

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

**27 OCTOBER 2020**

**DAY 292**



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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 27 OCTOBER 2020**

**CHAIRPERSON:** Good morning Mr Kennedy, good morning everybody.

**ADV KENNEDY SC:** Good morning Chair.

**CHAIRPERSON:** Are we ready?

**ADV KENNEDY SC:** We are ready Chair to seek your leave to call the next witness in the Denel stream of issues and that is Ms Celia Paulina Mamohlala Malahlela. She is in the witness box and ready to give her evidence once she  
10 has been sworn in. Thank you.

**CHAIRPERSON:** Yes okay please administer the oath or affirmation.

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

**MS MALAHLELA:** Celia Paulina Mamohlala Malahlela.

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

**MS MALAHLELA:** No.

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

20 **MS MALAHLELA:** Yes I do.

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

**MS MALAHLELA:** So help me God.

**CHAIRPERSON:** Thank you; you may be seated Ms Malahlela.

**MS MALAHLELA:** Thank you – thank you.

**CHAIRPERSON:** Yes you may proceed Mr Kennedy.

**ADV KENNEDY SC:** I am sorry Chair.

**CHAIRPERSON:** You may proceed.

**ADV KENNEDY SC:** Thank you Chair. Good morning Ms Malahlela.

**MS MALAHLELA:** Good morning.

10 **ADV KENNEDY SC:** Thank you for coming to give evidence before the Chair. You based overseas currently is that right?

**MS MALAHLELA:** Yes I am.

**ADV KENNEDY SC:** Where are you currently working or living?

**MS MALAHLELA:** In Europe.

**ADV KENNEDY SC:** In Europe.

**MS MALAHLELA:** Yes.

20 **ADV KENNEDY SC:** May I just ask it will be easier for the Chair to hear and the recording to pick up your voice. If rather than looking at me even though I am giving you the questions.

**MS MALAHLELA:** I look...

**ADV KENNEDY SC:** Please look at – in the direction of the Chair with the microphone in front.

**CHAIRPERSON:** All witnesses do not want to look at me.  
Okay alright.

**ADV KENNEDY SC:** Mr Malahlela is it correct that you have cooperated with the commission's officials and have produced an affidavit at our request?

**MS MALAHLELA:** Yes I have.

**CHAIRPERSON:** You just want to place on record for the transcript Mr Kennedy. Do you want to place on record for the record – for the transcript that we are still using Denel  
10 Bundle 01 today.

**ADV KENNEDY SC:** Yes. Yes I do Chair and it is Exhibit W10.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** That starts from page 127 of this bundle.

**CHAIRPERSON:** On mine it starts at page 131. I think it is the index that starts maybe earlier. The actual affidavit seems to start – start at 131.

**ADV KENNEDY SC:** 131 yes.

20 **CHAIRPERSON:** Ja.

**ADV KENNEDY SC:** Yes I have that thank you. I was looking at the title. May I just have a moment?

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** Ms Malahlela if I can take you please to page 164. It seems that this was simply a statement

signed by you not before a Commissioner of Oaths, is that correct?

**MS MALAHLELA:** 164.

**ADV KENNEDY SC:** 164 please look at the top left of each page when you look at the page numbers. Do you see Denel -01-164?

**MS MALAHLELA:** Yes I see that. I did sign in front of the Commissioner of Oath so I am just surprised why that does not appear at the bottom.

10 **ADV KENNEDY SC:** Yes that version may not have found its way in the file but can we remedy that by asking you please to confirm – you have already been – you have already taken the oath before the – this commission. Can you confirm that this is your statement?

**MS MALAHLELA:** Yes it is.

**ADV KENNEDY SC:** And have you been through it carefully?

**MS MALAHLELA:** I believe so.

20 **ADV KENNEDY SC:** And are you familiar with everything that it says?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** And do you agree with everything that it says?

**MS MALAHLELA:** Yes I do.

**ADV KENNEDY SC:** And do you confirm that it sets out the

true facts fully and accurately?

**MS MALAHLELA:** Yes I do.

**ADV KENNEDY SC:** Right thank you. Now Ms Malahlela I would like to start by getting a bit about your background for the record.

**CHAIRPERSON:** Do you ask me to admit it as an Exhibit Mr Kennedy?

**ADV KENNEDY SC:** I beg your pardon for omitting that formality. We ask that this be admitted Chair.

10 **CHAIRPERSON:** Yes. The statement by Ms Celia Paulina Mamohlala Malahlela is admitted as Exhibit W10.

**ADV KENNEDY SC:** Thank you Chair.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** Ms Malahlela if I can take you to page 132 you set out your professional background. I am going to pick up just a few points there. You have an LLB Degree?

**MS MALAHLELA:** Yes I do.

20 **ADV KENNEDY SC:** And 2.1 and then 2.4 deals with your work employment background prior to joining Denel, is that right?

**MS MALAHLELA:** Yes it does.

**ADV KENNEDY SC:** You were at Eskom Holdings as a Governance and Legal Officer February 2006 until July 2007?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** You were at De Beers Consolidated Mines as a Senior Supply Chain Officer August 2007 until 2010 and then you joined Katanga Mining as a Contracts Advisor and then you had the role added of Company Secretary from November 2010 until you left them in May 2012?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Then if we go back to paragraph 2.2  
10 you then moved to Denel and joined Denel Land Systems in May 2012 as a Contracts Manager in the Supply Chain Department, correct?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** And 2.6 on page 133 refers to your reporting to the Chief Operations Officer Mr Thebus whom you mention a number of times elsewhere in your statement. So he was the official to whom you reported?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** And to whom did Mr Thebus report?

20 **MS MALAHLELA:** To the CEO Mr Stephan Burger.

**ADV KENNEDY SC:** Stephan Burger and you refer also in your statement later a number of times to Mr Burger?

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** We will come back to that. Now 2.7 you set out your various responsibilities as Executive Manager



Supply Chain as including what is set out in 2.7.1 to 2.7.5. Was it part of your responsibility to ensure that there was compliance with proper procurement process?

**MS MALAHLELA**: Yes it was.

**ADV KENNEDY SC**: And was it part of your responsibility if anything was being done that did not comply with those processes to raise the issue?

**MS MALAHLELA**: Yes it was.

**ADV KENNEDY SC**: And who would you raise that issue  
10 with at least in a first instance?

**MS MALAHLELA**: To my superior.

**ADV KENNEDY SC**: Mr Thebus.

**MS MALAHLELA**: Yes.

**ADV KENNEDY SC**: Right. Then you refer to a delegation of authority in paragraph 2.9 and you have attached for us as an annexure to your affidavit the delegation. Is it correct that that – if you can just turn for a moment to page 30 – I beg your pardon page 167 is the marker page and then from 168 is that the Company Policy?

20 **MS MALAHLELA**: Yes.

**ADV KENNEDY SC**: Which has as part of its annexures a list of delegations?

**MS MALAHLELA**: Yes it is. So this is the one that applied from November 2012. It was amended from time to time.

**ADV KENNEDY SC**: Right thank you. And that table

setting out the delegation runs from page 177, is that correct?

**MS MALAHLELA:** I just need to confirm. That is correct Sir.

**ADV KENNEDY SC:** Right. So this sets out the levels of authority. May I take you please to – to page 182.

**MS MALAHLELA:** I have found it.

**ADV KENNEDY SC:** Paragraph or item 5 is headed Procurement. And 5.1 refers to levels of procurement,  
10 standard procurement of products and services other than items specified in 5.2 and 5.3 less than R50 million. Whose approval was required there?

**MS MALAHLELA:** Less than R50 million approval was the CEO.

**ADV KENNEDY SC:** By the CEO. Is that in the column C under GCE?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Right and in between R50 million and R200 million.

20 **MS MALAHLELA:** It was the Group CE.

**ADV KENNEDY SC:** Right and then anything above R200million.

**MS MALAHLELA:** Denel board.

**ADV KENNEDY SC:** Denel board. You mention this delegation specifically in a later section of your affidavit.

Is this the one that applies to the relevant transactions?

**MS MALAHLELA:** Yes it is the one.

**ADV KENNEDY SC:** Right thank you.

**CHAIRPERSON:** I am sorry I just want to understand what you have at page 182. What is SH on that first column that is vertical? What does it stand for?

**MS MALAHLELA:** It is shareholder.

**CHAIRPERSON:** Shareholder?

**MS MALAHLELA:** Yes. I think there is also a list of  
10 acronyms if I can just go to it on page 177 the first  
acronym is SH which is shareholder DPE.

**CHAIRPERSON:** Just quickly run through these ones here.  
DBD.

**MS MALAHLELA:** DBD is Denel Board of Directors. GC.

**CHAIRPERSON:** GC is Group CEO.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** And GEX?

**MS MALAHLELA:** Is Denel EXCO.

**CHAIRPERSON:** Sorry?

20 **MS MALAHLELA:** Denel – GEX is Denel EXCO.

**CHAIRPERSON:** Is it like Group Executive.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Committee?

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Oh and then CO will be CO of the

particular subsidiary or division?

