BAC's resolution.

**MR HUMAN** Yes, Chairperson. The identification would be in the heading SP462/15 would then be able to assign it to which entity it is but your advice is solid and I would certainly raise it with the BAC after the proceedings.

**CHAIRPERSON** Okay. Thank you.

**ADV MICHAEL MBIKIWA** Thank you, Chair. I intend to move on from the topic of the components tenders now, Chair.

10 **CHAIRPERSON** Yes, that is fine.

**ADV MICHAEL MBIKIWA** Thank you. Mr Human, I do understand that there was some litigation that arose out of this tender. I do not intend to spend time on it, but can you briefly tell us what that litigation involved?

**MR HUMAN** Certainly. Upon issuing the letter of the ward and letter of regret to the non-successful bidders, Air France, formerly raised a litigation proceeding. It was heard in the high court of Johannesburg. The long and the short of it is that the court upheld the decision of the SAAT board to award it to AAR. [Intervenues]

20 **ADV MICHAEL MBIKIWA** And my understanding is that that was brought on an urgent basis and it was for an interim interdict.

**MR HUMAN** It was for an interim interdict.

**ADV MICHAEL MBIKIWA** Do you know whether there was ever any final review proceedings?

**MR HUMAN** No, there was no further action taken by Air France in

06 FEBRUARY 2020 – DAY 208

fact Air France informed SAAT later on that they have no intent to pursue the matter further.

**CHAIRPERSON** So Air France was aggrieved by the award of the tender to JM AAR and took the decision to award the tender to JM AAR on review in court and the outcome was what you have just told me.

**MR HUMAN** Yes, Chair. Air France did raise the matter to seek an interdict not to continue the service while this process are unfolding.

**CHAIRPERSON** Okay. No, I think I may be missing something that might have been said while I was looking for something here. So, what  
10 Air France wanted to achieve was an interdict of the implementation or against the implementation of the tender in favour of JM AAR. Is that what it was?

**MR HUMAN** Correct, Sir.

**CHAIRPERSON** Okay, and that was dismissed?

**MR HUMAN** Yes.

**CHAIRPERSON** And as you understood the position, they wanted an interdict pending a review application.

**MR HUMAN** Interim interdict review relief.

**CHAIRPERSON** Yes. Okay.

20 **ADV MICHAEL MBIKIWA** As far as we are aware there is not judgement on a final review? [Intervenues]

**CHAIRPERSON** Yes. That's fine. Of course, it would be important to know to get the affidavits that were used by Air France so one can see how much information did they know about what went on.

**ADV MICHAEL MBIKIWA** Indeed Chair they are included in the



bundle. We have included both the affidavits and the judgement.

**CHAIRPERSON** Did they know quite very little?

**ADV MICHAEL MBIKIWA** Not what the commission knows.

**CHAIRPERSON** Okay, alright.

**ADV MICHAEL MBIKIWA** Mr Human can we then turn to the portion of your affidavit where you deal with the Swissport Ground-handling contract and GPU sale, that is at page 52 of DD22A starting at Paragraph 177. And before you take us through it, I think it would just be helpful for you to help us with some concepts. What are ground-handling services?

**MR HUMAN** Ground-handling services is those services on the apron at the airport; positioning power units, making sure that the towing services are available, tugs, that kind of thing; the loading and unloading of aircraft, baggage transportation and other equipment like steps, ramps, that kind of equipment falls under ground-handling.

**ADV MICHAEL MBIKIWA** And what are GPU's?

**MR HUMAN** A GPU is a ground power unit. Aircraft needs to maintain their power supply, that can either be done through running the engine of the aircraft, which of course is quite expensive. Jet fuel is, Chairperson, slightly more expensive than the normal 95 unleaded version that we use. And therefore, it makes sense to make use of a GPU power unit.

**CHAIRPERSON** How does that work? The power unit. Do they connect to some electricity or?

**MR HUMAN** Yes Sir.

06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON** If you do not use the aircraft engine, how does the aircraft get power?

**MR HUMAN** So it is almost like a mobile generator. It is usually on a carriage or on a trailer. It works with fuel or diesel, and then it has got electrical connections that is plugged into the aircraft to power it. There is two versions: mobile and then fixed power units obviously they are limited to the maintenance base, but the units we are referring to here is mobile. They can be towed behind a tractor or a vehicle positioned at the aircraft where they are needed.

10 **CHAIRPERSON** So this GPU would be, or that kind of generator would be used when the aircraft has touched down and is parking.

