

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

12 OCTOBER 2020

DAY 281



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 12 OCTOBER 2020

CHAIRPERSON: Good afternoon Mr Pretorius, good afternoon everybody.

ADV PRETORIUS SC: Afternoon Chair.

CHAIRPERSON: I am not saying – I am used to saying good afternoon in this venue I normally say good morning because we normally start in the morning.

ADV PRETORIUS SC: Correct Chair.

CHAIRPERSON: Are you ready?

10 **ADV PRETORIUS SC:** Yes Chair.

CHAIRPERSON: Yes okay. Please administer the oath again or affirmation to Mr Zwane.

REGISTRAR: Please state your full names for the record.

MR ZWANE: Mosebenzi Joseph Zwane.

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

MR ZWANE: No.

20 **REGISTRAR:** Do you solemnly affirm that the evidence you will give shall be the truth; the whole truth and nothing else but the truth; if so please raise your right hand and say, I truly affirm.

MR ZWANE: I truly affirm.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you Mr Zwane welcome back. Yes.

MR ZWANE: [00:01:11] Chair.

CHAIRPERSON: Thank you. Mr Pretorius.

ADV PRETORIUS SC: Thank you Chair. Mr Zwane this afternoon we would like to deal with the advanced payment system that was introduced towards the latter part of 2010 in the Free State Department of Human Settlements. You know about the advanced payment system. You have testified about it.

CHAIRPERSON: Mr Pretorius I suspect that they have not given me the files that has got that or unless it has been
10 changed. This appears to be the transcript – yes what I have here is mostly the transcript. I do not – it is the transcript throughout.

ADV PRETORIUS SC: That file should...

CHAIRPERSON: There should be the file that has got – that have got Mr Zwane’s statement and everything.

ADV PRETORIUS SC: If you – if you look at the index of the exhibit in the front of the file Mr Zwane gave evidence on the 25 September 2020.

CHAIRPERSON: Hm.

20 **ADV PRETORIUS SC:** And that is day 271. His evidence is there.

CHAIRPERSON: Yes but there was a file which we were using before he gave evidence that had got various documents.

ADV PRETORIUS SC: Well there are twenty files for the

Free State which one are you referring to?

CHAIRPERSON: The one that we used before he started giving evidence which we used.

ADV PRETORIUS SC: The one there...

CHAIRPERSON: Before there was a transcript. Obviously there was a time when we did not have a transcript of his evidence.

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: What did we have that related to him?

10 All the documents that has – the file that had documents including the document that had his signature, of service providers, his statement. A lot of documents.

ADV PRETORIUS SC: That is FS12 Chair.

CHAIRPERSON: Yes that is what I have just received.

ADV PRETORIUS SC: Because one is statement.

CHAIRPERSON: Yes that...

ADV PRETORIUS SC: That affidavit which was signed is Exhibit UU9.

CHAIRPERSON: Yes.

20 **ADV PRETORIUS SC:** And FS12 – Bundle FS12.

CHAIRPERSON: That is what I have just been given. It was not in front of me.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: But are you using the transcript not this one?

ADV PRETORIUS SC: Insofar as the next few questions go we will be using the transcript.

CHAIRPERSON: And then you will go back to this one or not really?

ADV PRETORIUS SC: Ja after a while.

CHAIRPERSON: After a while. Okay. No that is alright. I mean this one will just help me refresh my memory on certain things because I am more used to it.

ADV PRETORIUS SC: Okay Chair.

10 **CHAIRPERSON:** Ja. Okay you may continue.

ADV PRETORIUS SC: Thank you. You have testified about the advanced payment system Mr Zwane? You know about the advanced payment system? You know what topic we are moving onto now?

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: Good. Ms Mokoena testified that the advanced payment system was first raised at a meeting in October 2010. It was a meeting that we have referred to as the War Room meeting.

20 **MR ZWANE:** That is correct Chair.

ADV PRETORIUS SC: Right. And it appears from your evidence and the evidence of Mr Tsoametsi that this meeting took place after the Welkom meeting with the contractors.

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: I understand that at the Welkom meeting certain contractors were invited to attend, correct?

MR ZWANE: All the contractors.

ADV PRETORIUS SC: Yes well that is what I want to ask you about. That list of contractors that was invited what was that list?

MR ZWANE: That was a list that was developed by the Evaluation Committee – Bid Evaluation Committee given to the Bid Adjudicator Committee and subsequently to the
10 Accounting Officer who agreed and signed that list and brought that list to me for approval.

ADV PRETORIUS SC: Is that the list of 106?

MR ZWANE: I cannot remember the exact number but that is the list we used in inviting people to the Value Committee Chair.

ADV PRETORIUS SC: Well it is not clear what list that was still. When the tender process was abandoned a list we know was compiled of bidders who had qualified and bidder who had been disqualified. That was a list of over
20 300 people who had tendered.

MR ZWANE: There was another document that was a list of 306.

ADV PRETORIUS SC: 361.

MR ZWANE: 6.

ADV PRETORIUS SC: No the...

MR ZWANE: Of direct yes 306.

ADV PRETORIUS SC: It was over 300.

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: Alright. And it included bidders who had qualified and bidders who had been disqualified including bidders who were adjudged incompetent or not qualified to – to be granted contracts.

MR ZWANE: According to the minutes of the Bid Evaluation Committee that is correct Chair.

10 **ADV PRETORIUS SC:** Yes. Alright so we have a list of people who had or contractors who had bid for construction contracts within the Free State Province for the year 2010/2011. Those people included bidders who were qualified and bidders who had been disqualified including bidders who for one or other reason were declared unable to continue with the process. We know that.

MR ZWANE: According to the minutes yes Chair.

ADV PRETORIUS SC: According to the Bid Process yes.

MR ZWANE: Ja.

20 **ADV PRETORIUS SC:** But we know that in September you approved a list of contractors of 106 people.

MR ZWANE: That was not actually in September Chair I think it was end June.

ADV PRETORIUS SC: Alright we will – I think we are going to have to look at – Would you look at FS14 page

225.

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: What is that document? You will see it is signed by yourself.

CHAIRPERSON: What page – what page is it?

ADV PRETORIUS SC: September 2010.

CHAIRPERSON: I am sorry Mr Pretorius what page is it?

ADV PRETORIUS SC: FS14 – 225.

CHAIRPERSON: 225.

10 **MR ZWANE**: Housing allocations Chair.

ADV PRETORIUS SC: Well to be fair to you Mr Zwane that document begins at page 223.

MR ZWANE: Ja.

ADV PRETORIUS SC: Alright what is this document and when did it originate?

MR ZWANE: This document as far as I can remember it originated in – around the 30 June. That is the time when EXCO approved it and even requested that building of houses should start in earnest Chair.

20 **ADV PRETORIUS SC**: We will come to the timing of the presentation of this document at least on your evidence. But is this document had been presented to EXCO on the 30 June and we will refer to that minute in due course and had been approved by EXCO why was it only signed by you on the 10 September?

MR ZWANE: Chair I – I would not recall the – this issue of signature but as you have been fair to me to indicate that document – this document actually starts at 223 I want to point out that although I cannot see the date properly on page 223 but one can see that the – the way I signed here is not – the way I – the way I signed in 225. So I would have – what I can think is that those document was needed for official reasons at that month September so I signed. But the document was taken to EXCO earlier than that.

10 **ADV PRETORIUS SC**: Alright well we will come to the EXCO meeting in due course. But this document was presented in accordance with your evidence to EXCO on the 30 June 2010. That is the EXCO of the Province – the Free State Province.

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: Provincial Government, correct?

MR ZWANE: Yes.

ADV PRETORIUS SC: That EXCO would have been aware then of the entities on this list and would have after
20 consultation with you approved this list.

MR ZWANE: After presentation well Chair we made the approved.

ADV PRETORIUS SC: They approved.

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: If you would go please to page 217

of that same – oh no 127 of that same bundle please. You will see there in paragraph 75.3 a record of the proceedings or a summary of the proceedings of the Bid Evaluation Committee and the Bid Adjudication Committee in the abandoned tender process. It says there that 361 bids were received. You see that? This I can assure you...

MR ZWANE: Yes.

ADV PRETORIUS SC: Is consistent with the minutes but if you want to go to the minutes I am happy to do that.

10 **CHAIRPERSON**: 75.3?

ADV PRETORIUS SC: 75.3 yes.

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: So it was 361 not 306?

MR ZWANE: Okay. Some documents are saying 306.

ADV PRETORIUS SC: Yes alright.

MR ZWANE: Yes.

ADV PRETORIUS SC: I am not going to quibble about that.

MR ZWANE: Thank you Chair.

20 **ADV PRETORIUS SC**: But it is over 300?

MR ZWANE: It is over 300 I agree.

ADV PRETORIUS SC: 105 were disqualified for basic bid compliance. 104 were disqualified because they did not meet the minimum functionality threshold. 28 bids from so called established contractors and 81 bids from so called

emerging contractors qualified to be evaluation on price and the BEC then recommended 109 qualifying bid to be adjudicated on price. Is that more or less consistent with your recollection of what the Bid Evaluation Committee and Bid Adjudication Committee found?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: Oh. Now it seems to me that the list considered on the 30 June was not a list that emerged from this process, correct?

10 **MR ZWANE**: Ja I think you are correct Chair.

ADV PRETORIUS SC: In fact this process had not yet been completed. It was on-going.

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: So explain please how under your submission or consequent to your report the EXCO on the basis of your report consider 106 contractor or contracts and at the same time there is an incomplete tender process, how could this happen?

MR ZWANE: Chair may I respond?

20 **ADV PRETORIUS SC**: Yes please.

MR ZWANE: I – I notice what you are raising. I think I can remember that there was a process and it will reflect in some minutes here that earlier on there was a list of contractors which was approved and when the size of the houses was increased there was a dispute. I am sure

some minutes will raise that.

ADV PRETORIUS SC: We know about that yes.

MR ZWANE: Ja. I think the – the – this one of the 30 June if I remember well is that – is the list that was affected by the dispute of contractors when the size of the houses had to be increased. And the list that you have just asked me it is after that process of the dispute raised by contractors. We had to start afresh – ja I think so.

ADV PRETORIUS SC: Well I am afraid it may be that I do
10 not follow but as yet I certainly do not follow. After the dispute has arisen between the contractors and the department over the size of the houses the evidence is clear that at that stage it was decided to embark upon a fresh tender process. Correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: That process would have advertised for tenders and received tenders.

MR ZWANE: Which process Sir?

ADV PRETORIUS SC: The process we are talking about.
20 The process...

MR ZWANE: The first one or the second one?

ADV PRETORIUS SC: Let us start again.

MR ZWANE: Okay.

ADV PRETORIUS SC: There is a list of contractors – a data base we understand from your evidence at least that

pre-dated the 2010/2011 financial year, correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: The contractors appointed on that data base and there is no concession that that data base was properly appointed and it seems from our investigations that it might well not have been. But we are not dealing with that financial year. There was a dispute that arose between the contractors and the department. The contractors said now we have to build bigger houses it

10 is not going to work for us, is that correct?

MR ZWANE: That is correct.

ADV PRETORIUS SC: So it was decided then to scrap that data base and go out to tender again, correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: As part of that process – that tender process 361 bids were received, correct? And the figures in paragraph 75.3 page 117 of FS14 I can assure you that those are reflected in the minutes of the Bid Adjudication and Bid Evaluation Committees. So we have

20 now a list of 361 bidders, correct?

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: But we also have it around this time – remember we are not yet at the 28 July we are at the 30 June. We have a list approved by yourself of 106 bidders. Where did that list come from?

MR ZWANE: Oh okay. Well Chair when we arrived at the department ...

CHAIRPERSON: Yes continue Mr Zwane.

MR ZWANE: So when we – I arrived at the department there was a list that was there and that list was not developed by me. To my best recollection we used that list for [00:22:09] 2010 and that list was supposed to be used for 2010/2011. Until a dispute arised as far as I can remember arising from the reasons I have already pointed
10 out then there was a need then to begin to follow the processes that will actually give us a new list. That is what I remember Chair.

ADV PRETORIUS SC: Now that process to give you a new list was that same process that received 361 bids in answer to its invitation to bid. Correct?

MR ZWANE: If I recall from the minutes it should be the same process by the Bid Adjudication and Bid Evaluation yes.

ADV PRETORIUS SC: Well it would – there are many
20 things here that are difficult to understand but it would be completely beyond comprehension that there were more than one bidding process. There was one bidding process.

MR ZWANE: If I recall according to the minutes Chair after the – if you talking about the second process.

ADV PRETORIUS SC: Yes.

MR ZWANE: After the lapse of the open tender there was a decision that was made either by the Evaluation Committee or the Adjudication Committee that information which is available out of different processes I cannot remember them properly but similarly there are about three processes. Those – the names are released were to be put together and formulate a data base. Yes.

ADV PRETORIUS SC: That would have been a data base of 361 persons or entities plus the old data base. Correct?

10 It would have been far in excess of 360 entities or constructors – logically. Or you not following me?

MR ZWANE: No I hear that but I cannot confirm or deny that Chair because that information was not at my disposal.

ADV PRETORIUS SC: No but this one you can confirm or deny.

MR ZWANE: Okay.

ADV PRETORIUS SC: Because it follows your evidence.

The – there was a bid process that followed on a dispute
20 between the contractors and the department. That bid process advertised and invited tenders. You nod.

MR ZWANE: There is [00:25:29] Chair yes.

ADV PRETORIUS SC: As a consequence of that invitation 361 persons or entities bid for work. Correct? That is the minute I have just showed you.

MR ZWANE: Well Chair let me say maybe more 300.

ADV PRETORIUS SC: Yes because you say 306 and I say 361.

MR ZWANE: Yes.

ADV PRETORIUS SC: So far the – let us not go there. More than 300 bid.

MR ZWANE: Yes.

ADV PRETORIUS SC: That list included qualified and disqualified bidders.

10 **MR ZWANE:** Yes as per the minutes.

ADV PRETORIUS SC: Yes. You say there was another data base that had to be added to that list, correct?

MR ZWANE: I am saying – yes that is what I am saying.

ADV PRETORIUS SC: Yes you saying that.

MR ZWANE: Ja I am saying that.

ADV PRETORIUS SC: So therefore it is not difficult to conclude that the final consolidated list was more than 306 or more than 361 whichever figure you choose.

MR ZWANE: Yes.

20 **ADV PRETORIUS SC:** So that we can establish?

MR ZWANE: Ja.

ADV PRETORIUS SC: On your evidence right?

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: This process – the tender process continued or was still in existence until the 28 July when it

was finally abandoned. We know that as well, correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: But on the 30 June you present a report to EXCO correct?

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: You give EXCO a list of contractors, correct?

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: That list is the list that was signed
10 – you say later by you on the 28 September 2010.

MR ZWANE: I think I should correct that Chair. I think I should correct that. When you asked this question for the second time I said I can remember that there were actually two lists for 2010/2011. The first list is the one that was disputed. I corrected myself by explaining that. That from where I am seated I think the list that went to EXCO is the list that of the contractors that later disputed the price of building a house which had moved from 35 square meter to 50 and more. I think the list that I submitted on the 30th
20 could be that list.

ADV PRETORIUS SC: Alright.

MR ZWANE: Yes.

ADV PRETORIUS SC: So it is not the list that you signed on the 28 September.

MR ZWANE: No, no Chair.

ADV PRETORIUS SC: What was that list? Now in 28 September or on 28 September we have a list of contractors signed by yourself and approved by yourself. What is that list?

MR ZWANE: This list if I recall is a list that came out of ...

ADV PRETORIUS SC: Out of?