**MS MALAHLELA**: Yes.

**CHAIRPERSON**: Okay alright. Thank you Mr Kennedy.

**MS MALAHLELA**: And if I may add Chair so that means the CEO of the Group is the GCEO – GCE.

**CHAIRPERSON**: GCE is Group CEO.

**MS MALAHLELA**: Yes.

**CHAIRPERSON**: CEO is CEO of a division or subsidiary of Denel.

10 **MS MALAHLELA**: That is correct Chair.

**CHAIRPERSON**: Ja okay. Mr Kennedy.

**ADV KENNEDY SC**: Thank you Chair. And then if we still look at that key of – of acronyms or abbreviations on page 177 you have taken us through the one on the left hand side. On the right A means what?

**MS MALAHLELA**: Approval.

**ADV KENNEDY SC**: PR?

**MS MALAHLELA**: Primary Responsibility.

**ADV KENNEDY SC**: CR?

20 **MS MALAHLELA**: Co-responsibility.

**ADV KENNEDY SC**: C?

**MS MALAHLELA**: Consultation Input Supplied.

**ADV KENNEDY SC**: I?

**MS MALAHLELA**: Initiate.

**ADV KENNEDY SC**: And FI?

**MS MALAHLELA:** For Information received report.

**ADV KENNEDY SC:** So if we go back to what I took you took you earlier at page 182. If we look at 5.1 that is standard procurement of products other than those specifically mentioned elsewhere less than R50 million the A under CEO means approval by the CEO, is that right?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** And C we have just seen means Consultation or input supplied.

10 **MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** So what does it mean in the context of less than R50 million? Does it mean the CEO was vested with the – entrusted with the power to approve such a procurement?

**MS MALAHLELA:** Yes that is my understanding.

**ADV KENNEDY SC:** And that would be as the Chair's pointed that is the CEO of the division.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Not the Group CEO?

20 **MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Right. And then the C's mean that the GCE and the GEX that is the Group Chief Executive and the functional Groups Executive may be involved in consultation.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Or would require consultation.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Which one? Would they have to be consulted?

**MS MALAHLELA:** They will have to be consulted.

**ADV KENNEDY SC:** Okay. And then when we get to the – between R50 million and R200 million we have seen that the notation is A for GCE again does not mean that the Group Chief Executive as oppose to the divisional CEO  
10 would have to approve it?

**MS MALAHLELA:** Yes that is correct.

**ADV KENNEDY SC:** And the Group CE – the GCE's limit to approve a transaction the upper limit was R200 million?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** And anything above that would require board approval if we look at the final bullet point on this page above R200 million A is – appears under DBD that is the Denel Board?

**MS MALAHLELA:** Correct.

20 **ADV KENNEDY SC:** Right. Thank you. May we now...

**CHAIRPERSON:** That third bullet point is it intended to say R200 million and above?

**MS MALAHLELA:** That is correct Chair.

**CHAIRPERSON:** Okay. Of course I guess – I guess it means above R200 million because the – the one above

that says anything between R50 million and R200 million the GDC the Group CEO has to approve?

**MS MALAHLELA**: Correct.

**CHAIRPERSON**: So they cannot be two who approve R200 million?

**MS MALAHLELA**: Correct.

**CHAIRPERSON**: Cannot be both the board and the – so – so for the board it must anything above R200 million?

**MS MALAHLELA**: That is correct Chair.

10 **CHAIRPERSON**: Ja. Okay.

**ADV KENNEDY SC**: Thank you. May we then go back to your statement page 135 you set out an organogram showing the reporting structures or the procurement processes rather.

**MS MALAHLELA**: Okay.

**ADV KENNEDY SC**: Is that right?

**MS MALAHLELA**: Yes.

20 **ADV KENNEDY SC**: And then you refer in paragraph 2.12 to the delegation of authority meaning that depending on the value of the procurement you would be as among your duties preparing a – a submission for approval by EXCO of DLS depending on the level of authority.

**MS MALAHLELA**: Correct.

**ADV KENNEDY SC**: Right.

**CHAIRPERSON**: Well I struggled Ms Malahlela to follow

the diagram above paragraph 2.12.

**MS MALAHLELA:** So...

**CHAIRPERSON:** To see where the first step takes place, who initiates it and then the next step and so on. I ended up seeing at the bottom submit to Group Executive Director and then the top obtain approval. So I was not sure where you start and where you end. I am sure there is something I misunderstood would you like to explain it to me?

**MS MALAHLELA:** Not a problem. This diagram that you  
10 see here it was included in the procedure that was in place at the time when the transaction took place. So if you look at the values there they are not necessarily in line with the values in the delegation of authority. I know they are too small so the first one that you have is between 0 and 20.

**CHAIRPERSON:** I am sorry, I am sorry. These – does this diagram relate specifically to what happened in this case or this is just a general diagram to say this what would happen generally?

**MS MALAHLELA:** This is a general diagram which was  
20 included in the policy.

**CHAIRPERSON:** Oh okay alright.

**MS MALAHLELA:** They Supply Chain – the procurement policy. Ja but the delegation of authority we followed what was applicable from time to time as it was issued and sub-delegated further.



**CHAIRPERSON:** So – so where does one start when something needs to happen that is relevant to this?

**MS MALAHLELA:** So if our ...

**CHAIRPERSON:** I can see rejected – rejected – rejected and I see approved – approved – approved.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** But I do not see the start and the journey.

**MS MALAHLELA:** Okay. So we are starting here at the  
10 approval stage so that means you would not necessarily see the quotation stage or the tender stage at this level. It happens before which is not included in my statement.

**CHAIRPERSON:** Oh.

**MS MALAHLELA:** So I can take you through the approval process because that is what I wanted you...

**CHAIRPERSON:** Oh so this is about approval?

**MS MALAHLELA:** This is just about approval.

**CHAIRPERSON:** Not about the journey before that?

**MS MALAHLELA:** No it is not.

20 **CHAIRPERSON:** Okay. So just talk to it further.

**MS MALAHLELA:** So this was to give indication that if something needs to be approved. So let us say something needs to go to Group EXCO or Group CE for approvals. So what would happen is that the procurement manager would give approval and will recommend. It will go to the small

what we used to call the small procurement committee which is now on their referred to LPC which is the old acronyms that were used a long time ago but we called it the small procurement committee. Then it was recommended to the Group – oh sorry the Divisional EXCO and then from the Divisional EXCO then it will go to the Group C – Executive Director which is the CEO. Should I use the delegations that we have in here to explain? So let us say something is between R50 million and R200 million as we have seen in paragraph 5 Chair. So the manager the procurement manager responsible for that particular section of procurement be it commercial or technical would then give an approval to sign that they are okay with it. Then it is recommended to the small procurement committee which would normally approve up until R5 million which is a sub-delegation that is why you do not see it in the Group Delegation of Authority. Then that procurement committee would then recommend to the Divisional EXCO Supply Chain Committee which is chaired by the CEO of the division. And then if it is acceptable there then it will be recommended further to the Group Executive for approval. And if it is going to the board then it will go further than that.

**CHAIRPERSON:** So this diagram deals with amounts starting from what R20?

**MS MALAHLELA:** From 0 Chair.

**CHAIRPERSON:** From 0?

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Okay. I can see 0 to 20,000 there.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** And then I can see 20,000 to 500,000?

**MS MALAHLELA:** Correct.

**CHAIRPERSON:** And then I can see is it 500,000 below that?

10 **MS MALAHLELA:** Yes that is true.

**CHAIRPERSON:** And then another...

**MS MALAHLELA:** You have got 500 to 10 million. If I may Chair so...

**CHAIRPERSON:** Ja to 10 million.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** So this diagram covers situations that do not exceed 10 million?

20 **MS MALAHLELA:** So this diagram was the delegation of authority I believe because I was not in the organisation at the time. The delegations of authority that were applicable when the procedure was put in place but they since went obsolete because we or Denel revised the delegation of authority as and when Corporate revised.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** So this one is no longer applicable.

**MS MALAHLELA:** So the value...

**CHAIRPERSON:** At the time of the transactions.

**MS MALAHLELA:** Yes. That is correct.

**CHAIRPERSON:** Oh okay. Then I do not need to bother myself with this. I thought ...

**MS MALAHLELA:** No.

**CHAIRPERSON:** I thought it was here because it would be applicable.

10 **MS MALAHLELA:** No.

**CHAIRPERSON:** Okay alright.

**MS MALAHLELA:** It is just to show the process.

**CHAIRPERSON:** Okay. Alright. Mr Kennedy.

**ADV KENNEDY SC:** Thank you. Just to confirm Ms Malahlela this does not appear to deal with the situation of something that is to the value of more than R200 million?

**MS MALAHLELA:** No it does not.

**ADV KENNEDY SC:** Okay thank you. And for that we have to look at the table we looked at earlier which required that  
20 anything above R200 million would require not only the GCE's approval but also the board's approval.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Is that correct? Right thank you. Now you deal from page 136 with evaluation criteria that was – that were used in the assessment of bids. Was this

the standard process and requirement for when you assessed bids in your capacity in procurement?

**MS MALAHLELA:** At the time it was not applied in the division because it was – there was still – or rather we were still applying the policies and the procedures that were in place in the division. However Mr Mlambo had already told us to start applying the evaluation criteria as I have alluded to in my statement.