**MR HUMAN** Yes Sir.

**CHAIRPERSON** Or would it be for the time when the aircraft is parked? Or maybe only when there is a need; maybe the engine must run or whatever must run?

**MR HUMAN** Chair, it is usually when the aircraft is parked. Sometimes a foreign carrier would arrive in the morning and only fly out ten 'o'clock at night. So, for a period of twelve hours it would probably require the power unit. In other instances, shorter maintenance events  
20 can take two or three days and then the power unit will be connected so that the engines do not need to run, especially if work on the engine itself needs to be done then we would like to use a other power source than running the aircrafts own auxiliary unit or APU.

**CHAIRPERSON** Basically it provides the power that enables all the electricity in the plane to work without using the engine.

06 FEBRUARY 2020 – DAY 208

**MR HUMAN** That is correct Chair.

**CHAIRPERSON** Yes, okay.

**ADV MICHAEL MBIKIWA** And can you talk us through the process by which the ground-handling contract currently in place was awarded?

**MR HUMAN** Yes, Chair this contract was run by SAA itself, not by SAAT. It was published in May 2011 and then on a board resolution on the 31 July 2012 it was decided that the GPU owned by SAAT would be included in this process. It was for a 5-year period from 2012 onwards and Swissport was awarded the tender for the ground-handling  
10 services.

**ADV MICHAEL MBIKIWA** And when was that awarded?

**MR HUMAN** It was awarded on the 31 July 2012. I am on Paragraph 177 Chairperson, of the affidavit.

**CHAIRPERSON** I see something here that says Swissport was partially awarded the tender at 178. What does that mean? What did it get and what did it not get? Or is it something you might not be familiar with?

**MR HUMAN** I have attached, Chairperson, a Annexure and for the moment it eludes me what was included and what not, if you indulge  
20 me?

**ADV MICHAEL MBIKIWA** Chair perhaps I can assist. It is in the resolution which is in file DD22G. Effectively Swissport was awarded ramp-handling, PAU and wheelchair and document verification and Bid-Air was awarded bussing.

**CHAIRPERSON** Okay. Thank you. Would that mean that the tender

06 FEBRUARY 2020 – DAY 208

was split among two bidders?

**MR HUMAN** Correct Chairperson.

**CHAIRPERSON** Okay.

**ADV MICHAEL MBIKIWA** And was a contract concluded with Swissport?

**MR HUMAN** No the contract was not signed. I am unsure why. I am not aware why the contract was not signed.

**CHAIRPERSON** But the performance of the contract continued in the meantime

10 **MR HUMAN** Yes, correct Sir. Despite the fact that there was no signed contract, services were rendered.

**CHAIRPERSON** Okay.

**ADV MICHAEL MBIKIWA** And how much was paid to Swissport without a contract in place?

**MR HUMAN** R1, 139 Billion

**CHAIRPERSON** What was the value of the contract, well, of the tender before it was awarded? Do you know that?

**MR HUMAN** Chairperson not off the cuff. We can [Intervenies]

20 **ADV MICHAEL MBIKIWA** Chair it is contained in the same resolution I just referred to.

**CHAIRPERSON** Yes, what does it say?

**ADV MICHAEL MBIKIWA** The total was R1.4 Billion, but that includes amounts to Bid-Air which was R81 Million. So the amount to Swissport was a total of about R1.38 Billion

**CHAIRPERSON** Okay. Thank you. Yes.

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA** Mr Human you spoke about SAAT acquiring GPU's. Did it acquire GPU's?

**MR HUMAN** That is correct. Eight PU's were purchased and it was used for operations in SAAT during its maintenance operations.

**ADV MICHAEL MBIKIWA** And do you know how much SAAT paid for the GPU's?

**MR HUMAN** Yes. We have an attachment that indicates the purchase value, the depreciation and the book value. Chair, I would appreciate if the colleagues can just refer me to the correct [Intervenues].

10 **ADV MICHAEL MBIKIWA** Can I ask you to go to Exhibit DD22B?

**CHAIRPERSON** Have you got the page number?

**ADV MICHAEL MBIKIWA** Yes, it is 684, sorry.

**CHAIRPERSON** Yes.

**ADV MICHAEL MBIKIWA** Can you see what the price per unit and the total price was?

**MR HUMAN** Yes Chairperson, the purchase order contained on this page indicates that the value it was purchased at VAT inclusive R 9 193981.20

**CHAIRPERSON** Yes.

20 **MR HUMAN** Just short of about R 10 Million.