MR ZWANE: A process that was followed by Bid Adjudication Committee and finally submitted to me by the Accounting Officer. Because on the 28 July when the
10 decision was taken to go the route that the department took it was after the abandoned list of the disputes. So the lists that was produced on the 10 September I think it is stemming out of the process that was undertaken by the – the committees that...

CHAIRPERSON: The process that you are talking about, you see I think last time, you gave evidence to the effect that after it had been decided to abandon the open tender process, the department... you asked them what the way forward was going to be.

20 **MR ZWANE:** Ja.

CHAIRPERSON: And what was decided was that the department would produce a list. I do not know whether on that occasion we called it a database.

But they would produce a list of contractors and if I recall correctly, you said they were going to... that list would

include the contractors who had submitted bids during the open tender process.

But you also said the department was free to include in that list contractors who may have not submitted bids during the open tender process but who met certain requirements that had been certified by Exco, namely contractors owned by women, people with disabilities and young people.

Is that the process... the list that you are talking about?

MR ZWANE: I am talking about that list Chair but to the best of my recollection, I think I was asked a question, if I am not mistaken by yourself.

CHAIRPERSON: Yes.

MR ZWANE: That was I aware that some of the names were taken outside the process that had elapsed?

CHAIRPERSON: Yes.

MR ZWANE: And outside any other process that they have existed? I said no.

CHAIRPERSON: H'm.

MR ZWANE: I even said, if I knew I would have asked, how did you get these claims?

CHAIRPERSON: Yes.

MR ZWANE: Because they are not part of any process ...[intervenes]

CHAIRPERSON: Yes.

MR ZWANE: That is in front of us here.

CHAIRPERSON: Yes.

MR ZWANE: I... that is what I can recall.

CHAIRPERSON: Yes.

MR ZWANE: But what I agree with the Chair that the list of the date of September is ...[intervenes]

CHAIRPERSON: Is coming from this process that we are talking about?

MR ZWANE: Yes, yes.

CHAIRPERSON: Okay alright. Now talking about the
10 qualification that you have just made, namely that you did
testify that you would have asked them the basis for
bringing... for selecting certain contractors who may not
have been in the list of contractors who had submitted bids.

Now, I remember you putting... saying that you would
have asked them that question. My understanding of your
evidence was, not that you were opposed to them bringing in
contractors who may not have submitted bids but you would
simply have wanted the criteria that they followed on the
basis.

20 As I recall, my understanding is that your position was
that there would have been nothing wrong – and you must
tell me if my recollection is not correct.

There would have been nothing wrong in the department
bringing in contractors who were not in the list of those who
had submitted bids as long as they were those contractors

these requirements that came from Exco, namely women, young people and people with disabilities.

Did I misunderstand that part of your evidence?

MR ZWANE: Well, Chair let me say to you. People are thoroughly misunderstanding that.

CHAIRPERSON: Yes. Okay alright. Just explain that part before we proceed. Yes.

MR ZWANE: Ja. The correction will remain that in my affidavit I raised an issue that I was acquainted with PFMA
10 which stipulates that there should be a short process and that also is stipulated two hundred and Section 217 of the Constitution that there must be a process that is fair, competent, cost-effective. To name a few ...[intervenes]

CHAIRPERSON: [Indistinct] efficient, yes.

MR ZWANE: Ja.

CHAIRPERSON: The other requirement.

MR ZWANE: And that process, I understood it to be after the list which was still in existence during ...[intervenes]

CHAIRPERSON: The process.

20 **MR ZWANE**: ...a process of dispute.

CHAIRPERSON: H'm.

MR ZWANE: That we should follow that open tender so that everybody is given a chance. That is why I recall that at a later stage, I even said to you.

I asked the official when they came to me that: Why did

you not tell me that there was a shorter process that could be followed if you are telling me that no we have can have a database that can be quicker?

I asked the following the PFMA. So I was well-aware that a process where somebody wakes up and come up with a name and put it in database, it would have not been in line with the Constitution and PFMA. So my view was that if I... had I known, I would have asked that question.

And I must also explain that the instruction by Exco, it
10 was not requesting us to follow(?) any process. The instruction was saying to all the departments:

As you engage yourself here in an activity that will create jobs, this is the group that you must take into consideration. That is to the best of my recollection Chair.

CHAIRPERSON: I just want to make sure that I do not misunderstand you know.

MR ZWANE: Okay.

CHAIRPERSON: Does that mean that your understanding at the time when the open tender process had been abandoned
20 that your understanding was in creating a list or database, the department was simply going to take a list of contractors who had submitted bids, all of them. Is that correct? Is that so?

MR ZWANE: Yes, Chair.

CHAIRPERSON: Okay alright. Mr Pretorius.

ADV PRETORIUS SC: [No audible reply]

CHAIRPERSON: No, thank you. I wanted to understand that part.

MR ZWANE: I think I must clarify one part.

CHAIRPERSON: Yes, please do.

MR ZWANE: This or this all of them.

CHAIRPERSON: Yes, okay. Yes.

MR ZWANE: This all of them ...[intervenes]

CHAIRPERSON: Yes.

10 **MR ZWANE:** ...consists of even those contractors who did not qualify during the open tender.

CHAIRPERSON: H'm.

MR ZWANE: That was not my ...[intervenes]

CHAIRPERSON: That was not your understanding.

MR ZWANE: That was not my understanding Chair.

CHAIRPERSON: So was your understanding that the department would take the list that had been prepared by the Bid Adjudication Committee after sifting all the bids and indicating who was disqualified and who was not competent
20 and so on?

So it was the list that they would have proceeded with if the open system had not been abandoned? That is the list you were talking about, correct?

MR ZWANE: My view is that, that is correct Chair.

CHAIRPERSON: Yes.

MR ZWANE: If the tender process was... had been abandoned.

CHAIRPERSON: Ja.

MR ZWANE: There are contractors which may have not made it in the database because they were disqualified. That is my understanding. Yes, Chair.

CHAIRPERSON: Yes, but what about those? My understanding is that what you are saying is. Those contractors who had been disqualified during the open
10 tender process were not going to be in the list that the department was going to use after the open tender process had been abandoned? Is my understanding correct.

MR ZWANE: I ...[intervenes]

CHAIRPERSON: If you had disqualified during the open tender process, that is the end of you?

MR ZWANE: I am giving my own understanding Chair.

CHAIRPERSON: Yes. No, no. That is what I am interested in.

MR ZWANE: Ja, ja. I am giving my own understanding
20 Chair.

CHAIRPERSON: Yes, yes.

MR ZWANE: That process should have been like that. Yes.

CHAIRPERSON: Yes. Okay alright. So in other words, on your understanding the list that the department was supposed to use after the open tender process had been

completed was the list of only those contractors who were so to speak had passed the test during the open tender process and nobody else?

MR ZWANE: In the first instance Chair, there can be the aim of going through the open tender process. It is actually that.

CHAIRPERSON: Yes, yes, yes.

MR ZWANE: Yes.

CHAIRPERSON: So that was your understanding?

10 **MR ZWANE:** Yes, Chair.

CHAIRPERSON: Okay alright. Thank you. Mr Pretorius.

ADV PRETORIUS SC: Well, let us go through the documentation to test your answers Mr Zwane. First of all. Could you look at FS14, page 295.

MR ZWANE: 295?

ADV PRETORIUS SC: 295. As it appears from page 294, the previous page, these are the minutes of the Special Departmental Bid Adjudication Committee of 28 July 2010. Do you see that?

20 **MR ZWANE:** FS2?

ADV PRETORIUS SC: Page 294.

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: It appears that the document we are now dealing with are the minutes of the Special Departmental Bid Adjudication Committee held on the

28th of July 2010 in the Free State Province. Do you see that?

MR ZWANE: Yes, I see that.

ADV PRETORIUS SC: Good. If you go over the page to paragraph 7.1.

MR ZWANE: Yes.

ADV PRETORIUS SC: It reads:

“An evaluation of tender...

It gives a reference number.

10 “...for the construction of BNG House in the Free State through project linked. The chairperson indicated to the committee that the tender had been evaluated but due to the fact that the validity of the tender has expired and they cannot adjudicate. They have to cancel the tender. However, in order to spend the money appropriately, they have to use the suppliers on different databases.”

And then there is the checks of a resolution taken by that committee.

20 “Cancellation of tender is recommended due to the expiry thereof. The committee recommends that different databases be consolidated and use as a source of service providers. That is departmental database, provincial centralised database, Puadrem Database, as well as the list of all suppliers who

tendered for this tender.”

That is the resolution which was approved by the accounting officer on the 30th of July 2010 as appears from page 297 of FS14.

MR ZWANE: [No audible reply]

ADV PRETORIUS SC: Do you see all of that?

CHAIRPERSON: Well, maybe for the sake of completeness. One can repeat that before the chairperson wrote or the resolution is repeated in 104.

10 **ADV PRETORIUS SC**: Under the Head Committee’s decision.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: And then the chairperson signed and the accounting officer approved. Correct?

MR ZWANE: I can see that, Chair.

ADV PRETORIUS SC: So, arising out of the failed tender process – let us not go back into 2009/2010 because we do not have the facts before you in a comprehensive format.

20 But arising out of the failed tender process, it was decided to consolidate a number of databases as well as all... a list of all those entities or persons who had tendered the 306 or the 361.

So the proposition I am putting to you is that the database now, after the failed tender process and this consolidation recommended and approved, would be far in

excess of 306 or 361.

MR ZWANE: That is my understanding Chair as I alluded.

ADV PRETORIUS SC: So with that simple arithmetical process, we can proceed. I do want to give you a chance to refer to the open report which may assist you in fairness to you because you are dealing with matters some time ago. If you would go to FS15, page 523.

MR ZWANE: 523...

ADV PRETORIUS SC: I will give you a chance to have a
10 look at this extract in a moment because it does set out a summarised history and there is... there at least three questions that I would like to ask you arising out of.

But what is a matter of confusion, at least at this stage Mr Zwane, is that we have a list of well over 361 or 306, whichever version you choose, contractors.

A large, consolidated list. Let us refer to it as a consolidated. But we have on your evidence before the committee, the Exco Committee meeting, a list approved by yourself of just over 100 contractors. Correct?

20 **MR ZWANE**: The last... the list of the 9th... Sorry, the list of the 10th.

ADV PRETORIUS SC: The 10th of September?

MR ZWANE: Yes.

ADV PRETORIUS SC: Yes. Oh, that is what you say?

MR ZWANE: Yes.

ADV PRETORIUS SC: Now my question is. There was at least a process and a formal decision, giving rise to the consolidated list. Whatever defects it may have had and however bad in law those decisions may have been to include disqualified bidders on a list on the administrative say-so of officials. Let us leave that issue aside.

At least there was that list. Where does this list of a 106 come from? It can only come from someone under your direction, sitting down and compiling it in your discretion.

10 **MR ZWANE:** Well, my own understanding is that Chair that this list was an outcome of these process that we talked about. And no circumstances, in terms of my recollection, did I instruct anybody how to compile a list.

If I wrote it to do that and I thought that is the right thing, I would have waited for all these tedious processes of an open tender and so forth and so on. I would have done that thing.

ADV PRETORIUS SC: No, but Mr Zwane. You take this list to the meeting of the 30th of June.

20 **MR ZWANE:** Yes.

ADV PRETORIUS SC: And you proposed this list before the Exco Committee. You say: Exco, this is my list presented to you by the MEC. Please, approve it.

MR ZWANE: Chair, I explained earlier on my understanding of the list that was presented to Exco.

ADV PRETORIUS SC: But I am asking you, it is your own
...[intervenes]

MR ZWANE: That is my own recollection.

ADV PRETORIUS SC: How does it come about? It is your
list.

MR ZWANE: No, I have said Chair that there was a list that
was used during my predecessor's time. The list I followed
in 2009... remember, in 2000... I arrived at the department
in 2009. We did not go for a tender.

10 We followed the list that was there, existing already. In
2010, we followed that process as it is until there was a
dispute by contractors because of the bidding price that had
remained and the size was increased.

ADV PRETORIUS SC: Build the house for that price?

MR ZWANE: Ja, to the best of my recollection Chair, that
should be the list that I sent to Exco on the 30th of June.

ADV PRETORIUS SC: And was that the same list you
signed in September?

MR ZWANE: I alluded to the fact that that was not the same
20 because the list I sent to the executive, there were disputes
around it and the decision was taken that we should
formulate a new database. And so this process is followed
up until the 20th... the 28th of July. Up until, actually, the
motivation on page 297 what was the 30th of July. That is my
best recollection Chair.

ADV PRETORIUS SC: Now, the allocation list approved by you on the 10th of September 2010 ...[intervenes]

MR ZWANE: Yes?

ADV PRETORIUS SC: ...did contain at least 15 bidders who had been disqualified during the tender process. Were you aware of that?

MR ZWANE: No.

ADV PRETORIUS SC: Right. But it was your list approved and signed by you?

10 **MR ZWANE:** The list was brought to me after it was brought to me by the accounting officer. So I approved, yes.

ADV PRETORIUS SC: Ja, but when you approved it, did you back the list? Did you say, how was this list made up? Does it include disqualified bidders? Where does this list come from?

MR ZWANE: Well, I did not do that Chair. What I did and this is even what I said on the 25th. I went through the criteria that were given by Exco whether they are young contractors, disabled persons and women.

20 And I approved because I had given this task to a competent officials who had been doing this sort of work for more than 15 years when I was not even there.

And at that particular time, there never had been a dispute in terms of their work. So I did not go through those details because I was not even favoured by the detailed work

they do behind closed doors in their committees and so forth.

ADV PRETORIUS SC: Just to assist you. Perhaps you should look at FS15-523 which is an extract from the report later conducted under the auspices of the Free State, Department of Human Settlements. It is dated 14 September 2015 and it sets out there the findings that it made regard to various lists and you can look at it.

MR ZWANE: [No audible reply]

10 **CHAIRPERSON:** You want us to look at what page mister...?

ADV PRETORIUS SC: 523 of FS15.

CHAIRPERSON: Okay.

MR ZWANE: [No audible reply]

CHAIRPERSON: Yes, Mr Pretorius.

ADV PRETORIUS SC: Have you finished reading?

MR ZWANE: I am just finishing, Chair.

ADV PRETORIUS SC: I am just giving him a chance... Mr Zwane to read it.

20 **CHAIRPERSON:** [No audible reply]

MR ZWANE: Alright.

ADV PRETORIUS SC: We know what the Bid Adjudication Committee recommended and we know what was approved by the accounting officer. It was that large, consolidated list which must have constituted well over 300 entities. We

know that on the 10th of September you approved a list.
Correct?

MR ZWANE: [No audible reply]

ADV PRETORIUS SC: What your duty was in approving and what you actually did, we have interrogated to an extent. On the 10th of June, you took a list to Exco, the Provincial Exco and you said: Here is a list. Please approve. Correct?

MR ZWANE: [No audible reply]

ADV PRETORIUS SC: Now please help us. The list that
10 you took on the 30th of June, what list was that? And the list of September 10, what list was that? And how did those lists informed who eventually got contracts?

MR ZWANE: The list of end of June as I have alluded to that fact earlier on Chair, according to my memory, was the list of contractors who later on had a dispute.

CHAIRPERSON: Later on...?

MR ZWANE: Had the dispute.

CHAIRPERSON: Yes, but where were they coming from? Were they coming from the open tender process or were they
20 coming from a prior database that existed before the open tender process?

MR ZWANE: No, they were coming the prior database Chair.

CHAIRPERSON: They are coming from the prior database that existed before the open tender process?