**ADV KENNEDY SC:** Can I take you to paragraph 3.4 page  
10 137.

**MS MALAHLELA:** 3.4 ja. I have found it.

**ADV KENNEDY SC:** You refer to a presentation by Mr Mlambo. What position did he hold at that stage?

**MS MALAHLELA:** He was the Group Supply Chain Executive or manager.

**ADV KENNEDY SC:** So you were dealing with Supply Chain Management in the DLS Division.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Is that correct? But he was at the  
20 Corporate Head Office level of Denel?

**MS MALAHLELA:** Correct Chair.

**ADV KENNEDY SC:** Okay. And he conducted a presentation. Is that – is that the meeting that you were referring to a moment ago where he said you must now apply a particular criteria?

**MS MALAHLELA:** So we used to have – I will refer to two meetings. We used to have regular Group Supply Chain meetings where we would discuss Supply Chain issues in the group. So he referred to in the – in one of those sessions but he also referred to it in this session where the supply – it was essentially not a meeting it was a supplier day if I may call it that.

**ADV KENNEDY SC:** And then he gave – he indicated that certain evaluation criteria had to be used in the Denel  
10 group.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Did that mean that you in DLS were required to apply these criteria?

**MS MALAHLELA:** That is correct. As a division of Denel.

**ADV KENNEDY SC:** Okay. Now these three items in 351, 352 and 353 are they the criteria that he then said you must now use?

**MS MALAHLELA:** That is correct as I have taken that from the presentation which he had made which is an annexure  
20 to this statement.

**ADV KENNEDY SC:** Is that what you refer to again at the end of paragraph 3.4?

**MS MALAHLELA:** Let me just double check 3.4.

**ADV KENNEDY SC:** That is the presentation?

**MS MALAHLELA:** CM5 yes that is the one.

**ADV KENNEDY SC:** Yes. And if I can take you please to page 209 and 23 – 210. So it is 209 and 210 is that the agenda that you referred to in your affidavit?

**MS MALAHLELA:** Yes for the Supplier Day.

**ADV KENNEDY SC:** Thank you. Go back to page 137. So the three criteria were price, functionality and BBBEE. Price was 25% functionality 45% and BBBEE 30%. You mention in 3.6 that these criteria and particularly that the allocation of – of points based on BBBEE related to the  
10 Group Strategic Objective of Increase Black Supplier Pull. So I notice for example the BBBEE proportion was 30% a bit higher than price which was 25%. Is – does this reflect the point required by Mr Mlambo in terms of Group Policy to be improving black representitivity in the Supplier Pool?

**MS MALAHLELA:** That is correct. This is what he also said in an email which I think I have attached to this as part of him sensitising that we need to apply the criteria going forward.

**ADV KENNEDY SC:** Yes. And if you – you refer to an  
20 email in 3.7 is that the email that you have just mentioned?

**MS MALAHLELA:** Let me just double check.

**ADV KENNEDY SC:** Just look at 3.7. Is that what you referring to?

**MS MALAHLELA:** I just need to check the page where the email is so that...

**ADV KENNEDY SC:** Yes well just – yes well let me take you to that. It is at page 212. 212.

**MS MALAHLELA:** Yes this appears to be the one.

**ADV KENNEDY SC:** Right. And so that refers to a process at Group level among the executives at group level and the formulation of a policy to improve Denel's spend on black owned and black women owned companies?

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** And recent audit from – conducted by  
10 Deloitte which reflected that which found that there was a variation in implementation across the group and there was now a need to standardise this and to impose a clear level of criteria.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Is that correct? Right. Thank you. Then to go back to page 137 paragraph 3.8 you set out applicable internal procurement policies and you have referred to this specific documents in that regard. Now did you take into account what we have just dealt with; the  
20 criteria, the policies and procedures when you then proceed to – proceeded to deal with the evaluation of the various bids or offers that we are going to deal with in relation to the specific contracts that are the subject of the rest of your affidavit.

**MS MALAHLELA:** Yes.



**ADV KENNEDY SC:** Right. May we turn to the first of those contracts, page 138, paragraph 4?

**MS MALAHLELA:** 138. Okay.

**ADV KENNEDY SC:** Do you have it?

**MS MALAHLELA:** [No audible reply]

**ADV KENNEDY SC:** Do you have paragraph 4?

**MS MALAHLELA:** Yes, I have paragraph 4.

**ADV KENNEDY SC:** Right. I am going to take you through it. That deals specifically with the first contract of interest  
10 here. And that is the appointment by DLS for whom you worked of VR Laser Services specifically for the production of 217 armour hulls for the Hoefyster platform component. And that took place in 2014. Correct?

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Okay. Now, you refer first to a submission that was made to DLS Exco in April 2014 recommending the appointment of VR Laser Services for these 217 armour hulls. And you say in 4.1.1. that there was a submission to the Exco of DLS. So that is the division.  
20 That is not at group level at this stage.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Right.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** And you signed off a submission relating to quotations that have been received from three

entities.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** And those were LMT, DCD Dorbyl and VR Laser. And then you refer to yourself being a member of the team together with Mr Badenhorst. Well, you have received an instruction, rather, from Mr Badenhorst. Who was he?

**MS MALAHLELA:** [No audible reply]

**ADV KENNEDY SC:** You refer to him in 4.1.2. Project  
10 Manager, Transfer of Technology Platform. To attend a meeting to discuss progress. Is that correct?

**MS MALAHLELA:** yes.

**ADV KENNEDY SC:** And Badenhorst, you mention at the foot of the page. Had previously been employed in the Supply Chain Management Department as a procurement officer. Was that DLS's Supply Chain Department?

**MS MALAHLELA:** Yes, it was.

**ADV KENNEDY SC:** So you say he had been involved in the procurement process prior to having his position  
20 changed. Then you referred to a report, 4.1.4. Submitted by a Finland company, Patria Land Services. What was Patria involved in? What was its relevance to this?

**MS MALAHLELA:** So Patria was the only or the...

**ADV KENNEDY SC:** Is it what you referred to in 4.1.5, the original equipment manufacturers?

**MS MALAHLELA:** Yes, that is the one.

**ADV KENNEDY SC:** Is that the abbreviation OEM?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Right.

**MS MALAHLELA:** Original Equipment Manufacturer of the vehicle.

**ADV KENNEDY SC:** Right.

**MS MALAHLELA:** Which is the badger(?) or the interchange leader(?) who faced(?) the vehicle.

10 **ADV KENNEDY SC:** Right. And... but this was a new contract for the supply of 217 armour hulls. Had Patria itself supplied a number of similar items to Denel prior to this contract being awarded to VR Laser?

**MS MALAHLELA:** I cannot say but there were other vehicles that they were busy with but let me not speak to that because I do not have the exact facts.

**ADV KENNEDY SC:** Alright. Thank you. Then you referred to the meeting that Mr Badenhorst had asked you to attend together with the people mentioned in 4.1.6. Is that right?

20 **MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Bezuidenhout, Chebis(?) van den Heever, Drevon(?) and Van te Nell(?).

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** And then you say, you were first – this is at the foot of the page – you were first made aware of the

three suppliers responses to the RFO. So had there been a request for office that had been put out before this?

**MS MALAHLELA:** Yes, I believe so before I joined the organisation.

**ADV KENNEDY SC:** Yes. You say that that was dated, the RFO was dated February 2012. That was before you joined. I think you joined in May 2012 Is that right?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Okay. So you came into the process  
10 mid-stream.

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** Would that be fair to say?

**MS MALAHLELA:** [No audible reply]

**ADV KENNEDY SC:** Okay. And there had been responses to that RFO.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** From LMT, DCD and VR Laser. So that meeting took place and a submission was then to deal in Exco. We see at the top of page 40, paragraph 418.

20 And that contained a recommendation as to which supplier should be appointed for this particular contract. And you refer in 4.1.9. So that having been prepared in April 2014 by Mr Badenhorst and that was submitted to you.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** For your consideration and onward

transmission to the Exco.

**MS MALAHLELA**: Correct.

**ADV KENNEDY SC**: And then you referred to annexures which has set out the relevant correspondence. If I can just ask you to turn for a moment to pages 255 and 256?

**MS MALAHLELA**: H'm, 255... Yes, I have found it.

**ADV KENNEDY SC**: Yes. Is that the correspondence via email that you were referring to in your affidavit?

**MS MALAHLELA**: Sorry, I just... The correspondence  
10 relating to? If you can just help me with that?

**ADV KENNEDY SC**: The emails from Mr Badenhorst relating to the recommendation.

**MS MALAHLELA**: I was on 155. My apologies. So it is 255?

**ADV KENNEDY SC**: 255. Especially 256.

**MS MALAHLELA**: That is correct.

**ADV KENNEDY SC**: Alright. Thank you. Now back to page 140.

**CHAIRPERSON**: I am sorry. That is an email from whom to  
20 whom?

**MS MALAHLELA**: That is an email from Riaan to myself, cc'ing the programme rights.

**ADV KENNEDY SC**: It is Riaan Badenhorst.

**MS MALAHLELA**: Mr Badenhorst.

**CHAIRPERSON**: Oh, Mr Badenhorst.

**ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Ja.

**ADV KENNEDY SC:** Chair, it may assist if you have regard to page 255 which bears the email details of when it was sent by whom and to whom.