**CHAIRPERSON** Yes. Okay.

**ADV MICHAEL MBIKIWA** Now you have told us about the period between 2012 and 2016, tell us what took place in 2016?

**MR HUMAN** A decision was then taken to sell the GPU's as part of the ground-handling services to Swissport and this resulted in SAAT

06 FEBRUARY 2020 – DAY 208

selling the newly acquired GPU shortly thereafter.

**ADV MICHAEL MBIKIWA** You speak in your affidavit about a contract being concluded [Intervenes].

**CHAIRPERSON** Are we going back to the affidavit?

**ADV MICHAEL MBIKIWA** Sorry Chair, there is just so many files to move between. We are back in the affidavit at DD22(a).

**CHAIRPERSON** Yes. What page?

**ADV MICHAEL MBIKIWA** We are on Page 52 at Paragraph 180 and we are talking about the conclusion of a contract with Swissport. Are  
10 you there?

**MR HUMAN** Yes Sir.

**ADV MICHAEL MBIKIWA** So tell us about that contract?

**MR HUMAN** The SAA board agreed to award it to Swissport for 5-years. The process that was followed I do not have first-hand knowledge. The part that I do have knowledge and documentary evidence is concerning the sale of the GPUs that was a condition of this award.

It provided that Chairperson, the Swissport will arrange for the purchase of these GPUs and I have tried to formulate it in paragraph 184 of the affidavit. The sale took place at book value. The amount that I have  
20 mentioned earlier Chairperson was the purchase price of 9 139 000 odd per unit. After the appreciation the amounts- the units were then sold at the so-called book value.

**ADV MICHAEL MBIKIWA**: Sorry. Before we get there. On the issue of Swissport having concluded a- sorry, having performed services between 2012 and 2016 without a contract and then having concluded a contract in

06 FEBRUARY 2020 – DAY 208

2016. Do you know if there was a tender process that preceded the conclusion of the 2016 contract?

**MR HUMAN:** I do not have first-hand knowledge of a tender process unfortunately.

**ADV MICHAEL MBIKIWA:** Okay. Chair in Ms Hofmeyr's introduction this morning she referred to the fact that Swissport had referred to an affidavit they had previously given. I would just like to put their explanation of this process.

**CHAIRPERSON:** Yes.

10 **ADV MICHAEL MBIKIWA:** To Mr Human.

**CHAIRPERSON:** Ja.

**ADV MICHAEL MBIKIWA:** The summary of Swissport's position is that it was awarded a 5 year ground handling tender in 2012 but no contract was concluded. Swissport struggled with South African Airways to get a contract signed during the period from 2012 and in the interim provided services on a month to month basis. They did so without a signed contract.

By December 2015 the 2012 tender had therefore still not been implemented. A contract was then eventually concluded ... (intervenes)

20 **CHAIRPERSON:** I am sorry, do they say the contract has still not been signed because otherwise they were implementing it without a contract. Is it not so?

**ADV MICHAEL MBIKIWA:** Indeed.

**CHAIRPERSON:** Yes. So, the contract had not been signed by the end of 2015.

06 FEBRUARY 2020 – DAY 208

**ADV MICHAEL MBIKIWA:** By the end of 2015.

**CHAIRPERSON:** Ja okay.

**ADV MICHAEL MBIKIWA:** They then say that a contract was eventually concluded in March of 2016 for 5 years from 2016 to 2021 which Swissport says was routed in the 2012 tender.

**CHAIRPERSON:** That is very strange is it not? The bids were invited in 2012 or 2011 or whatever time and the tender was awarded to Swissport. No contract was signed but they rendered services and were paid as if there was a contract. And then in 2016 a contract was signed without a  
10 new tender and it was signed on the basis that it was the contract which should have been signed in 2012.

**ADV MICHAEL MBIKIWA:** Chair ... (intervenes)

**CHAIRPERSON:** But it was providing for a further 5 years.

**ADV MICHAEL MBIKIWA:** For a further 5 years.

**CHAIRPERSON:** Is my understanding correct Mr Human?

**MR HUMAN:** I wish I could say otherwise but yes, it is correct.

**CHAIRPERSON:** Ja. And what was the value of this 2016 contract now compared to the 2012 tender? Mr Human, do you- is that information you have at hand? Even if it is an estimate or not really.

20 **ADV MICHAEL MBIKIWA:** Chair this is coming in the evidence to follow.