MR ZWANE: Yes.

CHAIRPERSON: Alright.

MR ZWANE: And the list of the 10th of September, was out of this process.

ADV PRETORIUS SC: Out of which process?

MR ZWANE: Out of the open tender that had lapsed and a decision was then arrived at by the Bid Adjudication Committee to consolidate those different tenders and, as a result, that was signed by the accounting officer as a
10 database.

ADV PRETORIUS SC: Alright, perhaps I am not making myself clear, Mr Zwane.

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: The list of 106 projects and contractors in relation to 21 050 houses to be built, the 10 September list approved by yourself, correct?

MR ZWANE: 10 September, yes, Chair.

ADV PRETORIUS SC: Must have been a selection from the bid adjudication consolidated list because it is a far
20 smaller list.

MR ZWANE: Yes.

ADV PRETORIUS SC: You agree?

MR ZWANE: Not only that, Chair. I think on hindsight at the particular time I think around early September, if I am not mistaken, these contractors that had made a dispute,

we had to engage them because we could not start building houses, they went to court and around that time together with other MECs were able to resolve this matter amicably that the price of the houses has been increased to R72 000 and if they agreed, those who agree may come and become part of the process moving forward.

To the best of my recollection I think the list of 105 and the list of 106 might be telling that story, unless I do not understand the document.

10 **CHAIRPERSON:** So let me understand. There was a list that you took to Exco at the end of June, is that right?

MR ZWANE: Yes.

CHAIRPERSON: You said that was a list that came from the database that the department had already prior to the initiation of the open tender process. So it was people who were on the database. Okay. Do you know whether some or all of those people, those contractors, subsequently submitted bids during the open tender process or is that something you do not know?

20 **MR ZWANE:** No, I did not know that fact.

CHAIRPERSON: You do not know that.

MR ZWANE: Ja, I did not know that fact.

CHAIRPERSON: As far as you are concerned it is possible that some of those might have put in bids as well but you do not know.

MR ZWANE: The people who were not qualifying?

CHAIRPERSON: Yes, yes.

MR ZWANE: Chair, as I explained this process earlier on and my expectation of it, is that it will be a database of people who qualifies.

CHAIRPERSON: Yes, yes.

MR ZWANE: Ja.

CHAIRPERSON: Now the ones who – okay, so you have this list you took to Exco at the end of June. What was the
10 purpose of taking that list to Exco again?

MR ZWANE: We would normally report in terms of our activities and provide a report as to whether what has been requested from us by Exco in our normal course of duty has been addressed and if there are issues that we need to deal with, Eskom is not happy about one, two, three, we will then go back and deal with that issue. So it was a standard practice, Chair.

CHAIRPERSON: Namely to tell Exco or update Exco as to who you had on your database?

20 **MR ZWANE:** No, not that, I knew that the Exco was interested in the main that the list should have ...[intervenes]

CHAIRPERSON: Women, young people and ...[intervenes]

MR ZWANE: Disabilities.

CHAIRPERSON: People with disabilities.

MR ZWANE: And so we took that list to Exco. The one that we found it there ...[intervenes]

CHAIRPERSON: Ja, the one that existed prior to the open tender process.

MR ZWANE: Yes. And it was approved.

CHAIRPERSON: It was approved by Exco.

MR ZWANE: By Exco, I think on the 30 June.

CHAIRPERSON: Okay, so when you took it to Exco the idea was that Exco should approve it.

10 **MR ZWANE:** Exco should have the word, if they are not happy you would go back because normally I am the one who approves in the department.

CHAIRPERSON: Yes.

MR ZWANE: Yes, Chair.

CHAIRPERSON: So but am I to understand that the purpose of taking this list to Exco at the end of June was to update Exco as to the list that the department had?

MR ZWANE: Yes, Chair.

20 **CHAIRPERSON:** The contractors on the database of the department.

MR ZWANE: Yes.

CHAIRPERSON: To say these are the contractors who are on our database and then they might, in looking at the list, ask questions about which ones are owned by women, which ones are owned by young people and so on, that is

what they would be interested in, is that right?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: And when they approved – you say they approved the list, when they approved they were saying we are happy with this list because we think it meets some of these requirements about young people, people with disabilities and women and the idea was that after they had approved it would simply go back to the department, so it would simply give you the comfort and the department
10 that the contractors you have on your database are approved by Exco, they meet the important requirements.

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Yes, okay.

MR ZWANE: The other issue from where I was seated, it will give me comfort that we have done accordingly with what we needed to do.

CHAIRPERSON: Yes, okay.

MR ZWANE: Ja.

CHAIRPERSON: So when the open tender process was
20 initiated and therefore bids were invited it follows that they would have been entitled if they met the requirements to put in bids as well.

MR ZWANE: Yes.

CHAIRPERSON: Yes. So then the validity period of the tender expires and then the department decides that what

it will do is to put another – to put a certain list together and you say on your understanding the list they were supposed to put together was the list of only those contractors who had passed the test during the open tender process. That was your understanding of what the department was going to do.

MR ZWANE: That was my understanding but that would extend to all the other database that we had according to the minutes of the Bid Adjudication and my understanding
10 of those database is that they would be comprising of people who had passed the test, so to speak.

CHAIRPERSON: Now let me try and understand that. You know there would have been a list of contractors who had passed the test, as it were, during the adjudication process.

MR ZWANE: Yes.

CHAIRPERSON: Now that list would only be a list of those who had submitted bids in response to the invitation, is that right?

20 **MR ZWANE**: That is correct, Chair.

CHAIRPERSON: Anybody who may be on some other database who did not submit a bid would not be on that list, is that right? The list that you are talking about. You said what you expected the department to do is to take the list of contractors who had passed the test under the open

tender process, is that right?

MR ZWANE: Yes, yes, Chair.

CHAIRPERSON: And give you that list. Or, at least, that was my understanding. Or are you saying that that would not be the only contractors, they were supposed to add others from other databases.

MR ZWANE: I am saying in terms of the open tender, if it has not lapsed, only the contractors who had passed the test would be considered. That was my understanding
10 also. In the case where the Bid Adjudication Committee said and recommended, as it has been said here, that a broader kinder of a pool must be considered off the database that is in existence in the department. My understanding also there would be when that broader database is considered nobody who failed the test, whether in the open tender or in those other database they had would be considered. I do not know if I am clarifying the point, Chairperson.

CHAIRPERSON: Okay, let me check. It seems to me that
20 what you are saying is in putting together the list of contractors that the department was supposed to put together and bring to you after the open tender process had been abandoned, you did not expect them, that is the department, to confine themselves to the list of contractors who had passed the test during the open tender process,

you expected them to have that list of contractors who had passed the test under the open tender process, that is the open tender process that had been abandoned, but you also expected them to include other contractors taken from other databases that they talked about in their minutes and that but those contractors from those other databases would have to pass a certain test before being included in the list that would be brought to you. Is that what you are saying?

10 **MR ZWANE:** Yes, Chair, they came to me after the tender had lapsed and suggested this process and suggested that they would be taking from various database which are already there.

I was just making my own understanding of that process that even if I had agreed with them or their proposal, I still expected that Section 217 of the Constitution should not be lost in the process. Yes.

CHAIRPERSON: Well, I will leave it to Mr Pretorius to deal with how you expected that Section 217 to apply with
20 regard to those contractors were to come from other databases. Mr Pretorius?

ADV PRETORIUS SC: Well, Mr Zwane, I am afraid the manner in which you have answered these questions raises even more questions and we are still far from clarity. So let me attempt to question you in a way that does provide

some clarity. We know that was a dispute with existing contractors. Open Waters tell us there was a dispute 23 contractors. Did you know that?

MR ZWANE: I may not remember the exact number but I know there was a dispute with those contractors, yes.

ADV PRETORIUS SC: Right, Open Waters report say 23, right? It decided to embark upon an open tender process. Did I understand you correctly that you gave that instruction?

10 **MR ZWANE:** Yes, I knew about that instruction.

ADV PRETORIUS SC: You knew about that and you gave that instruction.

MR ZWANE: Yes.

ADV PRETORIUS SC: Right. So any evidence that you gave previously that this was all in the hands of officials, we can revise that evidence.

MR ZWANE: Well ...[intervenes]

ADV PRETORIUS SC: You knew the circumstances, you knew the need and you instructed an open tender process
20 to take place.

MR ZWANE: Yes.

ADV PRETORIUS SC: I must say that is somewhat different from your evidence previously but I am not going to go there for the present. The tenders closed on the 16 April 2010, right?

MR ZWANE: Yes.

ADV PRETORIUS SC: And the final decision was made on the 28 July 2010. So between the 16 April 2010 and the 28 July 2010 on your instruction there was an open tender process underway for the selection of contractors to build houses in the Free State, 2010/2011, correct? You nod.

MR ZWANE: If there was no dispute from the contractors, that you have just said 23 contractors, it shall have meant that this list of the tender that was started in April would
10 have come at a later stage.

ADV PRETORIUS SC: Well, let us go with what happened.

MR ZWANE: Okay.

ADV PRETORIUS SC: We know that tenders closed on the date for the submission of tenders closed on the 16 April, the period for the submission of tenders closed on the 16 April 2010, correct?

MR ZWANE: Yes.

ADV PRETORIUS SC: A decision was made on the 28
20 July 2010. We have looked at that decision about the consolidation of databases, correct? You must say.

MR ZWANE: Yes, yes, Chair.

ADV PRETORIUS SC: The recording does not pick up a nod.

MR ZWANE: Okay.

ADV PRETORIUS SC: So between the 16 April 2010 and 28 July 2010 there is a tender process underway, an open tender process taking place on your instruction, correct? Yes.

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: On the 30 June, however, in the midst of this tender process, you go to Exco with a different list of contractors. Should you not have told them look, there is a tender process, we cannot now use another
10 historical process, we embarked upon an open tender process on my instruction. Did you tell them that it was underway? You must have known it was underway.

MR ZWANE: My explanation to you, Chair, is that the tender that was underway was not in any way going to have a problem with these contractors that were there from the previous tender. Up until a point where we had to – if I recall, dealing with the issue that these contractors have laid a dispute. If you take it maybe the question that I thought would have been answered, what would have
20 happened if these 23 contractors, as this page is saying, did not have a dispute, it means those contractors were going to go on and build houses and there would be no issue about building houses from those contractors, it means those contractors, in terms of my recollection and my understanding, would have again ensured that they

become part of the new database of an open tender because, if I am not mistaken, some of the evidence that was put by some of the people who came here, the tender was lapsing of this one that was done by my predecessor. So we had in any way to come into a new tender. That is my understanding, Chair.

ADV PRETORIUS SC: Well, the 2009/2010 database had lapsed. Did you know that? I did not exist anymore in 2010/2011. You had to start from scratch.

10 **MR ZWANE:** Yes.

ADV PRETORIUS SC: Right. So the tender process was intended to appoint contractors for the whole project of housing.

MR ZWANE: What, 2010?

ADV PRETORIUS SC: 2011, correct.

MR ZWANE: 2011.

ADV PRETORIUS SC: Yes. So at the time you go to the Exco with another list of contractors, whether it is a 105 of a 106 - , first list, second list, does not matter for present
20 purposes, the point is it is another list of persons. They may have come from an expired list, does not matter for present purposes but the point I want to make to you is that on the one hand Exco is saying we approved this listen presented by you, MEC Zwane, for the construction of houses. At the same time there is a tender process

underway that has nothing to do with that list. The tender process produces a consolidated list of well over 300 bidders but on the 10 September 2018 you approve a list of 106 contractors.

Now what I am saying to you in simple terms is that as far as you, MEC Zwane, were concerned and as far as Exco was concerned, there was one process of selecting contractors underway largely based on the discretion of yourself or the Exco or individual officials and there was a
10 fair tender process, open tender process on the other. You knew on the 30 June that there was another process. Now I have put together a lot of questions, I can break them up if you like but that is what happened. How do you explain that?

MR ZWANE: Well, I thought I had explained, we – I had not used or compiled any list prior to the open tender. What I used was the database that was there and the open tender process was going to facilitate a new database that would be used by me for the next five years if I stayed the
20 five years. That is how I understand it, Chair.

CHAIRPERSON: I am sorry, Mr Zwane, can I ask this question? In the context of a situation where there is a need to initiate an open tender process, what is the use of the department having a database of contractors because for the open tender process you are not going to invite only

those who are on your database to bid, as I understand the position, you invite everybody, whether they are on your database or not.

So why is it necessary for a department to have a database of contractors or is it necessary in the context of those situations where you do not go on open tender? Maybe you need a few quotation then you use those?

MR ZWANE: Well, Chair, you would remember that I indicated when I was here on the 25th that when I asked
10 that question it is when I was told about what the Housing Act is saying and I can see that one of the witnesses, when he was here, he also touched on that issue of the view of the department, Mr Kaiser Maxatshwa by saying it was the MEC who would approve the list, would actually give contractors...

CHAIRPERSON: It cannot be. Can it be that prior to your time, as MEC of this department – well, I am saying prior to your time, maybe prior to this open tender system that was initiated that we are talking about in 2010, it cannot be
20 that the department was not – it cannot be that the department was awarding contracts without following an open tender process that they just picked people who were already on their database. Can it be?

MR ZWANE: Well, Chair, I am saying I was told that the database is acceptable and, as I have said, I think it is

page 44, if I am not mistaken paragraph 53.2 where Kaiser Maxatshwa is saying the MEC could allocate work to the contractors. Despite – that issue came when the open tender had lapsed, if one recalls what I said here, when I was asking the officials, where ...[intervenes]

CHAIRPERSON: When you asked the way forward?

MR ZWANE: Ja, what is the way forward? Then they told me that no, we can do the database and they explained to me. I said but why did you waste my time? As I said
10 earlier on. We could have followed this thing if it is lawful, they said no, it is part of the Act, Housing Act so ...[intervenes]

CHAIRPERSON: I am sorry, I just want to understand. So, as I understand it, the officials, when you asked them for the way forward, were saying to you or said to you the department can award contracts to contractors who are on its database without following an open tender process. Is that what they said?

MR ZWANE: They said we can use a database and
20 ...[intervenes]

CHAIRPERSON: Yes, but ...[intervenes]

MR ZWANE: A database would, according to how they explained it ...[intervenes]

CHAIRPERSON: Yes but the way – well, they might not have put it like this expressly but the gist of what they

were saying, is it that they were saying the department can award contracts to contractors who are on its database without following an open tender system. That was the effect of what they were saying?

MR ZWANE: Yes, Chair, I think that is my understanding.

CHAIRPERSON: Yes.

MR ZWANE: That is why I am even quoting what Kaiser said in this Commission.

CHAIRPERSON: Yes, yes, yes, okay.

10 **MR ZWANE:** He was relating here, it is no longer something that comes from me, only Kaiser.

CHAIRPERSON: Yes, that is fine.

MR ZWANE: Yes.

CHAIRPERSON: So was your understanding then arising from what they told you at that time that prior to this particular open tender process that had been initiated, that had just been abandoned, that they were saying to you prior to that they had been – the MEC could just award contracts to contractors on the database of the department
20 without following any open tender process. That was your understanding of what they were telling you?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Okay, alright.

ADV PRETORIUS SC: Well, are you seriously saying, Mr Zwane, that if an officials tells you that from a list of

people you have the discretion to appoint whom you like as a contractor that you believed that, that you could appoint entirely on your discretion from a list? An expired list, by the way, because we know 29/2010 that list had expired, that database had expired.

MR ZWANE: Well Chair I was not told that the list for twenty ...[intervenes]

ADV PRETORIUS SC: 9/2010.

MR ZWANE: Was, was – had expired.