**CHAIRPERSON:** Oh, okay alright. I was expecting to that at 256.

**ADV KENNEDY SC:** Yes.

10 **CHAIRPERSON:** Okay alright. Continue.

**ADV KENNEDY SC:** So this email, it seems, was pressing for a speedy decision to be made on the award of the business?

**MS MALAHLELA:** It was one of the emails that was pressing for a decision to be made because there was also pressure from Patria's side.

**ADV KENNEDY SC:** Pressure from Patria's side?

**MS MALAHLELA:** Patria's side.

**ADV KENNEDY SC:** Yes.

20 **MS MALAHLELA:** Because now we were running into leap(?) times.

**ADV KENNEDY SC:** Right. Now in your statement at page 140 at para 4.1.11. You say that a final submission was concluded on 25 April 2014 for consideration at its meeting on the 29<sup>th</sup> of that month. And that recommended that VR

Laser be appointed as the preferred supplier in the platform hulls manufacturing contract. Is that right?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** And then if I can take you now to CM10. You will find that at page 258 and following. There is an email from Linda Meyer to Exco, Exco secretaries and yourself, Celia Malahlela. Correct?

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** And was the document that then  
10 appears from page 259 attached to that?

**MS MALAHLELA:** Yes, it was.

**ADV KENNEDY SC:** And what is the document at 259 and following?

**MS MALAHLELA:** It is a submission to the Group Chief Executive asking for his recommendation.

**ADV KENNEDY SC:** Right. And were you involved in its compilation?

**MS MALAHLELA:** Yes, I was. I... Yes, I was.

**ADV KENNEDY SC:** And so it is addressed, if you see just  
20 under the logo of Denel, the top left-hand part of this page 259. You will see the next block, to Exco. Is that DLS's ExcOs?

**MS MALAHLELA:** At which page? Excuse.

**ADV KENNEDY SC:** Page 259.

**MS MALAHLELA:** Okay.

**ADV KENNEDY SC:** You see at the top left there is a Denel logo.

**MS MALAHLELA:** Oh, yes.

**ADV KENNEDY SC:** Then there is a heading, Group Chief Executive Officer Supply Chain Approval. And then the next line, it is addressed to Exco.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Is that DLS Exco?

**MS MALAHLELA:** It is DLS Exco.

10 **ADV KENNEDY SC:** Not Group Exco of Denel?

**MS MALAHLELA:** Not Group Exco.

**ADV KENNEDY SC:** Right.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** And it comes from Supply Chain of which you were part?

**MS MALAHLELA:** Yes. As you have referred to. The document was drafted by Riaan and sent to me for... that I look at it and then recommended through Exco.

20 **ADV KENNEDY SC:** Right. So you approved this draft that you have from Mr Badenhorst and then you sent it with you recommendation to Exco?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Is that correct?

**MS MALAHLELA:** For consideration.

**ADV KENNEDY SC:** And then if we look at page 261,



paragraph 8, the recommendation.

**MS MALAHLELA:** Page 261?

**ADV KENNEDY SC:** Page 261, yes. Paragraph 8. After reflecting the evaluation and the comments and so forth, the recommendation is that:

10 “Denel Land Systems Exco give approval to use VR Lasers as the Hoefyster Platform hull supplier. Due to the value of this transaction deal, it must seek final approval from Group CEO and the Board of Denel.

We trust that this document gives enough information to enable DOS Exco to give its blessings and make the recommendation as stipulated above.”

So you were saying to Exco DLS:

“Please approve this recommendation and then also go to the Group CEO for his approval.”

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Right. The value of the transaction, are you able to tell us what the value is?

20 **MS MALAHLELA:** [No audible reply]

**ADV KENNEDY SC:** If you look on page 260, paragraph 3.

**MS MALAHLELA:** Thank you. 260, paragraph 3. So the total potential contract value was R 364 774 839,00.

**ADV KENNEDY SC:** Alright. So this would clearly be way above R 200 million which was the limit of the Group CEO’s

authority?

**MS MALAHLELA**: [No audible reply]

**ADV KENNEDY SC**: Is that correct?

**MS MALAHLELA**: That is correct. So that is why in my recommendation I recommended that it goes to the board. And if you also refer to page 7, you will see that the last page is that we take for recommendation at the Divisional Exco and then after that it goes to the Group Exco and then ultimately to the board.

10 **ADV KENNEDY SC**: Right.

**MS MALAHLELA**: That was the intention.

**ADV KENNEDY SC**: Right. Thank you. Okay back to page 140, please.

**MS MALAHLELA**: [No audible reply]

**ADV KENNEDY SC**: 4.1.13 refers to an agenda. And just look for a moment at page 265. Is that the agenda you are referring to?

20 **MS MALAHLELA**: Page 265. Let me just get there. It seems to be the one but I note that there seems to be an error with regard to the dates because if you look at the date that appears on the agenda, it says the 27<sup>th</sup> of April and on 4.1.13, we are referring to the 29<sup>th</sup>. If we can just confirm that for correctness.

**ADV KENNEDY SC**: Right. Thank you. And in fact, there seems to be a difference in the paragraph to that which you

mentioned in your statement which I have just picked up now. But I do not think anything turns on that Chair?

**CHAIRPERSON**: Yes.

**ADV KENNEDY SC**: You then in your statement, page 140-41-14. You say:

“It can be noted under paragraph 7 of the DLS Exco submission of 25 April 2014...”

That is the document we looked at a moment ago at page 261. Is that correct?

10 **MS MALAHLELA**: Yes, that is the one.

**ADV KENNEDY SC**: Then to continue in your statement.

“The Patria report had been integrated into the recommendation of the cross-functional team for the appointment of VR Laser as the preferred supplier for this contract.”

**MS MALAHLELA**: Yes.

**ADV KENNEDY SC**: You say:

20 “Although the Patria report had been used in support of the decision to recommend VR Laser, it is submitted that VR Laser would have been recommended.”

Now who is submitting here? Whose view is this? Is this your view?

**MS MALAHLELA**: No. We... I do not want to call this a cross-functional team because it was not sitting as a formal

cross-functional team. So we sat as a team that looked at the quotations. If you refer to 1.1.6.1. That is the view of the team.

**ADV KENNEDY SC:** Sorry, what number were you giving?

**MS MALAHLELA:** 4.1.6. Where I am mentioning that we sat to look at the quotations that had been sent to us.

**ADV KENNEDY SC:** Yes, yes.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Okay. So the view was that VR Laser  
10 had offered the most competitive price out of the three suppliers.

**MS MALAHLELA:** Yes. And on the face of that, if you go to page 2, you will realise that the cheapest price with regard to that particular RFO was VR Laser.

**ADV KENNEDY SC:** Sorry. Can you just hold on a second? The page 2, are you referring to page 260?

**MS MALAHLELA:** Sorry. Yes, that is the one.

**ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** Yes.

20 **ADV KENNEDY SC:** It is page 2 of the document but if you can just try and bear in mind that we must use the page numbers on the top left.

**MS MALAHLELA:** I will. I will.

**ADV KENNEDY SC:** And so you refer to the three prices here. Is that in the middle of the page where the column is

headed supply and amount prices per unit. And we see there at LMT worth offering as a price per unit R 1.7 odd million. VR Laser R 865 010.00. And DCD slightly higher, R 896 000,00.

**MS MALAHLELA**: That is correct.

**ADV KENNEDY SC**: So LMT was roughly double what VR Laser was offering in terms of this response to the RFO.

**MS MALAHLELA**: That is correct.

**ADV KENNEDY SC**: And so to go back to your paragraph  
10 4.1.15, page 140. So you are saying:

“Although Patria, the original manufacturer, had recommended VR Laser for the various reasons, it had...”

The reason why you in your section were recommending approval of VR Laser’s appointment was that it was offering the best price?

**MS MALAHLELA**: True.

**ADV KENNEDY SC**: Right. And then you have set out helpfully at the top of page 141 in your statement the same  
20 table reflecting the prices.

**MS MALAHLELA**: [No audible reply]

**ADV KENNEDY SC**: Now you say at 4.1.16:

“Shortly before signing off the submission of 25 April 2014, which recommended VR Laser’s appointment and emailing it to Exco...”

You received an email from Mr Thebus requesting that you check the shareholders agreement in place between LMT and Denel Land Systems. Now LMT was one of the bidders in this three bid process.

**MS MALAHLELA**: That is correct.

**ADV KENNEDY SC**: And we have already seen that is price was double that of VR Laser whom you were recommending.

**MS MALAHLELA**: That is correct.

**ADV KENNEDY SC**: Now why was it... you do not seem to  
10 have attached the email but again, you do explain it in your statement. You say he was asking you to check the shareholders' agreement between LMT and Denel Land Systems, DLS. What was that shareholders agreement?

The Commission has heard evidence in relations to LMT, originally being an independent entity and later there was an agreement between Denel and the shareholders of LMT which was already supplying Denel regularly with items.

In terms of that agreement, Denel acquired a majority shareholding in LMT. Is this the shareholding agreement  
20 that was referred to?

**MS MALAHLELA**: I believe that is the one that he was referring to. I was not that involved with... in relation to shareholders agreement.