**CHAIRPERSON:** Oh, it is coming there. Oh okay.

**ADV MICHAEL MBIKIWA:** But it is in the region of 1.2 billion rand.

**CHAIRPERSON:** So, they would end up getting 1, something billion times  
2?

**MR HUMAN:** Correct sir.



06 FEBRUARY 2020 – DAY 208

**CHAIRPERSON:** Okay. Alright. Yes Mr Mbikiwa.

**ADV MICHAEL MBIKIWA:** Can you- and I am now back at your affidavit on page 53 where at paragraph 182 you describe the clauses in the 2016 contract related to GPUs. Just explain or read those clauses for us.

**MR HUMAN:** Certainly. Chair it was recorded that the board resolution had the following resolved resolution.

Swissport SA to acquire all GPU equipment that has been purchased by SAAT and,

Swissport SA to enter into a contract with a BEE company that has  
10 representation of black women, youth, military veterans and disabled  
persons from which Swissport will purchase all the equipment required for  
SAA contract.

**ADV MICHAEL MBIKIWA:** And who were the GPUs sold to?

**MR HUMAN:** This GPUs was sold to JM Aviation.

**ADV MICHAEL MBIKIWA:** And for what price were they sold to JM  
Aviation?

**MR HUMAN:** I would like to quote the correct amount but Chairperson ...  
(intervenes)

**ADV MICHAEL MBIKIWA:** I can take you to the Exhibit. It is Exhibit  
20 DD22B at page 844.

**CHAIRPERSON:** Yes.

**ADV MICHAEL MBIKIWA:** Are you there Mr Human?

**MR HUMAN:** No. So, page number?

**ADV MICHAEL MBIKIWA:** 844 in DD22B.

**MR HUMAN:** Apologies Chair. Chairperson the invoice for the GPUs

06 FEBRUARY 2020 – DAY 208

amounted to 248 000 per unit and the total was 3,392 640 rand.

**ADV MICHAEL MBIKIWA:** And do you know what the book value was at the time?

**MR HUMAN:** I do.

**ADV MICHAEL MBIKIWA:** And I can refer you in the same file to page 694.

**MR HUMAN:** Chair the book value at the time of sale was 7,968 117.

**ADV MICHAEL MBIKIWA:** So that is more than double the price for which it was sold?

10 **MR HUMAN:** That is correct.

**ADV MICHAEL MBIKIWA:** And can you tell me what ... (intervenes)

**CHAIRPERSON:** Just hang on one second. So Swissport- the buyer here was JM Aviation.

**MR HUMAN:** That is right sir.

**CHAIRPERSON:** And the seller was Swissport? Who was the seller now of the GPUs?

**MR HUMAN:** SAAT sold these GPUs to JM Aviation.

**CHAIRPERSON:** Swissport sold them.

**MR HUMAN:** No, SAAT.

20 **CHAIRPERSON:** SAAT.

**MR HUMAN:** To JM Aviation.

**CHAIRPERSON:** It's been ... (intervenes)

**MR HUMAN:** And then Swissport bought them from JM Aviation.

**CHAIRPERSON:** And Swissport bought them for more than double, almost more than double the price that ... (intervenes)

06 FEBRUARY 2020 – DAY 208

**MR HUMAN:** Yes.

**CHAIRPERSON:** That JM Aviation had bought them from SAAT.

**MR HUMAN:** Yes. Chairperson if I may, SAAT bought these units for 9,1 million. Shortly thereafter it sells these very units for 3,392 000 to JM Aviation. It is actually worth according to our financial records 7,968 000. This transaction is demonstrating that we have sold for next to nothing a unit that was more or less worth double.

**CHAIRPERSON:** Yes.

**MR HUMAN:** Thereafter JM Aviation sells these units to Swissport.

10 **CHAIRPERSON:** To Swissport for more than- almost more than double of what they paid to SAAT. Is that right? Yes. You agree Mr Human? I just want to make sure that you-

**MR HUMAN:** Chairperson ... (intervenes)

**CHAIRPERSON:** Because you are the witness. Is that correct? Is my understanding correct? SAAT ... (intervenes)

**MR HUMAN:** I do not have a document what Swissport has paid to JM.

**CHAIRPERSON:** JM yes.

**MR HUMAN:** But in the forensic report that is attached as Annex there is reference made to the sale.

20 **CHAIRPERSON:** So, from that report it looks like Swissport paid more, much more for them than- paid to JM much more for the same thing that JM paid to SAAT.