10 **ADV PRETORIUS SC:** When did you learn that?

MR ZWANE: I am saying I was not told that, the contractors that were doing work for 2009/10 the list was expired, because I came there in the department 2009 just through the year when the work was already happening. It means there was a database that was followed by the department when I came and there I did not stop that work continued on.

20 2010 this contractors who were already there as being said here continued and to the best of my recollection the list was going to be used for 2011 moving forward. The list that often open tender that is going to be used at a later stage maybe 2011 at a later stage when we had already compiled it but that was my simple understanding Chair because if the list had actually expired the department should have actually even got into

an open tender before I arrived. I should have not told them to get into an open tender because I found them already using this list.

CHAIRPERSON: But the open tender Mr Zwane what was your understanding of the objective of the open tender process that was initiated and later abandoned?

MR ZWANE: My understanding Chair was that that process was the correct process.

CHAIRPERSON: Sorry?

10 **MR ZWANE:** My understanding was that that process of an open tender was actually the correct process.

CHAIRPERSON: Yes, no but my question is what was your understanding of what was sought to be achieved through it. What was going to be the product or the outcome of that process?

MR ZWANE: The product of that process we will have a database of names.

CHAIRPERSON: Yes.

20 **MR ZWANE:** That was going to be used for the next five years. So was your understanding that that process was to produce a database as opposed to appointing contractors who were going to build houses?

MR ZWANE: I might be wrong in terms of the understanding of a database as a layman Chair but my understanding is that we would use those contractors that

have been approved by an open tender process to build houses.

CHAIRPERSON: To build houses in regard to the specific project or to build houses in any project that could arise in the next five years?

MR ZWANE: To be fair in this Commission as I was told Chair those contractors would be there for the next five years as that has been the case even before me. You go into an open tender identify contractors they then become
10 your database for the next five years.

CHAIRPERSON: Okay Mr Pretorius.

ADV PRETORIUS SC: I am afraid that clarity alludes us Mr Zwane so let me try once again. You on your instruction initiate or have initiated by the officials an open tender process for the construction of houses in the Free State for 2010/2011. Correct? You nod, yes.

MR ZWANE: The open tender was?

ADV PRETORIUS SC: 2011. Tenders close April the 16th a final decision is made for the establishment of a
20 consolidated list of contractors on the 28th of July. Correct?

MR ZWANE: Yes, yes Chair.

ADV PRETORIUS SC: On the 30th of June you take a list to EXCO you say that list was the expired database list. Correct? You nod.

MR ZWANE: I am saying that that list was the list that we found there and it may as well be a list that was that to expire.

ADV PRETORIUS SC: Well it had expired but be that as it may it was a historical list according to you. Correct?

MR ZWANE: Yes.

ADV PRETORIUS SC: Did you not tell EXCO look we have an open tender process for the establishment of a new list of contractors because you gave them a list you
10 asked them to approve that list and they approved that list whilst the tender process was underway and they actually told you at that meeting to start constructing houses.

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: So they were saying to you this is the list that you must now use. Correct?

MR ZWANE: That is correct.

ADV PRETORIUS SC: That list certainly the list of September included people who had not tendered at all in the open tender process and included people who were
20 disqualified during the course of that process. It seems to me the only explanation can be is that the MEC together with EXCO had their own plan of who was going to construct houses and on what basis persons would be selected and that had nothing to do or no relationship with the open tender process.

MR ZWANE: Well Chair that is not my understanding...[intervene]

ADV PRETORIUS SC: Well let us look at the minutes.

MR ZWANE: ...of the whole process.

ADV PRETORIUS SC: If you could to page 439 of FS21. Now I did speak to you before the proceedings started Mr Zwane and said that in fairness to you I would give you an opportunity to look at that minutes and read it and think about it.

10 **MR ZWANE:** Chair I think I must just share on this point appreciate that fact because I had raised a concern earlier on that...[intervene]

CHAIRPERSON: That you had not had a chance to read certain documents.

MR ZWANE: No, this file was not with the files in my possession so I appreciate the fact that I am being given an opportunity to go through these files.

CHAIRPERSON: Yes.

MR ZWANE: Yes.

20 **CHAIRPERSON:** No that is fine.

MR ZWANE: You said page 423?

ADV PRETORIUS SC: 439 of the S21 .

MR ZWANE: 439.

ADV PRETORIUS SC: Again the black numbers.

CHAIRPERSON: Yes, Mr Pretorius.

ADV PRETORIUS SC: Have you read it?

MR ZWANE: I have read it Chair, thank you.

ADV PRETORIUS SC: Now this is a minutes of the meeting of the EXCO cabinet on 30 June 2010.

CHAIRPERSON: Or resolution rather than minute Mr Pretorius?

ADV PRETORIUS SC: I am sorry?

CHAIRPERSON: Resolution rather than minutes I think.

ADV PRETORIUS SC: Well yes it is a resolution which
10 would appear in the minutes but be that as it may it is a resolution that was taken at a cabinet meeting on 30 June 2010, it is an EXCO resolution. Do you see that?

MR ZWANE: I see it Chair.

ADV PRETORIUS SC: Now before we get to the resolution you would have presented to the EXCO a report, a briefing. Correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: What would that briefing contain, can you recall because I must just say that we have tried
20 our best to obtain that report that simply appears to be unavailable?

MR ZWANE: I also tried my level best to go back and that is when I was told that you have all the information because we had to subpoena EXCO I was told that the minutes of EXCO are – cannot be distributed unless there

is an order. So I tried my level best also to have some information around this I could not Chair.

ADV PRETORIUS SC: Let us not spend too much time on it we cannot obtain the report.

MR ZWANE: Yes.

ADV PRETORIUS SC: And we made every effort to obtain your report. Can you help us and tell us what you said in the report?

MR ZWANE: Well Chair I think I would not be doing
10 justice or I would not be doing justice.

CHAIRPERSON: Well I think Mr Pretorius cannot be asking more than the main features of the report that you can remember obviously it's been quite some time and if you have left out some things one would understand because there has been a lapse of a long time.

ADV PRETORIUS SC: You see it is an important report if I may just interject Mr Zwane because it would reveal your knowledge of how the list of contractors was compiled the standards applied. Whether you informed them of the open
20 tender process or not and it would inform us as to what EXCO's knowledge was, it is a very important document one would have thought that it exists somewhere but we have been unsuccessful but I interrupted you please go ahead.

MR ZWANE: Thank you Chair let me try and I hope that it

is not used against me in future because I may be told that this is what you said in your affidavit and I can say for record purposes I cannot remember exactly what I said I think that should go on record.

But in the main it looks like I presented a list of contractors that were ready to can continue building houses and that list was rapid in terms of the requirements whether people have a company that is registered with HPRC. Whether they have a VAT certificate those issues
10 and the other issue was that the question of the criteria was raised by EXCO in this meeting. Here I should say that from reading this it tells me that EXCO had not interrogated me to the point that show us contractors were the woman, disability and so forth and so on that is broadly that I can remember, Chair.

ADV PRETORIUS SC: Well paragraph A of the resolution reads:

“The member of the executive council for Cooperative Governance and Traditional Affairs and
20 Human Settlements” - that is yourself.

MR ZWANE: Yes.

ADV PRETORIUS SC: “Briefed the executive council with regard to the vetting and profiles of all companies listed in the report involved in housing projects in the province.”

So it appears that you would have reported by giving them a list of companies and information with regard to their profiles and vetting process. That is what appears at least from Sub A here of the resolution.

MR ZWANE: Yes.

ADV PRETORIUS SC: B says:

“The executive council noted and agreed to the information given to the executive council by the department on housing allocations.”

10 In other words, that list must also have included the allocation of how one tracks. How many houses each contractor was to build.

MR ZWANE: Yes.

ADV PRETORIUS SC: Correct.

“It is further directed that the 1 August 2010 should see the implementation of the construction of houses by these companies.”

So what your report proposed and what EXCO decided was to approve a list of companies to allocate houses for
20 building by those companies. Correct? And that that would be the basis upon which construction would start on the 1st of August 2010. Correct?

CHAIRPERSON: Which was about three days or so after the Premier signed that resolution, he signed on the 28th of July. So in two, three days’ time those companies were

expected to start building houses.

ADV PRETORIUS SC: That is what the resolution says on your proposals.

MR ZWANE: Chair the 28th of July I see our signatures here. Paragraph 3 says:

“It further directed that the 1st of August 2010 - oh I hear what you are saying - should see the implementation of the construction of houses by these companies.”

10 You are right Chair, ja.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: So it seems – ja let me ask you this question. Did you tell EXCO look I know that I have made a proposal, I know that I am putting this proposal of who should be appointed and how many houses they should get to enable them presumably to start on 1 August. But I wanted to tell you that there is a parallel process on the go for the selection of contractors through an open bidding process. Did you tell them that?

20 **MR ZWANE:** I think they should have known it I should have reported it Chair.

ADV PRETORIUS SC: Yes.

MR ZWANE: Ja, because in the course of building houses if there is contractors from the database of the previous – my predecessor had lapsed a process of creating a new

database should have not waited for me. It goes without saying that if I arrive around June I might not be sure about the date houses are already being built out of a particular list and that list is part of this list that I sent to EXCO.

Having in mind that this list was expiring a new list which will be a database should be compiled out of an open tender. You had just said that the information that you have says this list had expired. If this list had expired
10 I accept that I did not, I was not aware that this list had already expired for us to use it for 2010 because nobody Chair raised any concern out of that list.

CHAIRPERSON: Okay let me ask this Mr Zwane in the light of this resolution of EXCO in the Free State Province which approves a certain list of contractors for purposes of building houses and says the building of houses should start on the 1st of August 2010 as the implementation of the construction of houses by these companies.

Did you go to EXCO with a list of contractors at a
20 time when the open tender process was still ongoing and said to EXCO here is a list of companies that I want you to approve who must construct houses. Is that what you did?

MR ZWANE: Yes, Chair.

CHAIRPERSON: And so – but that is very strange the open tender process the companies or contractors who

were going to win the tender out of the process were they going to build houses under the same project or a different project?

MR ZWANE: Well let me try to answer that question Chair and I think I will rely on the forensic audit.

CHAIRPERSON: Yes.

MR ZWANE: Seemingly if you look at paragraph 5...[intervene]

ADV PRETORIUS SC: Just for the record my apologies
10 for interruption you at FS15, 523 just for the record.

CHAIRPERSON: Paragraph 5 where?

MR ZWANE: FS15, 523 Chair for the record.

CHAIRPERSON: Mr Zwane you are going to be a lawyer soon so after this process you will be very good with this things.

MR ZWANE: No I have already applied.

CHAIRPERSON: You have already applied. 15, Mr Pretorius repeat I want to see where he is referring to.

ADV PRETORIUS SC: FS15, 523 sorry for interrupting.

20 **MR ZWANE:** No that is okay.

CHAIRPERSON: Yes, just wait until I have got the file. It is in this one. Oh okay please repeat the page for me on Bundle Free State 15.

MR ZWANE: 523, Chair.

CHAIRPERSON: 523.

MR ZWANE: All black numbers.

CHAIRPERSON: 523?

MR ZWANE: Yes.

CHAIRPERSON: Black numbers?

MR ZWANE: Yes.

CHAIRPERSON: Good, yes and then you said paragraph?

MR ZWANE: Paragraph 5, Chair which starts with the original lists.

CHAIRPERSON: Sorry at 523 you said?

10 **MR ZWANE:** Yes, FS15, 523 black numbers.

CHAIRPERSON: I have got that is part of the open water report is that right?

MR ZWANE: Yes.

CHAIRPERSON: And that has got a page that has got a lot of bullet points.

MR ZWANE: Those bullet points I refer to them as paragraphs.

CHAIRPERSON: 1, 2, 3, 4, 5 the one that says this original list?

20 **MR ZWANE:** Yes.

CHAIRPERSON: Okay, alright.

MR ZWANE: Chair if you look at the original list identifies 105 projects totalling allocations of 20 600 houses and then the bullet point underneath says:

“On the 10 September 2010 the MEC approved a

second allocation list identifying 106 projects and contractors in relation to 21 050 allocated.”

To the best of my recollection Chair this would mean there were two overlapping processes.

CHAIRPERSON: Just hang on one second Mr Zwane, yes continue.

MR ZWANE: This would mean there were two overlapping...[intervene]

CHAIRPERSON: Projects.

10 **MR ZWANE:** Yes.

CHAIRPERSON: Yes.

MR ZWANE: Because you will remember even when the Chair was interviewing one of the witness the accounting officer he had said in his affidavit which I am not confirming the correctness thereof or otherwise houses had not been built up until October for that financial year. Meaning there were houses that were built, yes.

CHAIRPERSON: Financial year?

20 **MR ZWANE:** Yes, so it is my understanding Chair that there was always that overlapping of allocations I do not have much information to bid that point because I am relying on my recollection.

CHAIRPERSON: So is your understanding therefore that the list that you took to EXCO at the end of July...intervene]

ADV PRETORIUS SC: June Chair.

CHAIRPERSON: Oh is it June I thought it was July.

ADV PRETORIUS SC: 30 June, Chair.

CHAIRPERSON: Okay 30 June.

MR ZWANE: Yes.

CHAIRPERSON: Okay that list was of contractors that you wanted to be approved for purposes of building houses that came from the previous financial year in terms of allocation. Is that right?

10 **MR ZWANE:** Whilst we are waiting the process of the open tender process.

CHAIRPERSON: Yes.

MR ZWANE: To also finish and allocate, that is my understand yes, Char.

CHAIRPERSON: Yes but the difference that you are emphasising is this that the open tender process that had been initiated on your instructions related to houses that were to be build in terms of the allocation for 2010/2011 financial year but the houses that were to be built by the
20 contractors that you took to EXCO on 30 June 2010 those houses related or belonged to the allocation for the 2009/2010 allocation.

MR ZWANE: That is my understanding yes, Chair.

CHAIRPERSON: Okay alright but the ones then relating to the 2009/2010 financial year had there been an open

tender process with them or were they being approved simply because they happened to be on the database no bids had been invited in terms of the public? You should know because you took them to EXCO.

MR ZWANE: No Chair, with the humility I am smiling because I thought I had made this point earlier when the Chair said ...

CHAIRPERSON: Well you made the point that one of the officials said that before the MEC could award contracts on
10 the basis of the data base.

MR ZWANE: On the data base.

CHAIRPERSON: But I just want to confirm that this one that you took to EXCO was one of those or was it one like that?

MR ZWANE: This was – according to my understanding this was a product of a data base that was formulated by my predecessor Chair. Remember I had said according to the information that was readily available there that was also testified to be correct by one of the witnesses here. You will go into an open once the data lapses and that open tender
20 will create a data base and that data base will then be used for the next five years and after that...

CHAIRPERSON: Whenever houses – whenever there was a need to build houses.

MR ZWANE: In the Province.

CHAIRPERSON: So you – you get contractors to be put on

the data base effectively even if there is no housing project just to have them.

MR ZWANE: Yes.

CHAIRPERSON: As and when a project – a housing project comes up or is approved then you do not invite tenders from the public in general you just go to this data base and then choose the ones that will build those houses?

MR ZWANE: For record Chair the situation was that there is never time where there is no houses to build.

10 **CHAIRPERSON:** Yes.

MR ZWANE: For the longest time this department has been there and even before.

CHAIRPERSON: Yes.

MR ZWANE: But Chair is correct that that data base will then be used to build houses in that province for the next five years.