**ADV KENNEDY SC**: Yes.

**MS MALAHLELA**: But I believe that is the one that he was

referring to.

**ADV KENNEDY SC:** Right. And Mr Thebus is a witness who has been consulting with us and submitted an affidavit and will be giving evidence at a later stage before the Chair of this Commission.

**MS MALAHLELA:** I am sure he will be able to speak to that.

**ADV KENNEDY SC:** He will deal with that. But you say in 4.1.17 that the indication you got from Mr Thebus was that  
10 his request that you look into the shareholders agreement was informed by communication he had received from LMT's Managing Director at the time, Dr Stephan Nel.

Now if I can just indicate for your knowledge and the Chair that Dr Nel's evidence will also be produced before this Commission at a later stage.

Now the point that Dr Nel raised with Thebus, according to what Thebus told you, was that Dr Nel was complaining. He accused DOS of contravening the shareholders agreement by contracting, by indicating that it was going to  
20 contract for this item with other parties, presumable VR Laser.

So effectively, he was saying on behalf of LMT that: We have an entitlement to this business. Do not give it to someone else. Is that your understanding of what Mr Thebus said?

**MS MALAHLELA:** That was my understanding, yes.

**ADV KENNEDY SC:** Yes. And then you refer in 4.1.18 to a further email that you received. This time from Mr Knoetze, the Chief Financial Officer, the CFO of DOS at the time.

And he said he recalled a letter signed by DLS confirming that DOS would put business of the manufacturing house to LMT as a condition to the equity deal involving the purchase of LMT.

So Mr Knoetze has indicated that yes this may relate to  
10 a letter indicating that LMT would be given business.

**MS MALAHLELA:** A That is correct.

**ADV KENNEDY SC:** And will be giving business once the majority shareholding in LMT was sold to Denel.

**MS MALAHLELA:** My ...[intervenenes]

**ADV KENNEDY SC:** Was that your understanding?

**MS MALAHLELA:** I cannot speak to that.

**ADV KENNEDY SC:** Okay.

**MS MALAHLELA:** Because we... The other thing is that, this letter, we did not find it and I see... If you refer to the  
20 emails further down by Ms Govender, you will realise that she is referring to the email not being found.

**ADV KENNEDY SC:** Right.

**MS MALAHLELA:** The... Sorry, the letter not being found.

**ADV KENNEDY SC:** Right. In fact, in your 4.1.21, you refer to the chain of email correspondence attached to CM12.



May I take you please to page 267 and following?

**MS MALAHLELA:** Page 267... Yes, I found it.

**ADV KENNEDY SC:** And that is email correspondence which includes a number of attachments which appear to be documents ...[intervenes]

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** ...that relate to LMT.

**MS MALAHLELA:** [No audible reply]

**ADV KENNEDY SC:** Now did you investigate this then at  
10 the request of Mr Thebus?

**MS MALAHLELA:** The group... The legal executive investigated it for us and wrote a report. As you can see, my statement later on refers to the emails and what she said.

**ADV KENNEDY SC:** Okay. Let us go back to that statement of yours, page 141.

**MS MALAHLELA:** H'm.

**ADV KENNEDY SC:** Paragraph 4.1.19. Now Ms Denise Govender, you referred to as the Executive Legal for Denel Land System, DLS. And she sent a response which is part of  
20 the email correspondence which is attached there.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** And she attached a number of documents, 4.19.1 a draft shareholders agreement between DLS and LMT. Submission to the board of Denel Group. Notifying of a revised transaction. Requesting approval.

Reduction of Denel's shareholding from 70% to 51%, et cetera. A call option, et cetera. And then 4.1.21 you refer to Ms Govender referring to page 6 of the Denel Board submission. And the reasons why Denel was acquiring a majority shareholding in LMT. Is that correct?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** That is what Mr Govender referred to ...[intervenes]

**MS MALAHLELA:** To.

10 **ADV KENNEDY SC:** ...to your... to you.

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** Right. And then... So what was the upshot of this investigation undertaken by Ms Govender? You were made aware that LMT's CEO, at the time Dr Nel, was saying that they should be given preference rather than anybody else. They should be given the work because now they were majority owned by Denel.

20 Part of the deal was that work would go to LMT. Instead, you now looking at a more competitive process which we know ultimately resulted in the award of the contract to VR Laser rather than LMT. What was the upshot of Ms Govender's investigation?

**MS MALAHLELA:** I would ...[intervenes]

**ADV KENNEDY SC:** That it could go ahead or not.

**MS MALAHLELA:** I will take you to paragraph 1.1.2.4. It

has a summary of different documents that she looked at and her advice with regard to each and every document, applicable document.

**ADV KENNEDY SC:** Yes, thank you. So that is 4.1.24 on page 143.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** And her conclusion and presumable you are not... your function was not to comment on whether her legal conclusion was correct or not?

10 **MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Although you have an LLB, she was employed as Group Executive of Legal.

**MS MALAHLELA:** That is true.

**ADV KENNEDY SC:** Yes. So her conclusion was in relation to 4.1.24.1 that the MOU between DLS and LMT did not impose a legally binding obligation on Denel to contract LMT for this particular contract?

**MS MALAHLELA:** That is what she wrote.

20 **ADV KENNEDY SC:** Right. And the MOU was no longer enforced. In 4.1.24.2, there was no legal obligation arising from a contract for hulls. And then an option to purchase agreement, also did not place a legally enforceable obligation.

And she also dealt with a letter by DLS's CO to Khomotso. The Commission has heard evidence and we will

hear evidence relating to Khomotso. That was a minority shareholding in LMT after Denel required the majority shareholding.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Were you aware of that?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Alright. So then you referred to Ms Govender's email. I am not going to go into the content of that because you have already summarised it in your  
10 statement. That is attached... Let me just find the page. It is from page 284. Is that correct?

**MS MALAHLELA:** I just need to confirm. That is correct.

**ADV KENNEDY SC:** Alright. Thank you. Now I would like to turn in your statement to page 144 and that is the adjudication of the updated request for proposals for this HY, Hoefyster contract in June 2014.

So you were now able, as I understand your evidence. Once Ms Govender said there is no legal obligation for Denel to give the business to LMT automatically, you can then...  
20 you were then able to proceed to evaluate these... Oh, sorry. To have these bids adjudicated and an award made.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Right. Now, what reference is then made in 4.2.2 to a process in which the bidders were asked to amend or update their proposals to contain a breakdown

of the prices and the items that we see in 4.2.2.1 to 4.2.2.3 are the items. So you required a breakdown. Why was there... why was it necessary to have a breakdown of the overall prices that they had submitted?

**MS MALAHLELA:** Because it was not clear what each bidders quoted for. We could not compare apples with apples.

**ADV KENNEDY SC:** Okay. And then you refer in 4.2.5 to the responses received from the three suppliers, LMT, VR  
10 Laser and DCD. And you then summarise in 4.2.6 the pricing that was actually received.

**MS MALAHLELA:** H'm...

**ADV KENNEDY SC:** Is that correct?

**MS MALAHLELA:** In 4.2.6?

**ADV KENNEDY SC:** 4.2.6. And then you give the... how it is broken down where applicable. LMT, however, in 4.2.6.1... Are you with me?

**MS MALAHLELA:** Yes, I am with you.

**ADV KENNEDY SC:** LMT gave a response in which it  
20 quoted an amount of R 736 534,00 excluding VAT. That for each of the 217 hulls, it indicated that:

“It is not possible to quote for mine protection separately as it is an integral part of the whole structures.”

Now you had asked for a breakdown specifically to see

what is your price for the mine protection system separately from the rest.

**MS MALAHLELA:** So if I may just go back a little bit? So we submitted the documentation to Exco. The documentation coming from the first RFO that was issued out. And Exco recommended that we go and get revised quotations because we could not see what the suppliers actually quoted for and all of that is in the minute.

**ADV KENNEDY SC:** Right. So that was a decision by Exco,  
10 not by yourself?

**MS MALAHLELA:** It was.

**ADV KENNEDY SC:** Yes. But did you implement that decision ...[intervenes]

**MS MALAHLELA:** To reissue?

**ADV KENNEDY SC:** ...by why of asking these three bidders to give a broken down price?

**MS MALAHLELA:** Yes, we did.

**ADV KENNEDY SC:** Yes. Are you able to tell us, when we  
20 look at LMT's revised submission in 4.2.6.1, the quoting of an amount of R 736 000,00 excluding VAT. Was that the same as what they previously tendered or different?

**MS MALAHLELA:** It was different. It was more than half the price.

**ADV KENNEDY SC:** More than half?

**MS MALAHLELA:** Yes. So if we can just go there.

**ADV KENNEDY SC:** Yes, we saw earlier that it was over a million rand, was it not?

**MS MALAHLELA:** I think it was around R 1.7 million.

**ADV KENNEDY SC:** Yes. Double the eight hundred something thousand submitted by ...[indistinct]

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** So here you have a dramatic reduction in LMT.

**MS MALAHLELA:** Sure.

10 **ADV KENNEDY SC:** Yes. With the purpose of getting a breakdown to allow suppliers to change their prices overall.

**MS MALAHLELA:** Since a lot of time had elapsed I take it that – or should I say – how do I put that? It was expected that the price could be different but we did not expect that the price would go down.