**MR HUMAN:** Yes Chairperson.

**CHAIRPERSON:** Okay alright.

**MR HUMAN:** So, my evidence is based on the contend of the forensic

report.

**CHAIRPERSON:** Yes.

**MR HUMAN:** And the learned colleague could maybe just point us to what the amount then paid by Swissport.

**ADV MICHAEL MBIKIWA:** Indeed.

**CHAIRPERSON:** Yes. It looks like he has got it ready.

**ADV MICHAEL MBIKIWA:** Chair the amount is 9,4 million that was paid by Swissport. But this is evidence that Ms Hofmeyr is going to ...  
(intervenes)

10 **CHAIRPERSON:** That will be led ja.

**ADV MICHAEL MBIKIWA:** Lead over the next couple of days.

**CHAIRPERSON:** Yes. No, that is fine but it is good just to connect the story properly.

**ADV MICHAEL MBIKIWA:** Indeed Chair.

**CHAIRPERSON:** So, the question would be what was going on with SAAT, one, selling the units in the first place? And secondly, selling them at almost what, half the price. Am I right? Or even lower than that to JM.

**ADV MICHAEL MBIKIWA:** Less than half to JM.

20 **CHAIRPERSON:** Less than half to JM and selling the units when they were still quite new as well. And I think that is what Mr Human said. And then later on they lease them from Swissport.

**ADV MICHAEL MBIKIWA:** Indeed.

**CHAIRPERSON:** Ja. And in terms of the documentation that you have come across you could not find anything that justifies this merry-go-round that was going on.

06 FEBRUARY 2020 – DAY 208

**MR HUMAN:** To the contrary Chairperson after the sale SAAT has to date paid 8,42 million rand in leasing fees for these very same units that we owned and now lease back.

**CHAIRPERSON:** Now and are you able to say what the- what SAAT loss has been when you look at that plus the fact that they sold the same units to JM for less than half. Are you able to say what the loss is when you take all of those into account?

**MR HUMAN:** Yes, Chairperson the capital loss from the original purchase price to selling price was just over 6 million and the subsequent loss due to unnecessary expenditure was a further 8,4 million in leasing cost.

**CHAIRPERSON:** Yes.

**MR HUMAN:** That would have been prevented if we just retained the assets. So total loss would be 14,5 million or thereabout.

**CHAIRPERSON:** Shoe. I take it there will be evidence as to who were the people responsible for all these decisions ja. Okay alright.

**ADV MICHAEL MBIKIWA:** On the issue of the leasing back Mr Human, the fact that they have been leased back at this cost, what does that say about the decision to sell them?

**MR HUMAN:** It is an irrational decision to sell them Chairperson.

20 **ADV MICHAEL MBIKIWA:** And it suggests that SAAT still needs those GPUs?

**MR HUMAN:** Absolutely.

**ADV MICHAEL MBIKIWA:** Chairperson that ... (intervenes)

**CHAIRPERSON:** But well maybe Ms Hofmeyr will remember. Did I not or maybe you were not involved. Did I not hear evidence along the same

06 FEBRUARY 2020 – DAY 208

type of thing when Mr Nene was giving evidence with regard to SAA about, I think airbuses and that there was an idea that they must be sold and then leased back? But anyway.

**ADV MICHAEL MBIKIWA:** Chair it is before my time but Ms Hofmeyr is nodding.

**CHAIRPERSON:** Okay alright. Thank you.

**ADV MICHAEL MBIKIWA:** Chair that concludes my questions for Mr Human.

**CHAIRPERSON:** Yes okay. Mr Human, thank you very much for coming  
10 to give evidence. We will call you back if a need arises but thank you very much and you are excused.

**MR HUMAN:** Thank you Chairperson.

**CHAIRPERSON:** Thank you. We are going to then adjourn. Tomorrow the plan is that Ms Memela is supposed to be here. Is it just her or there is another witness?

**ADV MICHAEL MBIKIWA:** It is just her Chair.

**CHAIRPERSON:** Just her yes.

**ADV MICHAEL MBIKIWA:** The day has been set aside for her.

**CHAIRPERSON:** Okay. At this stage you are not aware of any  
20 developments that might exist with regard to her intentions?

**ADV MICHAEL MBIKIWA:** We have received nothing Chair.

**CHAIRPERSON:** Ja okay. Alright, we will adjourn for the day and tomorrow we will start at 10 o'clock. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 7 FEBRUARY 2020**