ADV PRETORIUS SC: Well Chair I might – I might just interject there. It is clear from the Treasury Regulations under the Public Finance Management Act that for contracts
20 of this size you cannot just appoint.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: It has to go through a process from a data base. But I do not want to confuse things further at this stage. It cannot work like that Mr Zwane that is the law. You know the PFMA and the Regulations under the PFMA.

But are you suggesting that when you went to EXCO on the 30 June the subject matter of discussion was the completion of the contracts for 2009 and 2010? That cannot be.

MR ZWANE: Well that...

ADV PRETORIUS SC: And I will tell you why it cannot be in a moment but I – let me give you a chance to put your – nail your colours to the master.

MR ZWANE: Chair that is actually correct because as I have said there is no time lapses contractors build houses – it
10 does not happen that during the end of the financial year every work stops and new contractors starts to build. There is an overlap.

Some houses are at the wall plate, others are still on the foundation level of the previous year. So normally you do not allocate new contractors because the financial year has lapsed to finish the – you allow these contractors that were there to finish their work and continue allocating work for the new financial year. I guess that is why a data base was used. So ja that is my understanding Chair.

20 **CHAIRPERSON**: So when you – when you invite the public for purposes of – so you invite the public to respond to whatever you say. I do not know what you said but you want to – you want contractors that are going to be put on the data base.

That is what you want actually when you issue an

invitation to the public. And you say that data base will be – those who succeed being put on the data base it is from them that the department will from time to time over the next five years appoint contractors to build houses. That is the – that is the idea.

MR ZWANE: That has been the idea Chair.

CHAIRPERSON: That has been the idea.

MR ZWANE: Up until I think around 2012.

CHAIRPERSON: Until about 2012?

10 **MR ZWANE:** Ja where I think the concern was raised by Auditor General.

CHAIRPERSON: Yes.

MR ZWANE: That those process should follow PFMA as well to the letter. Yes Chair.

CHAIRPERSON: But now when you took this list that you took to EXCO on the 30 June did you think that this process was in accordance with the PFMA? You remember you said the PFMA is the Act that you really familiarised yourself with not the Housing Act. But did you think that was in
20 accordance with the PFMA or is that something you did not apply your mind to?

MR ZWANE: Chair I alluded to the fact that I asked about this data base that is when you will remember even the – on the 25th the issue of Housing Act was introduced in this house.

CHAIRPERSON: I thought that it was much later in the year around September/October when you were told about the Housing Act after you said to your department – to the officials what is the way forward?

MR ZWANE: Yes.

CHAIRPERSON: After the open tender system had been abandoned. I thought that is when...

MR ZWANE: Okay.

CHAIRPERSON: Am I correct?

10 **MR ZWANE:** You are correct Chair.

CHAIRPERSON: Yes. We are now talking about 30 June much earlier.

MR ZWANE: Ja. No as I – as I am saying that was a norm Chair not only in the Free State. I had an opportunity to talk to my colleagues – former colleagues in other provinces. They are confirming actually that Housing Act and the National Housing Code would be followed.

20 And this process I am talking about of a data base was challenged by AG and it meant the country or provinces went to follow suit on what PFMA says. It was not a situation that was obtaining there in Free State alone as I understand it Chair.

Because I was also worried when I came out of this commission to say was I the only one doing this thing? And I was told no. This is what used to happen and I also went

back to the former DG Ralikontsane. He confirmed that that was the case.

CHAIRPERSON: But going back to my question. As at the 30 June when you took that list to EXCO.

MR ZWANE: Yes Chair.

CHAIRPERSON: Did you understand this way of doing things to be in accordance with the PFMA?

MR ZWANE: The one of...

CHAIRPERSON: The one of...

10 **MR ZWANE:** The data base.

CHAIRPERSON: Of using a data base to appoint without an open tender.

MR ZWANE: Well according to the – to the data base Chair I guess the – I am putting it as a layman of course.

CHAIRPERSON: Ja.

MR ZWANE: According to the data base on the PFMA the issue of a data base is there but it has limitations in terms of the amounts. So I knew about it that you get into a data base and to build houses and at a point where you do – you
20 allocating your data base that issue of the amounts normally will not arise up until you do your allocation.

Because the allocation will then determine that how many – what is the value of the contract in terms of the number of houses given to a particular contract. That is when this issue will arise.

I did ask about that Chair because I was aware of it and I was told that no this has been happening like this for a number of years so there is nothing wrong about it. And that continued Chair even beyond my time. So until the AG raised the point around it and it was stopped.

CHAIRPERSON: Is – is your short answer therefore to my question that yes it was your understanding as at 30 June when to took that list to EXCO that what was being done was in accordance with the PFMA?

10 **MR ZWANE:** Yes Chair.

CHAIRPERSON: Okay alright. Mr Pretorius.

ADV PRETORIUS SC: I want to go back because it seems that your answer to the contention that there was a tender process on the one hand and another process on the other which was in complete contradiction to the tender process is that oh no on the 30 June 2010 all that the Cabinet was doing was completing the 2009/2010 allocations.

Now I want to put it to you that that is simply incorrect. The 2009/2010 arrangements were cancelled.

20 That is why you instructed a new tender process to take place. They were cancelled as you have already explained because the Premier said we want bigger houses and then there was a dispute.

So that whole process was set aside and that it had to be started afresh. So the 30 June was not just a

completion of what happened in 2009/2010. That was history.

CHAIRPERSON: What do you say to that proposition?

MR ZWANE: Chair I think here we should look at the issues of dates. When was the dispute laid, by these contractors that are here and how are we going then to respond to the work that they should have continued doing? Because the fact is that not all the houses were finished when the tender came to a halt.

10 Now that contractors who were building at that moment it would have made sense that they should continue finishing their job. I do not dispute the fact that there was a dispute I think I have said it and the contract was cancelled.

ADV PRETORIUS SC: Mr Zwane.

MR ZWANE: Yes.

ADV PRETORIUS SC: The evidence is clear and you can go to the Open Water Report if you like. You did not go to EXCO to say we have got to finish what we did in 2009/2010. You went to EXCO to tell them what you were going to do
20 during 2010/2011 to complete the housing project for that year. That is point number 1. Am I correct?

MR ZWANE: You are correct Chair.

ADV PRETORIUS SC: Thank you. You in your report to EXCO not only said these are the contractors – not these are the contractors that must finish the work – these are the

contractors that must build houses in the 2010/2011 year in the 2010/2011 project and you allocated houses to these people – to these contractors for the 2010/2011 year. Correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: That was done – the selection of those contractors and the allocation of houses to those contractors as per your report was done without any formal tender process. You knew it and EXCO knew it.

10 And they knew that against the background of the fact that there was an open tender process parallel which was allowed to die a quiet death in fact. That is what happened.

So this process of you and EXCO selecting contractors and allocating houses to them was done outside of the formal tender process – the formal tender process was allowed to die an unnatural death in this case.

MR ZWANE: Can I respond Chair.

ADV PRETORIUS SC: Please.

20 **CHAIRPERSON**: Yes.

MR ZWANE: Thank you. Chair I would not have said and I do not think Chair even my successor said it. The houses that are built into 2010 we normally say they are houses – they are 2010 houses.

In that year there is an overlap of houses coming

from previous years – let me say years not even a year that will find others – it is 2010 others still comes from 2008 that is the situation was it obtains on the ground. Now I say this is 2010 because why in 2010 but if you go to the details I think that is where we are going to live. If you go to the details in terms of the bars and financial systems they will reflect that information. That is why I know about it.

That actually if you go back you will find that a house which was supposed to be finished in 2008 has actually
10 overlapped to 2010 and as I present the number of houses we are going to be built in 2010 I include all those houses and if in terms of the correct putting of this issue is an issue I understand that.

But I would have still said these two contractors separate list are the 2010 contractors that are building houses in 2010. Because the fact of the matter is that in 2010 between February to this – up to this time there was a lull in terms of building houses in the Free State. So I – I thought that – well I explained it ..

20 **ADV PRETORIUS SC:** I think you have answered in a way that clarifies the issue now in your most recent answers but I just want to point something out.

MR ZWANE: Okay.

ADV PRETORIUS SC: Last time you gave evidence the general thrust of your evidence was that you did not know

what was going on. This was all being done by the officials. Now it seems you know precisely what contractors were appointed, which were finishing 2009 – 2009/2010 contracts, what you were presenting to EXCO with allocations determined or approved by yourself. You now express detailed knowledge. Is there an explanation for the sudden change between the last time you gave evidence and the time you give evidence now?

MR ZWANE: Yes Chair there is.

10 **ADV PRETORIUS SC**: What is it?

MR ZWANE: Two issues Chair. I have – I must consider that in my life I have never had this amount of work that is behind me to go and conclude in two weeks. These are the details that under normal circumstances will be an administrative detail. And – and I thought it will help for me to go and read and try and give clarity.

Because any way these administrative questions are coming to me irrespectively of the fact I am saying this was the work according to PFMA that was supposed to be done
20 by officials. Remember Chair those commission had to give me time to go and familiarise myself with an Act.

CHAIRPERSON: Yes with the Housing Act.

ADV PRETORIUS SC: Alright so do I understand you correctly when you said on the occasion that you did not remember or that these were matters that resided within the

knowledge of officials in your department that was an honest answer to the position at the time?

MR ZWANE: That was an honest answer Chair but I – I also should add that I did say last time that one of the ways of interacting with an administrative work was through reports that will be brought to us as Politicians.

ADV PRETORIUS SC: The point I am making now is that your evidence now appears to be an attempt to make sense of all the documentation you have written – read in the
10 meanwhile?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: It is not your own memory and your own recollection. You have referred to documents and you like us are trying to wade through this mountain of sometimes contradictory information. But I am really asking what you can remember not – we can just as you can go through all these documents. They are there for everybody to see. But what I want to put to you are certain facts that reside in your memory rather than your interpretation of the
20 documents.

MR ZWANE: Well Chair I think why I took this approach because I was convinced that it would not be a sensible thing to continue to say I cannot remember. Remember last time we spent quite a sizeable amount of time.

CHAIRPERSON: Ja.

MR ZWANE: Emphasising the point that how can you not remember this simple fact?

CHAIRPERSON: Yes.

MR ZWANE: So I thought I should try and consolidate with the little knowledge that I still remember.

CHAIRPERSON: Basically you are saying that you have had a chance to look at certain documents.

MR ZWANE: Yes.

CHAIRPERSON: And that has helped you to refresh your
10 memory in some case. In some cases it has revealed some details that you may not have been aware of?

MR ZWANE: Exactly Chair and some of the details that I have already forgotten.

CHAIRPERSON: Ja.

MR ZWANE: Where – ja – for an example if you say Housing Act.

CHAIRPERSON: Yes.

MR ZWANE: At that particular time it was an animal that I would have said no I cannot remember anything here.

20 **CHAIRPERSON:** J.

MR ZWANE: But if I sit down and peruse this Act then the memory came to say you once read this thing somewhere and I may have not had the details as they are required but as a layman I had to spend time to try and assist this commission as I have promised last time Chair. Thank you.

CHAIRPERSON: Mr Pretorius.

ADV PRETORIUS SC: Well let us take it – take a step back.

The first proposition I would like to put to you is that on the 30 June and I think you have now confirmed this what EXCO was considering was who would build which houses for the 2010/2011 financial year? Correct?

MR ZWANE: Correct Chair.

ADV PRETORIUS SC: They were not saying look we have had some contracts in existence in 2009/2010 we must
10 complete those contracts. That was not what was happening. Because all the documentation to which you have now had the benefit of referring is clear. Those contracts, those allocations were cancelled and a new system under your instruction had to be initiated by way of open tender. Correct?

MR ZWANE: I – I thought that – that part is correct but not complete.

CHAIRPERSON: Yes.

MR ZWANE: I had said the houses that – when this – when
20 these bids came we cancelled contracts of people. There were milestones that were still left to be finished. It would have been irresponsible of me as a MEC to leave those milestones and continue for a new tender that will build new houses.

We had to find a way of ensuring that the milestones

uncompleted as they are should be completed. And to my best recollection Chair is that there was no parallel processes in terms of these allocations. There was an allocation in 2010 that would have completed the work left and I can say Chair that incomplete houses as we go to the minutes of EXCO when we find time you will see that they were also issue and incomplete houses do not normally reside within a particular financial year.

So these two processes – this one was to complete
10 what has not been completed and this one would have still had its allocation away from the allocation of the year.

CHAIRPERSON: Well let me understand this. I would have imagined that during each financial year there would be an allocation for the construction of houses. Am I right about that or no – or not really?

MR ZWANE: That is correct Chair.

CHAIRPERSON: That is correct. Now you would know that you have got X budget for houses during that financial year.

MR ZWANE: That is correct Chair.

20 **CHAIRPERSON:** And you would then decide how many house would be built with that housing budget, is that right?

MR ZWANE: Of that particular financial year.

CHAIRPERSON: Of that particular financial year?

MR ZWANE: Yes Chair.

CHAIRPERSON: Yes. And you would during the same

financial year you would appoint contractors who would build houses based on that financial years' allocation?

MR ZWANE: Yes Chair.

CHAIRPERSON: That is correct. Now that seems to suggest to me therefore that you would not go into the next financial year without having appointed the contractors who would construct the houses based on the previous years' financial allocation. Am I right?

MR ZWANE: If the Chair could be kind enough to?

10 **CHAIRPERSON:** Okay I am saying that if the position is that for each financial year when you have been allocated the housing or a budget for building houses for that financial year you would appoint contractors who would build houses on the basis of that financial years' budget in that same financial year.

MR ZWANE: That is correct Chair.

CHAIRPERSON: Yes. I am suggesting therefore that I – I do not see how you would go into the next financial year not having appointed contractors to build houses based on the
20 previous financial years' allocation.

So in other words I would not expect you in 2011 to be appointing contractors to build houses on the basis of the allocation for 2009/2010 allocation. Because I would have expected that those would long have been appointed.

If come 2010/2011 they still have not finished their

allocation of houses that they were supposed to build or they have built up to windows or foundation and they – they have to continue. You do not have to appoint them afresh, they just continue. That is what I would expect. Is that not how it happens?

MR ZWANE: That is correct Chair.

CHAIRPERSON: Yes. So what circumstances would have required you in 2010 30 June to appoint contractors who were supposed to build houses based on the allocation –
10 financial allocation for houses for the 2009/2010 financial year?

MR ZWANE: The State of the Province address Chair to earlier and in that State of The Province Address, there was an issue of houses in the Free State. Move it from 45 metre square and ...[intervenes]

CHAIRPERSON: To 50.

MR ZWANE: ...to 50 square metre. And this bid arise. And even this bid arises, people take you to court. You... they are not going to build these houses. These are the people
20 the Chair said they are... They are building. Under normal circumstances, they will continue ...[intervenes]

CHAIRPERSON: Until they are finished.

MR ZWANE: ...until they are finished.

CHAIRPERSON: H'm.

MR ZWANE: That is why the chairman is up to 2010 Chair

as we deal with them here. Under normal circumstances, I did not appoint a contractor when I came in 2009.

I continued with those contractors who were building and those contractors would have gone to finish whatever they were supposed to finish.

I must just add that should we have taken a decision we want to deal with, maybe to show houses and so forth, then we will take from the database that we are creating. I think Chair in a nutshell it is correct.

10 **CHAIRPERSON**: H'm. Yes, but I want to connect. Maybe there is something I am not connecting. Contractors who had already been appointed in the previous financial year had a dispute with the department because the premier increased the size of the houses. Is that right?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: But was the premier saying that the size of the houses would be increased including those which had come from the previous financial year, not like new projects?

MR ZWANE: It goes back to my earlier point that in 2010
20 ...[intervenes]

CHAIRPERSON: Ja?