**ADV KENNEDY SC:** Yes. And then ...[intervenes]

**CHAIRPERSON:** So in the end what was the explanation for that?

20 **MS MALAHLELA:** I talk to it later on in my affidavit, I think he is going to get to it.

**CHAIRPERSON:** Do you remember what the explanation was?

**MS MALAHLELA:** They...I...

**CHAIRPERSON:** If you do not remember you can deal

with it later, I thought you might just remember  
...[intervenes]

**MS MALAHLELA:** The top of my ...[intervenes]

**CHAIRPERSON:** Sounds an awkward thing.

**MS MALAHLELA:** Ja. Top of my head, let me not...

**CHAIRPERSON:** Okay, alright.

**MS MALAHLELA:** Let us just get to it then I know I am referring to the actual stuff.

**CHAIRPERSON:** Okay. Alright.

10 **ADV KENNEDY SC:** Can I take you perhaps as the Chair has raised this issue, to page 149? Let us just jump ahead for a moment to page 149, paragraph 42.21. Do you have it?

**MS MALAHLELA:** 42.21?

**ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Yes. You say:

“The pricing contained in the revised proposals of 27 June 2014 can be summarised as follows:

20 42.21.1 LMT sought to explain its pricing with respect to the 2017 hulls(?) in their previously submitted proposal by distinguishing between the interior and exterior features of each hull as follows:

(a) The unit price of the 217 hulls were



R736 534 each where sandblasting and priming was included, and

(b) The unit price of the 217 hulls were R763 191.02 each where sandblasting and painting of each hull with matt oak earth exterior and beige green as per the RSA spec was included.”

That does not seem to actually give an explanation for why there was such a substantial decrease.

10 **MS MALAHLELA:** Ja, there was another section where they alluded to having improved the processes but it is somewhere in the documentation, I can just get it and refer to it.

**ADV KENNEDY SC:** Okay, let us deal with that in due course then. Alright, let us go back to your page 145. So you deal not only with LMT’s revised proposal but also that of VR Laser and then there is a reference to the breakdown for them. In relation to DCD you deal with that in 42.64 on the foot of page 146 and a table at the top half of – sorry,  
20 146, from 145, is that correct?

**MS MALAHLELA:** That is correct, ja.

**ADV KENNEDY SC:** Alright, now in 4.2.8 you refer to a team meeting on 1 April 2015 to consider the responses and you then in 429 say that you called for a cross-functional team to evaluate the updated proposals, is that

correct?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** And you set out the names of the individuals who were invited to sit on the cross-functional team. In 4.2.10, Mr Badenhorst, Bezuidenhout, Brevan, etcetera and your name appears at 4.2.7.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Right. And you also involved the assistance of a Mr Rhakaduwe of the supply chain management department.

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** Now let us move ahead to 42.14.

**MS MALAHLELA:** Found it.

**ADV KENNEDY SC:** On page 148. That is where your cross-functional team evaluated the three suppliers' responses on the 25 June and a list of questions was noted requiring clarification. Correct?

**MS MALAHLELA:** That is correct, we looked at the quotations received on the 25<sup>th</sup> and we called for a meeting the following day.

**ADV KENNEDY SC:** And what flowed from that was on the following day, there were feedback sessions or a feedback session attended by the three suppliers separately, VR Laser, DCD and LMT, different times that you specify. Was that for the questions to be posed for their clarification?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Right. Now we do not need to go into the detail of what was done then and then in 4.2.20 the cross-functional team then gave the three suppliers an opportunity to submit revised proposals based on the issues raised.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** And they then submitted their revised proposals. In fact, Chair, I see I was confused, the  
10 reference I gave earlier to 42.21 relates to these revised proposals. Let me just check with you, Ms Malahlela. So was this another opportunity for them to revise their proposals again?

**MS MALAHLELA:** Yes, if they I misunderstood anything and our initial documentation.

**ADV KENNEDY SC:** Right.

**MS MALAHLELA:** After the clarification.

**ADV KENNEDY SC:** Right. So they had originally submitted prices, then they were asked to break their  
20 prices down and some of them did, some of them did not and then – and then there is yet a further opportunity for revised proposals.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Ja, was this normal procedure to allow them to revise their proposal?

**MS MALAHLELA:** It was not – I cannot say that we have done it before on a specific order but it makes sense to be able to evaluate apples with – to understand that everyone quoted on the same parameters because if you look at the quotations you realise that some of them are included painting, some of them did not include painting. So we wanted to have a proper clarification, Chair.

**ADV KENNEDY SC:** Right. And then they submitted the revised proposals. We see in 42.21.2, DCD did not change  
10 its pricing.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** VR Laser gave an updated proposal but there was no revision in the actual pricing.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** And it just gave other information and – yes, there is no mention – I beg your pardon, I must start LMT, we dealt with that earlier, 42.21.1. Alright and then 42.24 refers to the same criteria, price functionality and BBEE with the percentages as mentioned to earlier,  
20 correct?

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Right and then there was a template. And do I understand from that that the template was then used to tabulate the evaluation of the three bids.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Right. And you then say in 42.26 that VR Laser received the highest score of 65.54%. And then for price it got 10.3.9% of a potential 25%, functionality, 50.15% and 5% for BBBEE.

**MS MALAHLELA:** That is correct and you can also see it on the face of the evaluation template.

**ADV KENNEDY SC:** Right.

**MS MALAHLELA:** It is a copy and paste essentially of what happened.

10 **ADV KENNEDY SC:** Yes. And then you compare that with LMT in 42.27. It came second. Iscor was 64.78%, correct?

**MS MALAHLELA:** Yes, same here based on the consolidated sheet that is also part of the ...[intervenes]

**ADV KENNEDY SC:** On the scoring.

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** And so; the difference between LMT and VR Laser was a very small difference, not so, less than %, it was .76%.

**MS MALAHLELA:** Based on these percentages.

20 **ADV KENNEDY SC:** Yes. But you refer at the foot of the page to LMT total financial offer being 165 million making it the cheapest out of the three suppliers.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** So although we have seen its original proposal with double what the other suppliers were offering

through the revision of the proposals it came out actually ultimately the cheapest.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Yes. Chair, may I ask, do you wish to take a tea adjournment around now?

**CHAIRPERSON:** Ja, let us do that.

**ADV KENNEDY SC:** It see it is 11.15.

**CHAIRPERSON:** We will take the tea adjournment and resume at half past eleven.

10 **ADV KENNEDY SC:** Thank you, Chair.

**CHAIRPERSON:** We adjourn.

#### **INQUIRY ADJOURNS**

#### **INQUIRY RESUMES**

**CHAIRPERSON:** Okay, let us continue.

**ADV KENNEDY SC:** Thank you, Chair. Ms Malahlela, can I take you back to your statement page 151? Are you there? Right.

**CHAIRPERSON:** Switch on your mic, Ms Malahlela.

**MS MALAHLELA:** Sorry. It is on now.

20 **ADV KENNEDY SC:** Alright, now may I take you to paragraph 4.29. You deal in the next number of paragraphs with your interaction with Mr Burger and you had already told us that Mr Teubes is the person you would report to directly and Teubes would report to Burger.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** But you had a number of interactions with Mr Burger. Could you tell the Chair please what was the general nature of the interactions with Mr Burger about this specific procurement process and whether it was ordinary or out of the ordinary for him to be speaking directly to you about this issues.

**MS MALAHLELA:** At the time it was not ordinary for the CEO to come to my office and ask me to give him feedback on procurement matters as I was reporting to the COO, not  
10 the CEO.

**CHAIRPERSON:** Was Mr Teubes around on that day or was this a situation where maybe Mr Teubes was not around?

**MS MALAHLELA:** I cannot recall exactly if he was around on the day. But I – sorry?

**CHAIRPERSON:** If Mr Teubes was not at work would you have found it strange if Mr Burger came to you for a feedback?

**MS MALAHLELA:** Usually he would call me to his office  
20 instead of coming to my office if there is an issue that we ...[intervenes]

**CHAIRPERSON:** Okay, so there are two things. One, it is whether it is his request for a feedback from you that was not normal or whether it his coming to your office that was not normal or both?

**MS MALAHLELA:** Both.

**CHAIRPERSON:** Both were not normal.

**MS MALAHLELA:** Unless he was coming from somewhere in the offices but it was just not normal, he did not come to me.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** Ja.

**CHAIRPERSON:** Had it happened before?

**MS MALAHLELA:** Not that I can recall.

10 **CHAIRPERSON:** Yes. What would be normal is that he would get his feedback from Mr Teubes?

**MS MALAHLELA:** If there is need to give him feedback. We usually would not give feedback during the process.

**CHAIRPERSON:** Sorry?

**MS MALAHLELA:** We usually did not give feedback during the process.

**CHAIRPERSON:** Oh, even that was not normal?

**MS MALAHLELA:** Yes.

20 **CHAIRPERSON:** Okay but if he needed anything from you the channel would be for him to go through Mr Teubes?

**MS MALAHLELA:** Or call me to his office or give me a call to tell me what he needed or give me a call to tell me what he needed.