MR ZWANE: ...as the premier spoke, it would affect everybody that build houses.

CHAIRPERSON: Immediately?

MR ZWANE: Immediately.

CHAIRPERSON: Okay alright. Now the issue of the dispute with the department and how has this dispute resolved?

MR ZWANE: If I can recall Chair.

CHAIRPERSON: H'm?

MR ZWANE: We were mandated I think a few of us.

CHAIRPERSON: H'm?

MR ZWANE: I was part of those people who were mandated after the contractors had taken us to court.

CHAIRPERSON: H'm.

10 **MR ZWANE**: To go and engage them. To say: No, come down. Let us talk. Let us see how we can resolve. And what assisted us in the discussions, trying to resolve this, was that Exco had agreed to... Remember, the issue as you build houses at the same price of fifty ...[intervenes]

CHAIRPERSON: Yes, that was the dispute. Ja.

MR ZWANE: That was the dispute.

CHAIRPERSON: Exco agreed to top-up.

MR ZWANE: To top-up by 2000.

CHAIRPERSON: Yes.

20 **MR ZWANE**: Which went to seventy-two.

CHAIRPERSON: Yes.

MR ZWANE: So finally we could resolve those issues and to my best recollection, some of them, I cannot remember the number, came back to be part of the database of ensuring that these houses are build. Yes.

CHAIRPERSON: So are you saying, the resolution of the dispute by topping-up did not mean that those contractors, all of those contractors, who had a dispute with the department were then prepared to continue and finish? You were to appoint some new ones to finish houses that had been started by others?

MR ZWANE: The resolutions was not made a point when the decision of building the houses Chair. The decision came with 50 000. There was a dispute. People went to
10 got../ where to sit down.

And I must say that officials also engage me and we engaged Exco in terms of feasibility of these 50 000 for 50 square metre house. At the particular time, I cannot remember, when should it take but it was a later meeting.

Exco then agreed that no we will top-up. We will go to seventy. Then the task which was given to us was to go and convince these contractors to come back.

Your question is that, they did not come back, all of them? I ...[intervenes]

20 **CHAIRPERSON:** Also who had the dispute.

MR ZWANE: To the best of my recollection Chair. I do not... I do not recall all of them coming back. We had to open that.

CHAIRPERSON: You see, my difficulty is that. If that list of 30 June that was approved by Exco or related to the list of

the contractors who had the dispute with the department because the department now wanted them to construct houses, build the houses on the basis of a price that had been agreed upon on smaller houses.

I would not have expected that you would take it to Exco for approval because those people had a contract. So they did not need to be approved by Exco. That is what I am trying to understand.

MR ZWANE: Ja, Chair. I think there is an overlapping of
10 issues.

CHAIRPERSON: Yes.

MR ZWANE: That there was a decision taken and if I am not mistaken, also this decision was taken at the Exco level when we reported that these contractors had laid a dispute, that okay, they have laid a dispute, council to be a contract.

Ensure that we then have contractors willing to continue at the same price of 50 000. That issue had to be engaged in subsequent meetings, going back to the department, talking to ourselves, understanding the financial
20 implications, meeting with contractors themselves who had pointed out to us but it is not feasible.

These contractors were here to make profit. We are losing. The making(?) that would have made. So it is not feasible that we can build houses for free. So we engaged Exco when that decision had been taken of that the work

done have contractors that will finish.

And at a later stage, as we have convinced them, I cannot just remember but properly but I think they were also made those of them who agreed to come back, part of the process. That is my recollection Chair.

CHAIRPERSON: H'm. Mr Pretorius.

ADV PRETORIUS SC: You were interviewed by Open Water Forensic Accountants?

MR ZWANE: I cannot remember, Chair.

10 **ADV PRETORIUS SC:** Well, they say you were. And they say, MEC Zwane gave them certain information. Now ...[intervenes]

MR ZWANE: I cannot remember, Chair.

ADV PRETORIUS SC: ...I am not going to try and unravel, quite frankly, the facts which do not appear to fit neatly into any timeline or to any consistent sequence. Safe to put to you certain what appeared to be incontrovertible facts, right?

MR ZWANE: Yes, Chair.

20 **ADV PRETORIUS SC:** The allocations, 70 600 and you may recall this number, allocation scheme, contracts however they arose, were cancelled arising out of the need to build new houses but different specifications and arising out of the dispute with the contractors. That was cancelled. That was put aside. Correct?

MR ZWANE: According to this report. Yes, Chair.

ADV PRETORIUS SC: Well, according to the evidence of more than one source. You then, we learnt today, instructed for the construction of houses in 2010/2011 an open tender process the initiated and concluded. Correct?

MR ZWANE: Correct, Chair.

ADV PRETORIUS SC: That ultimately died an unnatural death because it was cancelled, the tender bid evaluation period had expired. Correct?

MR ZWANE: That is correct.

10 **ADV PRETORIUS SC:** At the same time as this process was being concluded, you reported to Exco with a list of contractors and allocations which included the building of new houses. Correct?

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: Now whether those are parallel processes, whether they conflict. We need not debate. That is just a semantic debate. The fact is, that there was an open tender process and there was an allocation of contractors for the building of new houses in 2010/2011
20 presented to and approved by Exco. Correct?

MR ZWANE: That is correct.

ADV PRETORIUS SC: And not only would that have been to build houses, different from houses in previous years, bigger houses but the allocation list would include new entrance onto the list, not just old contractors who had to put a roof

on the house. Correct?

MR ZWANE: [No audible reply]

ADV PRETORIUS SC: They were disabled people that had now to be included.

MR ZWANE: On the open tender.

ADV PRETORIUS SC: No, no, no. Not on the open tender.

MR ZWANE: Okay.

ADV PRETORIUS SC: On the 30th of June, Exco said to you on your new allocation list, make sure there are youth
10 and women formations.

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: Correct. So that is not just old contractors.

MR ZWANE: Ja.

ADV PRETORIUS SC: This is a new list. Correct?

MR ZWANE: [No audible reply]

ADV PRETORIUS SC: The point about this new list. It is formed and formulated at the discretion, whether your discretion or whether the discretion of the officials, in
20 implementing the guidelines of Exco. Correct?

MR ZWANE: Yes, Chair.

ADV PRETORIUS SC: Alright.

CHAIRPERSON: Now, Mr Zwane. From what you have told me, it seems to me that it could not have been correct to say when you met with the officials of the department after the

open tender process had been abandoned when you asked them what is the way forward and they told you that the way forward would entail appointing contractors from the database.

It could not have been correct that you were hearing about this way of doing things for the first time. I am under the impression, and you must tell me if my impression is not correct.

I am under the impression that last time you were saying
10 when they told you that that was new to you. So you asked them: Well, why did you not tell me all along... I do not know whether you said: Why did you let me waste time if we could... there is a short way? Did I understand your correctly?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Yes. But from what you have said with regard to taking the list of contractors to Exco, it seems that you would have known at that stage that there had been no open tender process in regard to those and they were taken
20 from a database or do I misunderstand something?

MR ZWANE: No, Chair you do not misunderstand some things.

CHAIRPERSON: Yes. H'm. So did you know... if you knew in June that the department could do... could just appoint contractors on the database and give it... let them build

houses, then why did you say to them you did not know that there was a shorter way later in the year?

MR ZWANE: No, thank you, Chair. The... there are two issues. The issue that I raised as I did not know, as Chair has correctly put it. This was a process where an open tender that had lapsed did not see its light of the day.

CHAIRPERSON: Was that taken to its conclusion?

MR ZWANE: Yes.

CHAIRPERSON: Ja.

10 **MR ZWANE**: Now a database is formed, not out of an open tender. The previous occurrences, as I understood them, you brought your open tender, go through a series submissions and create your database.

Now they have a process where the open tender has lapsed. Now from where I am seated, you could not have a database without having an open tender. Back to where an open tender, then a database, then a list taken out of a database.

I did not know that there would... there could be a
20 process of coming up with a database when we have not gone through the open tender.

The earlier issue that I made, as I have alluded to earlier on, is that there would be an open tender and out of that open tender there would be a database that would be used for five years.

And when that lapses, open tender, then database. That is how I understood these two processes not to be in syncd. Yes, Chair.

CHAIRPERSON: Except that you said your understanding of what the officials told you at that meeting was that the list that was going to come out and I guess that would form the database, would come from... would be the contractors who had gone through this open tender process and had passed the test. In other words, therefore, those who would have
10 passed the test. You understand what I mean?

MR ZWANE: Yes, Chair.

CHAIRPERSON: That those would have passed the... that is what you said as I understand you.

MR ZWANE: That is correct.

CHAIRPERSON: So although later on, I think you said that you had an understanding that others from other databases would be included. Is that correct?

MR ZWANE: Those database Chair.... Yes, that is correct. Those databases would have to composed of contractors
20 who had passed the test. Who make ...[intervenes]

CHAIRPERSON: Yes.

MR ZWANE: Ja. So it does not make much of a difference. They are here and they have passed the test because there was a fair process of procurement to get them on that database.

CHAIRPERSON: But what then was new that they were telling you, which you did not know, if the list that they were going to create was one that had gone through an open tender process.

MR ZWANE: What was new Chair is that in this open tender process we had opted for had been undertaken notwithstanding that they were other databases that were still in existence that could have been used, according to this late information.

10 But for this particular purpose, because the database which was there before was lapsing. We had to get to a process, procurement process that will lead us to earlier(?) database for the next five years.

CHAIRPERSON: Yes, but as I understand the position. Your understanding already in June, maybe even before that, was that it was in order to award contracts to contractors who appeared in the database.

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Is that right?

20 **MR ZWANE:** That is right.

CHAIRPERSON: Now in that meeting with officials, the officials tell you, as I understand it: We are going to create a list of a database based on the contractors who had passed the test under this open tender system that we have just abandoned. Okay? And we will also take contractors

from other databases. Is that right?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Now on your understanding as you have conveyed it to me. Anyone... any one contractor who is on the database has gone through a certain open tender system.

MR ZWANE: That is correct, Chair.

CHAIRPERSON: So what was different that they were telling you that you were... that you did not know then?

10 Because you did say: Why did you not tell me? I wasted time. Or something like that. We wasted time with this process.

MR ZWANE: The process of an open tender Chair had to date, according to the legislation, a particular time before a tender can be closed.

The process that the officials were now engaging on was to take the databases that were already there that do not want a specific timeframe to be done.

20 This databases are here, all of them. They sit down, they compile a database out of them. I did not know that can happen and it is legally sound. I thought that the process that was be explained to me, that if this database lapses you will have to go into an open tender and create a new database.

You are changing(?) from the databases that are in

existence. That was new to me. What was the board to lose? I have indicated which I questioned and I was... the explanation came to me that you go into an open tender once in five years.

That I know even before the open tender lapsed as I alluded earlier on Chair. The Chair is correct. Yes.

CHAIRPERSON: So you say what you did not know is that the department could create a list of contractors from various databases. Is that what you say you did not know?

10 Without inviting contractors in terms of the public to submit their names.

MR ZWANE: That is correct, Chair.

CHAIRPERSON: H'm. Mr Pretorius.

MR ZWANE: Now before that Chair. Can I...

CHAIRPERSON: Yes, I was also looking at... we are two minutes, three minutes past five. Before we take the break, let us talk about how far we can go.

ADV PRETORIUS SC: Chair, we are not going to finish today. We have been involved, hesitate to say stuck
20 because I am here at fault, not just Mr Zwane in a particular set of issues surrounding the database and the tender process.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: Really what we wanted to do today was to deal with the advanced payment system.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: And so ...[intervenes]

CHAIRPERSON: We are not going to finish?

ADV PRETORIUS SC: We are certainly not going to finish because that is a whole section on its own.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: And I must take responsibility for introducing this topic because I asked the Welkom meeting, how was that database or on the basis of what list was the
10 Welkom meeting compiled and that took us back to the 30th of June which I was going to ask about ...[intervenes]

CHAIRPERSON: Well, maybe ...[intervenes]

ADV PRETORIUS SC: And it seems that we have not moved beyond that.

CHAIRPERSON: It showed that we... that maybe there was a lot of confusion or lack of clarity. So maybe you did not do anything wrong by letting us having a ...[intervenes]

ADV PRETORIUS SC: Yes, I would like to ask a few more questions to clarify that but...

20 **CHAIRPERSON:** Yes.

ADV PRETORIUS SC: But I am happy. We originally planned to go for six.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: I am happy to meet that requirement.

CHAIRPERSON: Yes, I am happy to do that as well. Maybe

let us take a break, a short break and then we come back.
We continue until six and we take it from there.

ADV PRETORIUS SC: Right, thank you.

CHAIRPERSON: Okay we adjourn. Let us adjourn and then we come back, at what? At quarter past or twenty past Mr Pretorius?

ADV PRETORIUS SC: I am in your hands.

MR ZWANE: It is fine Chair. Quarter past is fine with me.

CHAIRPERSON: Quarter past is fine with you. Let us say
10 quarter past. Okay.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV PRETORIUS SC: Thank you, Chair. Before we return to the original question, Mr Zwane, can I just clarify one issue? The list that you presented to Exco on the 30 June could not possibly have included entities that had passed muster through the tender process; the tender process only reached that conclusion much later, correct?

20 **MR ZWANE:** That is correct, Chair.

ADV PRETORIUS SC: And the list that you approved through your signature of the 10 September we know from analysis and I can take you there later, if necessary, included persons who had tendered but were disqualified and included persons who had not tendered at all. Did you

know that?

MR ZWANE: No, that I do not know.

ADV PRETORIUS SC: Well, that is a fact but if necessary we can get there later or just submit that to the Chair. Let us go back to the Welkom meeting, if we may, which is where we started, Mr Zwane. How did you decide who to invite to that meeting?

MR ZWANE: Well, Chair, the Welkom meeting to the best of my recollection was around October and these
10 processes had already been completed. So if I remember, I said they must invite all the contractors who were involved in building houses in the Free State.

ADV PRETORIUS SC: Would that have been your 10 September list?

MR ZWANE: Yes, it would have been my 10 September list and I guess it will not have necessarily excluded those who have not finished building houses earlier on.

ADV PRETORIUS SC: Alright, the meeting was chaired or attended at least by yourself, correct?

20 **MR ZWANE:** That is correct, Chair.

ADV PRETORIUS SC: And what the contractors apparently said to you was look, if you want us to finish houses in a hurry or on an expedited basis, at least we need help, correct?

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: Why could they not obtain materials themselves? After all, the contract with them would have required them to be able to finance the building of a house and to obtain materials by contracting with suppliers?

MR ZWANE: To the best of my recollection we were being faced with two challenges that I thought it will make sense to listen to them. The first challenge was that we were lagging behind in terms of the percentage that we needed
10 to achieve by national norms.

Number two, is that we were already heading for builders holiday which is your late November, the whole of December to go into mid-January next year. And that process came out with its own challenges for contractors because now they were required to go and have more material for the period, which under normal circumstances, they would have not had - been required to go and buy materials themselves. That is why they said to us you cannot expect us to be working on weekends, expect us to
20 go and work during holidays but you, as the department, you are not assisting in any way.

The material suppliers were going to close and the process we were trying to push to ensure that we catch up with where we are lagging behind was not going to happen if we did not assist contractors.

I think the last issue is that amongst the contractors were the so-called new entrants, the young, the disabled and some women and they would not have that capacity to buy material that would last them for the whole of December, late November, December to mid-January. I think those are the issues, Chair, I want to put in front of you.

ADV PRETORIUS SC: Are you saying that the suppliers would close down and therefore there would have to be
10 bulk buying and not everybody was capable of bulk buying?
Do I understand you correctly?