**CHAIRPERSON:** So he could deal directly with you sometimes.



**MS MALAHLELA:** Seldom, sometimes. Yes.

**CHAIRPERSON:** Yes, okay. But you say here what was not normal was one, that he asked for a feedback from you in the middle of a process. Two, that he came to your office.

**MS MALAHLELA:** Correct.

**CHAIRPERSON:** Okay, alright. Mr Kennedy?

**ADV KENNEDY SC:** Thank you, Chair. In 4.2.29 you refer to yourself giving him regular updates on an  
10 instruction. What instruction did he give you?

**MS MALAHLELA:** He asked me to give him feedback on the process.

**ADV KENNEDY SC:** On a regular basis or just on one occasion?

**MS MALAHLELA:** On a regular basis.

**ADV KENNEDY SC:** Okay.

**CHAIRPERSON:** Did that mean that even when Mr Teubes was around?

**MS MALAHLELA:** Yes because if you refer to the emails,  
20 I cc'd Mr Teubes on our conversations.

**CHAIRPERSON:** You copied Mr Teubes?

**MS MALAHLELA:** Yes, I did.

**CHAIRPERSON:** Yes. Did Mr Teubes find it strange as well?

**MS MALAHLELA:** No, he knew about it.

**CHAIRPERSON:** No, what I am asking is whether he also found it strange that Mr Burger wanted the reports from you.

**MS MALAHLELA:** I am not sure, I did not speak to them.

**CHAIRPERSON:** You do not okay, alright.

**ADV KENNEDY SC:** You then refer to informing Mr Burger about the prices and that a recommendation could not be made on the information and he then requested a copy of the bid evaluation committee's evaluation sheets or matrix.

10 You refer to that in 42.31.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Did he explain why he was asking you for that?

**MS MALAHLELA:** No.

**ADV KENNEDY SC:** Did you have any feeling as to whether it was normal practice for him to do that?

**MS MALAHLELA:** I thought it was just oversight ensuring that we follow the right process on this particular one because it was high value, it is just to ensure that everything goes well. That was my impression at the time.

20

**ADV KENNEDY SC:** Then you refer in 42.32 to him looking at the evaluation committee's sheets, evaluation sheets, etcetera, and he informed you that he was prepared to defend VR Laser. How did that discussion arise?

**MS MALAHLELA:** I sent him – it all in writing, so I sent him an email and then he responded by saying that he is prepared to defend VR Laser as they also number 1 in the scoring. It is all in writing.

**CHAIRPERSON:** Ja but just give the context what had happened before that made him – that prompted him to make this remark that he was prepared to defend VR Laser. It is like somebody had said something and then he thought it was necessary to make it clear to you or to all  
10 concerned that he was prepared to defend them. What was the context?

**MS MALAHLELA:** I would not know so the information that I have is that I had been sending him information after his request and he looked at this information and after the last email that I had sent before this then he responded by saying that he is willing – or let me quote. He is prepared to defend VR Laser. I do not know against what.

**CHAIRPERSON:** Did you understand this remark yourself or did you not understand [inaudible – speaking  
20 simultaneously]

**MS MALAHLELA:** My understanding at the time was that he was willing to go to – that he would normally take the recommendation to corporate office and the board. So once it is approved I will give it to him to take to corporate office after he had signed it. So my understanding at the

time was that when he gets there he would be willing to work with the submissions that he has based on the information that he had.

**CHAIRPERSON:** Okay. Mr Kennedy?

**ADV KENNEDY SC:** Thank you, Chair. Then in 42.38 you refer – sorry, 42.33, top of page 152, you refer to Mr Burger asking whether the Patria Report was included. Do you know why he – in the committee’s recommendation, do you know he raised that? Did he explain?

10 **MS MALAHLELA:** No, he did not explain.

**ADV KENNEDY SC:** Did you find it out of the ordinary?

**MS MALAHLELA:** Now thinking back what – the whole conversation and him being part of the process was out of the ordinary itself.

**ADV KENNEDY SC:** Yes. And then in 42.34 you say that Mr Burger said that he would be negotiating with VR Laser, negotiating what?

20 **MS MALAHLELA:** I do not know what he was negotiating with VR Laser because - as you let me just look at that, then I can – so if you look at the exact email that – that is 42.34 was taken from, you will see that we had already drafted the submission and the submission was in the approval process and was now going to be changed because the committee had already made the decision with regard to the way forward. So I do not know what he was

talking about with regard to him discussing with VR legal, I believe that he is coming, maybe you must ask him.

**CHAIRPERSON:** Well, you cannot have all of these things that you say you did not know because he is writing to you and he is communicating something. I see here he seems to say – your paragraph 4.2.34 says:

“He also undertook to negotiate with VR Laser to reduce the price [inaudible – speaking simultaneously]

10 **MS MALAHLELA:** Outside the normal process.

**CHAIRPERSON:** H’m?

**MS MALAHLELA:** Outside the normal process.

**CHAIRPERSON:** Yes. So this sounds strange to me.

**MS MALAHLELA:** It is.

**CHAIRPERSON:** Now I am thinking if you receive communication or he sent this to you, there would be some reaction from you, Mr Burger, what are you talking about? Why would you negotiate with VR Laser to produce the price?

20 **MS MALAHLELA:** For me the process was concluded – as you see later on I received a quotation without soliciting it and I was requested to include it and I refused.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** Which I believe now in hindsight that came, I do not have the facts, came as a result of him

having negotiated. I do not have the facts.

**CHAIRPERSON:** Yes but it sounds like he – this negotiating that he wanted to undertake with VR Laser to reduce the price does not sound right.

**MS MALAHLELA:** It does not.

**CHAIRPERSON:** Yes. Would Mr Teubes have become aware at some stage during the process of what Mr Burger said?

10 **MS MALAHLELA:** He was cc'd in the emails, in all the emails.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Did he share with you what his reaction was to this?

**MS MALAHLELA:** No.

**CHAIRPERSON:** He did not.

**MS MALAHLELA:** No.

**CHAIRPERSON:** You never got to know what he thought about?

20 **MS MALAHLELA:** No. In hindsight, when I received the quotation, I assumed that is what happened.

**CHAIRPERSON:** H'm...

**MS MALAHLELA:** That is why I [inaudible – speaking simultaneously]

**CHAIRPERSON:** Would it be correct to say from a certain

point Mr Burger seems to have shown a particular interest in the process in what was happening?

**MS MALAHLELA:** Correct, from my point of view.

**CHAIRPERSON:** From your point of view.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** And would that be not the kind of level of interest that he normally showed in other matters?

**MS MALAHLELA:** No.

**CHAIRPERSON:** Yes and now he was saying he would  
10 negotiate with VR Laser to reduce their price and he would do so outside the normal channels.

**MS MALAHLELA:** Correct.

**CHAIRPERSON:** Okay, alright. Mr Kennedy?

**ADV KENNEDY SC:** Thank you, Chair. Ms Malahlela, can I take you to the emails at page 529?

**MS MALAHLELA:** 529. I have found it.

**ADV KENNEDY SC:** There is an email at the foot of the page which appears to come from you to Mr Burger. In fact is says Stephan, Reenen. Reenen is a reference to  
20 Teubes, is that right?

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** And then you say:

“Please find the attached as requested. The committee will meet tomorrow to do the final recommendation if they agree with the results after

population of info.”

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Was that the cross-functional committee you referred to earlier?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Right. Now Mr Teubes – sorry, I beg your pardon, Stephan Burger then responds to you in the email halfway down the page, in the middle of the page, on the 27 June. Just read out to the Chair please what he  
10 says?

**MS MALAHLELA:** The one that starts with:

“Thank you, Cecilia...”

**ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** “Thank you, Celia, given all that I am prepared to defend VR, the one thing that I have not seen is the factor that Patria has strongly recommended VR as the preferred supplier but maybe this is integrated in the scoring. Given VR’s price but also that they are number one, I think we  
20 should get DCO approval but in parallel I will discuss with them to reduce their price. I would not have done that if they were not number one but, as they are, it could do no harm to get the prices reduced. This, however, I will do outside the normal channels. That is the email that I was



referring to.”

**ADV KENNEDY SC:** Now what did you understand him to mean when he said they are number one?

**MS MALAHLELA:** So if you refer to the consolidated sheet, there were numbers with regard to number 1, number 2, number 3, which is on the consolidated score sheet. That is what he was [inaudible – speaking simultaneously]

**CHAIRPERSON:** In other words, in terms of preference.

10 **MS MALAHLELA:** Yes.

**CHAIRPERSON:** In terms of scoring.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Of points.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** So VR Laser was number 1.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Yes, so that is what he is referring to.

**MS MALAHLELA:** That is what I understood he was referring to.

20 **CHAIRPERSON:** Yes, okay.

**ADV KENNEDY SC:** And was that the scoring that yielded results that we saw earlier where VR Laser was number one but LMT was less than 1%?

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Less in scoring than VR Laser.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** It was .76, I think it was, percent.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** Now I get the impression – and you must tell me if my impression has got any basis in terms of what had happened, that when he says I am prepared to defend VR and then talks about negotiating the reduction of price, I get the impression that that is a reaction of somebody  
10 who might have felt or understood that VR, as number one, was under threat and that they might not actually get appointed hence wanting to defend them so that they either remain number one or they get appointed. That is what I can think of.