MR ZWANE: That is true, Chair.

ADV PRETORIUS SC: You see, because one would have thought that had a proper list of competent contractors been compiled that they could have dealt with these issues, did not need the department to intervene. The reason why the department intervened was they had to spend the money.

MR ZWANE: Chair, the fact of the matter is that we had
20 all agreed, as Exco, that we must try and transform the patterns of economy in the Free State and that was the norm even in the country, the BEE story. It means at a particular point, as government, we were going to be faced with a challenge of ensuring that we open up for new entrants, women, young people, those who were disabled.

And the other fact is that some experienced contractors, because of the movement of – the size of houses and so forth, did not come to the party, so we had to deal with that issue, Chair, under that understanding.

ADV PRETORIUS SC: Yes, but you did not deal with it through a proper tender process which would evaluate the competence of the bidders from what every category of person they emanated, you did it through individual – the exercise of discretion on the part of yourself or officials or
10 of Exco and it seems to me that the overwhelming evidence that we have heard to date, which is also documented in the review application and the judgment of the High Court, that the advance payment system was designed, at least in major part, to ensure that the allocation was spent. Would you concede that much?

MR ZWANE: To make sure that the allocation...?

ADV PRETORIUS SC: Was spent. The DORA allocation was spent.

MR ZWANE: I said last time when I was here, Chair, to
20 the best of my knowledge and my records will show you that I took leave, I worked in December. My priority, which I clearly communicated to the officials, even when I was saying to them they should all cancel their leaves in December, was to get houses built on the ground, was not just to spend money, take money to suppliers and through

national inflate expenditure when we have not done so.

That is why you will see that during the process of the time when the Minister spoke to me, I acted. I ensured I was there so that if there is a problem, the problem should be resolved, to ensure that houses are built and I am sure the reports will show you, Chair, that we did what we could to the best of our ability in terms of insuring that from the 21% that the Minister wrote us a letter on, by January according to the reports by the accounting officer,
10 we were at 62.

So that is my take, that I would not have resisted money being taken if we were failing to do the work. If the aim was to inflate, I would not have taken time, forfeit my holidays when every MEC is on holiday and work.

ADV PRETORIUS SC: We will come to the implementation.

MR ZWANE: Okay.

ADV PRETORIUS SC: In due course because that will reveal much of the true intent of the scheme but the
20 overwhelming evidence, documentary and oral evidence before the Chair has been that quite apart from other considerations, a major consideration of the advance payment system was to ensure that you could convince the national department that you were spending your allocation so that they would not take money away. It is

in black and white, we have been through it last time.

MR ZWANE: By building houses, Chair.

ADV PRETORIUS SC: Of course by building houses.

MR ZWANE: Yes.

ADV PRETORIUS SC: But by building houses in a manner that we will come to in a moment.

MR ZWANE: Okay.

ADV PRETORIUS SC: Okay, alright. Now the advance payment system we have heard from a number of
10 witnesses and I can take you through all the evidence, if you like, but you would have read the evidence, was raised by yourself at the meeting in October 2010 after the Welkom meeting. Is that a fair proposition?

MR ZWANE: I raised the question, Chair.

ADV PRETORIUS SC: Well ...[intervenes]

MR ZWANE: I raised ...[intervenes]

ADV PRETORIUS SC: You use that term advisedly because that is the term used by another witness. You raised a question – that same witness, however, says later
20 on in his evidence that it was a proposition but let us not go into that detail. What question did you raise?

MR ZWANE: Why cannot we help the contractors if we want houses to be built and achieve on our ERP. I have raised this matter and I want to know what can be a hiccup in terms of us doing this.

ADV PRETORIUS SC: Doing what?

MR ZWANE: Helping the contractors buy material.

ADV PRETORIUS SC: By making advance payments to suppliers so that they could then give the materials to contractors?

MR ZWANE: Well, Chair, if you pay for material with the suppliers, from where I am seated that is not an advance payment. Your material is ready, it is yours. The issue – that issue, why I raised this question, is that under normal
10 circumstances, the material will be purchased or procured by the contractors themselves. Those contractors we had engaged with and they have requested us as to help us. We are working on weekends to make you achieve your goal, why do you not come to the party? So I thought it is a sensible question that I should put and it must be engaged. It was not an instruction.

ADV PRETORIUS SC: What was the question that you put or raised?

MR ZWANE: Why can we not help these contractors?

20 **ADV PRETORIUS SC:** How?

MR ZWANE: I take it, Chair, that if I go to a meeting of officials who are competent in terms of procurement and so forth, I raised a question that what will prohibit us in ensuring that we help these contractors with the material? They are capable enough to be able to say to me we

cannot help.

ADV PRETORIUS SC: Well, they did, but we will get there.

MR ZWANE: Somebody in a meeting said we can and even raised an issue of [indistinct] that [indistinct] has done this thing before in one of their projects and indeed, Chair, you are correct, some engaged this matter, that is why the outcome was that somebody must then go out and research.

10 **ADV PRETORIUS SC:** Mr Zwane, the question is a straightforward one. How were you to help the contractors, what was your suggestion?

MR ZWANE: By making material available.

ADV PRETORIUS SC: How would you do that?

MR ZWANE: I did not at that particular point, Chair, process my thoughts in terms of the details, the how part and so forth. That is why I went to a meeting and asked the question. If I had concluded, I would have raised a proposal, not even an instruction, because I know in terms
20 of PFMA, money issues are not my purview. I can only suggest and propose and if the proposal is not taken, there is nothing that I can do.

CHAIRPERSON: How did you formulate the question you raised?

MR ZWANE: Why can we not help the contractors with

material? Because that was the issue raised by the contractors in the Welkom meeting, that we are willing to help you, we are committed with the work on holidays.

CHAIRPERSON: But the department did not keep material, Mr Zwane.

MR ZWANE: Well, it ...[intervenes]

CHAIRPERSON: You knew that did you not?

MR ZWANE: Yes, I knew, Chair.

CHAIRPERSON: It was service providers or material
10 providers who – or suppliers, material suppliers who kept material. So the department could not help the service provider, the contractors with material without money being paid for that material, is it not?

MR ZWANE: That is true, Chair.

CHAIRPERSON: Yes.

MR ZWANE: That is true.

CHAIRPERSON: And that would have been obvious to you when you put the question, is it not?

MR ZWANE: Well, coming from a meeting where people
20 have raised this matter, Chair, does not mean that was a question that I have properly processed in terms of what will this mean, what will that mean.

CHAIRPERSON: Mr Pretorius?

ADV PRETORIUS SC: Mr Tsoametsi in his testimony and we can go there, if necessary, said that you proposed

buying materials in advance for contractors at this meeting.

MR ZWANE: I asked a question.

ADV PRETORIUS SC: Was the question to the effect that why can we not buy materials in advance for contractors?

MR ZWANE: That is correct.

ADV PRETORIUS SC: That is correct?

MR ZWANE: Why can we not help the contractors by availing the material to them.

10 **ADV PRETORIUS SC**: Mr Zwane, please, we can be here for a long time but I can promise you, I am going to persist until we get clarity. Obviously by providing materials to contractors they would have to be bought, correct?

MR ZWANE: That is one way, Chair.

ADV PRETORIUS SC: That is?

MR ZWANE: That is one way.

ADV PRETORIUS SC: How else do you do it? Could you go and steal it from ...[intervenes]

20 **MR ZWANE**: Well, the department could have negotiated and then it stood as a guarantor for the contractors.

CHAIRPERSON: Is that your ...[intervenes]

MR ZWANE: I am just thinking about – I am saying, what I am bringing to the fore is that – it is not given that this was the only option, that is why I put this question to people who are learned, people would have known that – I mean,

a government is an institution that is there. At all times government is an institution where the movements of these contractors that will be working during December is kept. So I am raising this point very aware that I have just said to the Chair I have not processed this issue.

ADV PRETORIUS SC: Alright, but you must have known, Mr Zwane, that to supply materials to contractors without the contractors having to buy the materials, which they would ordinarily have to do in terms of their contract. The
10 financial responsibility, whether by way of guarantee or purchase would belong to the department.

MR ZWANE: That is correct, Chair.

ADV PRETORIUS SC: So the department would have to incur in one form or another an obligation, a financial obligation to enable the supply of materials.

MR ZWANE: Yes, that is correct, Chair.

ADV PRETORIUS SC: Alright. Now let me put to you what the other witnesses say and there is more than one witness in this regard. Mr Maxatshwa says in his testimony
20 on the 23 September – you have the EXHIBIT UU, the bundle marked transcripts?

MR ZWANE: Ja.

ADV PRETORIUS SC: It is day 270, it is after divider 3, Chair, in that bundle, at page 89.

MR ZWANE: FS12?

ADV PRETORIUS SC: Ja.

MR ZWANE: What page, Chair?

ADV PRETORIUS SC: Page 89 where the fact of the meeting is introduced, the October meeting. In paragraph 80 of his statement and I go over to page 90.

CHAIRPERSON: One second, Mr... Are you not finding it?

MR ZWANE: The what?

CHAIRPERSON: Just repeat the bundle number, Mr
10 Pretorius.

ADV PRETORIUS SC: It does not have a number, it is marked transcripts.

CHAIRPERSON: Transcripts.

ADV PRETORIUS SC: It has been recently introduced.

CHAIRPERSON: Okay and then page?

ADV PRETORIUS SC: Well, each day's transcripts, because they will be uploaded onto the website in this form, has its own numbering.

CHAIRPERSON: Yes, ja.

20 **ADV PRETORIUS SC:** But day 270 is after the third divider and we are at page 90.

CHAIRPERSON: I think day 270 is with me. Oh sorry - okay, at the bottom there are page numbers on my one.

ADV PRETORIUS SC: Yes, so it is page 90 of 130.

CHAIRPERSON: 90. Yes, I have got it.

ADV PRETORIUS SC: Right if you look at page 90, Mr Maxatshwa was being led on the basis on the basis of his statement which was before the Chair and I put to him:

“But is it correct in paragraph in 80 where you say “during the meeting the MEC advised those present that he had come up with a plan.” Is that your recollection of what happened?”

“Correct, Chair.”

And he says the plan originated from you. What do you say
10 about that?

MR ZWANE: I do not agree with this, Chair.

ADV PRETORIUS SC: You say you asked a question?

MR ZWANE: That is what I am saying.

ADV PRETORIUS SC: Right. He goes on to answer a proposition put to him, also based on his statement:

“He explained then what that plan would involve and that was essentially buying material for building projects from suppliers and paying for those in advance.”

20 Correct? Is that what happened?

MR ZWANE: That is what happened, Chair, as I am told, but you read the plan, the background of the plan says:

“An advance payment will be made where necessary.”

ADV PRETORIUS SC: When...?

MR ZWANE: Where necessary. My own interpretation of that is that there would be instances where there is no advance payment. Where necessary, that advance payment would be made and if it is made there should be an agreement between the contractor, the supplier and the department.

ADV PRETORIUS SC: Yes, we will come to the agreements and how they worked or did not work in due course but do you know that over 600 million was paid by way of advance payments during this period?

MR ZWANE: I have since learned when I – learnt about it when I read.

ADV PRETORIUS SC: But you seem very cautious now to qualify your proposal to say that well, it did not have to be advance payments and only when necessary should there be advance payments. Were you aware then of the dangers of an advance payment system and therefore you needed to be careful about how it was formulated and how it was implemented? It seems to me that that was present to your mind, certainly now and then?

MR ZWANE: In fact, Chair, if you go on – I think it is FS12 - you would see that the risk factors, mitigation factors were actually raised at a particular meeting and I think in this case in the 30 December or November meeting, in that Bethlehem meeting. That is when the

department started raising these issues as a layman, Chair, talking to lawyers, talking to people who have done master's in urban planning. I do not understand how would all these people, people who are responsible as accounting officers, sit on that side, the people who are supposed to advise me, come to this Commission and said when we have done this on the basis of a proposal by the then MEC and this proposal was ...[intervenes]

ADV PRETORIUS SC: That is not the proposition being
10 put to you. The proposition is that the proposal originated from you, that is all – it went through various processes after that. But let us stick to the question.

MR ZWANE: Okay.

ADV PRETORIUS SC: Otherwise we are going to go
down another rabbit hole. The proposition that I would like you to consider is that you were aware from your evidence now even in October 2010 that this proposal, advance payment or provision of guarantees or the assumption of financial responsibilities in respect of
20 suppliers was fraught with risk and had to be controlled, correct?

MR ZWANE: That was brought to me at some stage, Chair, yes.

ADV PRETORIUS SC: No, but right in the beginning you were careful only to raise the question and to seek advice

and you were aware that there were various forms, according to your evidence, of achieving the goal and you were aware that it should only be done where necessary. You took pains to emphasise that now.

The clear import of your evidence is that this was matter that involved risk and had to be carefully formulated and controlled, correct?

MR ZWANE: Chair, the idea of the advance payment arose out of a question that I asked and the debate in the
10 meeting and the decisions of that meeting.

ADV PRETORIUS SC: Was it an issue that raised risks and had to be approached with caution? That is my question.

MR ZWANE: The debate, Chair, in the meeting suggested that there was no unanimity in terms of taking this route, that is why ...[intervenes]

ADV PRETORIUS SC: Sorry to interrupt, Mr Zwane.

MR ZWANE: Okay.

ADV PRETORIUS SC: The question is, were you aware
20 at the time that any system of assisting contractors, whether by way of financial commitment or who have financial responsibility through guarantees was a matter involving risk.

MR ZWANE: No, no Chair.

ADV PRETORIUS SC: You didn't think it was risky?

MR ZWANE: If I may Chair I would have put this question differently, in fact I would have proposed and detailed my proposal.

ADV PRETORIUS SC: But when the proposal came back to you on the 25th of November signed by Mr Tsoametsi and the HOD, that contained a provision that advance payments should be made only where necessary, correct?

MR ZWANE: That is correct.

ADV PRETORIUS SC: I will get to the contracts which
10 show that the department assumed financial risk, that must have been obvious to you when you read that document, correct?

MR ZWANE: That's correct Chair.

ADV PRETORIUS SC: Right, so at least on the 25th of November if not at this meeting in October a month before you would have been aware of the risk involved to the department assuming financial obligations. It seems that you agree to that.

MR ZWANE: No, I don't.

20 **ADV PRETORIUS SC:** You don't?

MR ZWANE: No.

ADV PRETORIUS SC: On the 25th of November you were not aware that the advance payment system involved any risk to the department, financially? Mr Tsoametsi the risk involved the loss of hundreds of millions of Rand to the

department, R600million was spent by way of advance payments for which little or no value was received. Are you saying in October, I mean that's an alarming proposition to put to you, but are you saying in October/November you weren't aware of this risk?

MR ZWANE: When this agreement was brought to me on the 25th, after the 25 actually of November I went through it, it was signed and approved by the Accounting Officer, remember this is the question I had asked and even said
10 people must go and investigate properly and that would have included the issue of the document being legally sound.

Now when they come back these people some of them were lawyers, they have legal background as a and I wouldn't have doubted that skill that this document has gone through the processes and we can use it.

ADV PRETORIUS SC: Right, you have introduced a new topic now, which we will get to and that's the legality of the proposition, there can be little doubt that what was
20 proposed and the manner in which it was implemented was completely illegal but what Mr Tsoametsi made very clear was that he didn't test the scheme against any legislation or any legislative provisions by way of regulation, he didn't do that, it was not a legal opinion. Do you understand that, what do you say about that evidence?

MR ZWANE: Well I have gone through the transcript I have seen that Chair, I have also heard that he agreed when he was questioned that we had given him a broad mandate to go and look into the feasibility of what was now on the table, and for me that would also include the soundness of the document legally.

ADV PRETORIUS SC: Well he said it didn't.

MR ZWANE: I have come to understand it now through the transcripts but at that particular time after the 25th of
10 November 2010 here is a lawyer bringing to me a document that is been signed by himself, it means he is happy, signed by the Accounting Officer, it means the Accounting Officer as the receiving officer who is also responsible for the up-keeping of the finances that the Department is having and see to it that those finances are being used in an efficient manner, they signed also.

As a layman Chair I did not have a reason whatsoever to begin to say I have a question on this issue.

ADV PRETORIUS SC: You called the Welkom meeting,
20 you managed the Welkom meeting, you dealt with the concerns of the contractors who wanted assistance with supplies, you raised the issue by way of a question on your evidence, not consistent with other evidence, at the October meeting with the officials. You must have been concerned about the legality of any proposed scheme

because you say included it by implication in your instructions to Tsoametsi, correct?

MR ZWANE: Yes, he was tasked by the meeting.

ADV PRETORIUS SC: Yes, okay, just we are not going now as to what happened after that, I am just enquiring as to your opinion at the time that it indeed needed a legal opinion, as to the legality, you yourself has just said so.

MR ZWANE: Yes Chair.

ADV PRETORIUS SC: Correct. Why didn't you go to the
10 Legal Department, Mr Venter, and say look here is a proposal or a contemplated proposal please check, you are the responsible party in the Premier's office for the legality of contracts, in fact you were at a meeting where the Premier said everything must through Mr Venter. Why leave it to Mr Tsoametsi, a BProc who had never practiced law before.

MR ZWANE: It was not my task Chair as an MEC to go and get the details and things of the research that I said must take place. I did not at any point - measures or
20 accounting officers where – or consulting with people I said go and research, the mandate was broad and open, so when it comes back to me, like many others I take it that the work has been done.

At that point in time Chair I did not see a reason why I should ask who and who have you consulted. I

thought they had done everything they should be doing and I was happy with that.

ADV PRETORIUS SC: The issue I am putting to you is one of accountability. The Province lost hundreds of millions of Rands through this advance payment scheme and its failure. R600million was spent in a short period of time by way of advance payments which had to be recovered or attempted to be recovered through litigation. Certain people did things and certain people didn't do
10 things, what we know is that you as MEC did not ensure that a proper legal opinion was prepared and presented to you to satisfy you that the scheme was legal.

You never saw a proper legal opinion that set out the proposal and gave an opinion as to its legality in terms of laws and regulations, you never saw that, it never existed.

MR ZWANE: Can I respond Chair?

CHAIRPERSON: Yes.

MR ZWANE: I am sure any politician, a leader at that
20 level who was not a lawyer, who did not have a legal background, when a document is presented here by a legal person who is being cast broadly to go and research about the feasibility of doing this particular issue, would have not at that particular time say let me go and get a legal opinion, unless anybody at that level had raised an issue

about the legality or discomfort I am sure would have then said no let us go for a legal opinion, but when the Accounting Officer was happy and everybody – why would I have ...[intervenes]

ADV PRETORIUS SC: Legality was a concern to you, you have said so.

MR ZWANE: Therefore I sent a legal person to go and research.

ADV PRETORIUS SC: Exactly, and that is precisely
10 because you are not legally trained that you would ask to see a document that made it clear that the opinion had been properly obtained, properly formulated and properly set out, precisely because you are not a lawyer, you would want to be assured as an executive or as a Minister, MEC, that the research had been done and conclusions had been properly reached. At the very least you would have made sure that Mr Venter of the Legal Office had been consulted.

MR ZWANE: Well Chair as I am saying that did not come to my mind at that particular time.

20 **ADV PRETORIUS SC:** We know with hindsight, as pronounced by various reports, by the affidavit of the Department itself, by the judgment of the High Court that the advance payment scheme was illegal, correct?

MR ZWANE: Well Chair ...[intervenes]

ADV PRETORIUS SC: By omission therefore the scheme

had been allowed to be implemented, at least from your point, will you not concede that?

MR ZWANE: Chair the advance payment for contractors in terms of South Africa is not an illegal issue.

ADV PRETORIUS SC: Well let's deal with them.

MR ZWANE: One of the Treasury regulations, I think it is paragraph 8.2.3 raises a point, and I think the PFMA raises that point too, to say if you have an advance payment there should be a contract that specifically indicate that
10 you are going to do an advance payment and then in that case then you can administer an advance payment.

ADV PRETORIUS SC: Well there was no such contract.

MR ZWANE: Now I am saying Chair from where I am seated I think it will be unfair of this Commission to want to say no as a layman politician there I should have taken responsibility, the responsibilities of an Accounting Officer who himself had actually signed this document that I need to come to this Commission and say it was an illegal document.

20 **ADV PRETORIUS SC:** But Mr Zwane ...[intervenes]

CHAIRPERSON: Mr Zwane don't you perform oversight over the Accounting Officer as MEC?

MR ZWANE: That is correct Chair.

CHAIRPERSON: So if you are going to keep on saying if the Accounting Officer says this is right who am I to say it

is not right, how are you going to perform oversight?

ADV PRETORIUS SC: Chair equally if I were to ensure that every time I play my oversight I have an external person to actually qualify what the person who is being appointed to advise me this person under his control have a number of people who are ...[indistinct] I am sure to be seated in this Commission for a different reason of having wasted government's money having people in the department that are tasked to do the same work, so the
10 oversight I am doing simply according to the law the same Accounting Officer must provide me with reports and with this report it is when I can say the progress here is not according to what we have agreed, why did you deviate here if you have deviated and get responses.

CHAIRPERSON: So you are saying that you are playing oversight, you are performing oversight over the HOD if you have to rely on him, whether he has done the job properly?

MR ZWANE: That is actually the case Chair, he must
20 provide me with reports.

CHAIRPERSON: So if he says I have done the job properly then you are satisfied?

MR ZWANE: If it is the job that I can be able to verify like in the case of houses, there should be a person that I will take time to go with him and the team to verify that indeed

houses have been built. In that affidavit I had said in December of that particular year I myself have opened some houses and that was in the ...[indistinct] to ensure that if they said to me houses have been built, I must go and open these houses and here if people are happy and then open the houses, I think that is how far I would oversight Chair as politicians.

CHAIRPERSON: Do you believe that you possessed what would be required to perform oversight over the HOD or
10 Human Settlement at the time?

MR ZWANE: Well Chair I will answer that question broadly, when you are appointed as a politician to whatever position now of late your parties will want to get your qualifications but under normal circumstances there is an emphasis that the people you appoint should be adequately appointed, that is why there are levels that at this level of an HOD these are the requirements of a person who must be. This person goes through an interview and this person should then be trusted by you, and you should utilise the
20 skills that they possess, otherwise it would be pointless to appoint people and you don't use them.

So I still believe that with the experience that I had I had given it my best shot to be present where I could be present, it does not mean Chair that in that scheme of things some issues would not go wrong, no it does not

mean that.

I think also what I want to emphasize, maybe just to point is that in December the minutes will show and some reports will show that we had gone into a session, that session which was even saying contractors there should be a meeting between officials and contractors to reconcile so that we mitigate the risks that were there.

Now I would say ja, I was adequately equipped to actually look after the housing issues at that particular
10 time Chair.

CHAIRPERSON: Okay. We are at four minutes past six Mr Pretorius.

ADV PRETORIUS SC: Perhaps I should just finish this line of questioning if I may Chair.

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: What is clear Mr Zwane is that the legality of any answer to the question, and I am paraphrasing your own evidence now which is contracted by the witnesses but the legality of any answer to the
20 question that you raised had legal implications which should have been considered, correct?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: Notwithstanding that concern you never saw a legal opinion which set out clearly that the scheme was legal and complied with legal prescripts

whether by way of statutory regulation?

MR ZWANE: That is correct Chair.

ADV PRETORIUS SC: And I am going to put it to you in summary, but what the witnesses, Mr Mokoena and Mr Tsoametsi and Mr Maxatshwa say is that the scheme with a question, the proposal however you want to put it, was not a general proposal but it was that the department should pay suppliers for materials. What do you say to that? Not one, but three witnesses.

10 **MR ZWANE:** I think Chair I should humbly put it in this Commission that I find some of the facts from this too amazing, to say the least. The HOD was a lawyer and Mr Maxatshwa is a lawyer by profession. They know about the legislation, they know that their Accounting Officer has powers to actually overrule me on issues that have an unauthorised expenditure, illegality, and I have alluded to this before, he should ask me in writing, preferably in writing and he must report me to the Treasury of National and the Province.

20 Now he comes here and says he feared for the fact that I would have said he should resign but the same HOD I have given him instruction as an MEC that every official should cancel their holidays in December. What did he do? In this case he tells me I can't, did I fire him? No, he went and come back and that is not the only decision Chair

that the HOD had actually said in this Commission here I do not agree with the MEC and I put my foot down.

Now I find that to be quite frank his relationship with facts is a bit fractured. If he was saying I was this monster that came with a document, he did not sign it, again did not sign it and he did not – he cancelled his trip out I would understand. If myself me as a person Chair in these different departments sir I don't seek to rule the officials by iron fist, I always ask can you do this, if they
10 say no I say why, tell me, if there are legalities, I abide with the decision of the collective, so I am just saying humbly in this Commission, I may not know the reasons why they have chosen to do that, but at least HOD should have acknowledged that he was an HOD and an Accounting Officer and he was aware of PSMA to say the least.

Thank you Chair.

ADV PRETORIUS SC: Yes well I am not sure I detected a direct answer at least to the question but more than one witness has said before the Chair that when this idea or
20 question was raised at your instance it was raised in the context of the Department making prepayments, not any other form of liability. What do you say to that?

MR ZWANE: Prepayment is advance payment?

ADV PRETORIUS SC: Advance payment, in other words that you would buy the materials.

MR ZWANE: I think at the ...[indistinct] the documents ...[indistinct] that we will buy material yes Chair.

ADV PRETORIUS SC: Yes, and that what was discussed at the meeting and when we meet again, fair warning, we will discuss the fact that they raised the legality pertinently there, which is even more reason why you should have satisfied yourself that a proper legal opinion was taken.

MR ZWANE: Well Chair this thing as an MEC in that department, if I was this person who was so adamant to
10 choose this scheme against all odds why did they continue with this scheme when I was not there anymore, why did they continue to sign cessions. I left the department in early February Chair, in May according to the documents that I have read here HOD Mokoena was still signing these cessions and the media even saying this thing even went beyond HOD Mokoena's time and it overlapped to Mr Moeketsi's time.

If I have to entertain what they are saying they should have stopped this thing in February because it was
20 a scheme of MEC Zwane who did not want to hear any legalities. Now that Mr Zwane is no longer there why are they not stopping this thing which is illegal, why do they continue with this illegality Chair.

ADV PRETORIUS SC: In fact the evidence, you are quite right Mr Zwane, the evidence says that even after the

Minister – Mr Sexwale, had said to the Department stop this system, the system continued.

MR ZWANE: I am asking why Chair because ...[intervenes]

ADV PRETORIUS SC: Do you agree that it did?

MR ZWANE: I do not know the details because the letter that ...[intervenes]

ADV PRETORIUS SC: You said it did Mr Zwane.

MR ZWANE: No the letter, I am saying about Minister
10 Sexwale, the letter that I have that is on page 252 that comes from the Minister, he is not saying this thing must stop, it says – he has placed the intention, the intention was some allocation and reallocating and it says to us please furnish us with written representations as to what are you going to do. I think to my best memory as I read that letter these are the two points I picked up unless there is another letter.

ADV PRETORIUS SC: No it was a meeting in February
20 2011 where the evidence is that the Minister, National Minister said that this prepaid system must stop and no further payments should be made. Notwithstanding that instruction the Department continued.

MR ZWANE: Well Chair ...[intervenes]

ADV PRETORIUS SC: Which raises – well let's deal with that first.

MR ZWANE: Chair I left the department of Human Settlement in February, the second week of February I left. Now what I am trying to bring to the attention of – your attention Chair, would there have been a reason of the department not stopping about this issue because I left.

ADV PRETORIUS SC: But the fact, I am not blaming you Mr Zwane.

MR ZWANE: Oh, okay.

ADV PRETORIUS SC: It is not my task to blame you, the
10 fact is I just want to establish that as far as you are aware the system continued after February.

MR ZWANE: Oh, okay.

ADV PRETORIUS SC: Is that correct?

MR ZWANE: According to what I have read Chair, according to what I have read, I was not there, that is why ...[intervenes]

ADV PRETORIUS SC: Mr Zwane you stated emphatically not five minutes ago with your hands in the air that the system continued, you didn't say why do I read here that it
20 continued, you stated it as a fact, and you know ...[intervenes]

CHAIRPERSON: You did Mr Zwane.

MR ZWANE: I state it as a fact and I quote it Chair that according to what I have read, we can check the transcripts, according to what I have read by Iponkwena,

by Kaiser, Kaiser was even saying it continued beyond the time of - that is the emphasis I did ...[intervenes]

ADV PRETORIUS SC: Anyway, we can rest assured your evidence is not necessarily to establish that factor, it is established in documented version.

MR ZWANE: Alright, thank you.

ADV PRETORIUS SC: As you seem to agree. Is that ...[intervenes]

CHAIRPERSON: But also I think one or more of the
10 witnesses testified about a meeting that was held which was attended by Minister Sexwale and yourself if I am not mistaken where it was just – where he said this advance payment must stop and whoever testified said you may have put up some argument but ultimately you agreed, but when you came back to the Free State you said no, no, no, we must continue. Is my recollection correct Mr Pretorius?

ADV PRETORIUS SC: Yes chair we have recorded those references and we will deal with it in due course, but you are correct.

20 **CHAIRPERSON:** Ja.

ADV PRETORIUS SC: We have seen evidence to that effect.

CHAIRPERSON: Yes, okay, alright, shall we leave it for him to respond to it next time or must he respond to it now?

ADV PRETORIUS SC: Perhaps in better sequence. I am happy to ...[intervenes]

CHAIRPERSON: You will come to it at some stage?

ADV PRETORIUS SC: Yes I will.

CHAIRPERSON: Okay then he doesn't have to respond now. Okay, alright. We are going to adjourn, so we will need to arrange another date for Mr Zwane to come back. Mr Zwane another date will be arranged for you to come back, unfortunately, but thank you for coming to the
10 Commission today, we will adjourn now and ...[intervenes]

MR ZWANE: Can I say something chair?

CHAIRPERSON: Yes.

MR ZWANE: I just want to assure this Commission that I am willing to cooperate.

CHAIRPERSON: Yes.

MR ZWANE: This is for the second time in the same matter but I am willing to come back Chair, I will come on another time, and I must appreciate the endeavour to finish me with, what would have helped me, and I also appreciate
20 the way in which this Commission has conducted its issues today. I must say first time when I was here I felt like I am in a serious court, but I think today I appreciate and I will give it my fullest cooperation Chair.

I just wanted to make that point and thank you very much.

CHAIRPERSON: No, no that is fine, well I don't know about last time but it may be because you had not had the chance to read certain documents. I thought that both Mr Pretorius and myself haven't changed.

ADV PRETORIUS SC: Not much.

CHAIRPERSON: But we might not be able to see ourselves.

We will adjourn, I believe tomorrow I will be hearing evidence relating to Eskom and I think the witness will be
10 Dr Ngubane.

We adjourn.

INQUIRY ADJOURNS TO 13 OCTOBER 2020