**MS MALAHLELA:** Ja.

**CHAIRPERSON:** Was there anything that was happening in the process that Mr Burger had become aware of that he might have interpreted as threatening VR Laser's prospects of being appointed?

20 **MS MALAHLELA:** The only thing that I can think of is the issues with LMT that we have already spoken about.

**CHAIRPERSON:** Yes, yes.

**MS MALAHLELA:** That is the only thing that I can think of but again, I am not sure.

**CHAIRPERSON:** Yes, okay. And the issue of reducing

the price, seems to me might only also have been – might have been intended to address maybe – to make sure that in terms of advantage to the company there was some benefit maybe in order to counteract any negativity or any negative factors because if you say this is my price and it is an acceptable to the company, you will not have to reduce it.

**MS MALAHLELA:** Correct, perhaps that was part of the ammunition that he was building to defend, I do not know.

10 **CHAIRPERSON:** Yes.

**MS MALAHLELA:** But it makes sense.

**CHAIRPERSON:** Yes. But you would agree that from what he is saying and from his actions it looks like he was very supportive of VR laser getting the appointment.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** That is how it looks like.

**MS MALAHLELA:** That is how it looks like.

**CHAIRPERSON:** Ja, okay, alright. Mr Kennedy?

20 **ADV KENNEDY SC:** Thank you, Chair. If I can take you back for a moment to page 150. We dealt with this in your evidence before the adjournment. 42.26 refers to the scoring given to VR Laser.

**MS MALAHLELA:** One five, sorry?

**ADV KENNEDY SC:** 150 is the page number. Maybe it is the numbers on the top left.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** 150, do you have it?

**MS MALAHLELA:** I found it.

**ADV KENNEDY SC:** 42.26 you refer to how the scoring was made up for VR Laser, 65.54%, broken down price, functionality and BBBEE. Now what interests me is the price of financial offer. So VR Laser was offering a price of R262.4 million for this project.

**MS MALAHLELA:** Correct, that is what appears, ja.

10 **ADV KENNEDY SC:** Okay. And then you set out in 42.27.2 the financial offer, the price from LMT being the cheapest. That is R165.6 million.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** So we are comparing LMT, 165 million with VR Laser at 262 million, almost 100 million more expensive.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Yes. Despite that, VR Laser was given an overall scoring almost 1% more better than LMT  
20 because of the other considerations.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** The BBBEE and the functionality.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Which were weighted in the way that we have already seen where pricing was weighted less

than the other items. Okay. Alright, can we go back to the emails, please?

**MS MALAHLELA:** Okay, which page are they on?

**ADV KENNEDY SC:** Page 528 now. 529 is the one that you have just dealt with from Mr Burger saying he is prepared to defend VR and that he – that he intended to see if he could negotiate a lower price from VR.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Did he indicate in this email or  
10 anywhere else whether he was going to give the same opportunity to LMT or DCD to revise their prices?

**MS MALAHLELA:** No, he did not. That is also the other reason why I refused to include the quotation after I received it.

**ADV KENNEDY SC:** Why was that? Why did you refuse?

**MS MALAHLELA:** The other suppliers were not given an opportunity and supply chain did not solicit it.

**ADV KENNEDY SC:** Okay.

**MS MALAHLELA:** So I knew nothing about us requesting  
20 it.

**ADV KENNEDY SC:** Then if we can look at what appears to be your reply at page 528. Can you confirm if that is your reply?

**MS MALAHLELA:** Yes, it is.

**ADV KENNEDY SC:** Now in your reply, if I may just take

the witness through paragraphs that appear not to be in dispute and then just get to the real points, Chair. The Patria Report was integrated in a technical scoring, that is something he had asked Mr Burger, have you incorporated reference to the Patria recommendation.

**MS MALAHLELA:** Yes, I ...[intervenes]

**ADV KENNEDY SC:** You mentioned that earlier.

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** Yes. But then in the second  
10 paragraph, they are not numbered but the second  
paragraph of your email, you say:

“VR Laser price is totally over our budget.”

Now we have seen that their price that I took you to a moment ago was R262-odd million.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** And you say that:

“That is totally over our budget, the maximum we can do is R1 million per unit all costs included based date 2014.”

20 What were you referring to there?

**MS MALAHLELA:** I was – we normally had values that were attached to line items that we were buying as part of the programme, so between finance and programmes they will tell us how much we are allowed on that particular line, then we know what we can negotiate for the company to be

able to make profit.

**CHAIRPERSON:** If this email at page 528 preceded that remark by Mr – that email by...

**ADV KENNEDY SC:** Mr Burger?

**CHAIRPERSON:** Like it did on the next page, then it must be that this remark by Mr Burger that he would negotiate with VR Laser to reduce the price must have been prompted by your statement that their price was totally over the budget, is that right?

10 **MS MALAHLELA:** Perhaps but that was not my intention.

**CHAIRPERSON:** But it did precede.

**MS MALAHLELA:** Let us just check the date for correctness, so that email ...[intervenes]

**CHAIRPERSON:** They are the same date. Ja, yours is in the morning at twenty eight minutes past eight, his is eighteen minutes past one.

**MS MALAHLELA:** One.

**CHAIRPERSON:** A.m.

**MS MALAHLELA:** Correct.

20 **CHAIRPERSON:** Or is yours first – is his first or...?

**MS MALAHLELA:** Let us check the pages, 203 – where was this email ...[intervenes]

**CHAIRPERSON:** Or maybe because of the trail of emails at some stage or another you may have...

**MS MALAHLELA:** Ja.

**CHAIRPERSON:** He might have known that there is concern with regard to the price, VR Laser's price being above budget.

**MS MALAHLELA:** He might have.

**CHAIRPERSON:** Ja. Okay, alright. Perhaps just to assist, Chair, apart from the date and the time which reflects that Stephan Burger's email was sent at 1.18 a.m. and your email was sent the same morning but at 8.28, the first paragraph, if you go back to Mr Burger's email, starts:

10 "Thank you, Celia, given all of that, I am prepared to defend VR. The one thing that I have not seen is the fact that Patria has strongly recommended VR as the preferred supplier but maybe this is integrated in your scoring."

**CHAIRPERSON:** Oh, yes.

**ADV KENNEDY SC:** And then your email at page 528 starts and deals with that.

**MS MALAHLELA:** Ja.

**CHAIRPERSON:** Ja.

20 **ADV KENNEDY SC:** Patria report was integrated in the technical scoring.

**CHAIRPERSON:** Ja.

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** So am I ...[intervenens]

**CHAIRPERSON:** So yours was a response to his.



**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Ja.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** Alright, thank you.

**CHAIRPERSON:** But the fact that VR Laser's price was over the budget, did it not mean that they could not be appointed or given the job then as long as their price was over the budget?

10 **MS MALAHLELA:** So normally what we would do is that we would take it to the committee, get mandate to negotiate with them to bring them within the budget price and if they did not agree to come within the budget price then we will get permission from management to proceed with this price.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** Thank you, Chair. Then still on page 528 you add a further paragraph apart from dealing with the price being totally over budget, the third paragraph you

20 say:

“Please note that the other big disadvantage for LMT and DCD was that we could not give them points for any BBBEE element. They have submitted letters stating that they are in a process of verification.”

Elsewhere in your statement you have referred to expired certificates.

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** What was the actual problem that led to them being given zero points? Did they deserve zero points or was there a problem with their proof?

**MS MALAHLELA:** For us to be able to award points we needed a valid certificate which has not expired.

**ADV KENNEDY SC:** Right, so then your letter – your  
10 email to Mr Burger continued:

“They have submitted letters saying that they are in the process of verification. Should they submit the new certificates within the next fourteen days we have to include their points. If they do it will change the picture with regard to the final total score. Please refer to the BBEE notes on the consolidated score sheet. I will schedule a meeting.”

Etcetera.

20 “...to do final recommendations ...[intervenes]

**MS MALAHLELA:** So we included this to be apparent in the score sheet as well.

**ADV KENNEDY SC:** Yes. So you have raised two difficulties in your email. The one is that the VR Laser price is ...[intervenes]

**MS MALAHLELA:** High.

**ADV KENNEDY SC:** Is going to take you way over budget and the second is that the scoring in which they scored just under 1% better than LMT could change if LMT and DCD submitted fresh BEE certificates which might affect – might entitle them to some points.

**MS MALAHLELA:** Correct. We had given them an opportunity to submit within 14 days.

**ADV KENNEDY SC:** Yes.

10 **CHAIRPERSON:** Would that have been proper of them to – or for you to accept their BEE certificates after you have scored them? Should they not make sure that they meet all the requirements by a certain date and if they have failed to meet those requirements they have got to be scored on that basis.

**MS MALAHLELA:** If the scoring ...[intervenes]

**CHAIRPERSON:** Can they come back later and say here are the certificates in circumstances where as at a particular critical date they did not have those certificates?

20 **MS MALAHLELA:** If the certificate arrived after we concluded the process then that would have been unfair but we, as the committee, took a decision to allow them to submit in the meeting, the clarifications meeting with them.

**CHAIRPERSON:** Ja, okay, does not like right to me but let us not – we do not have to stay on it, let us move on.

**ADV KENNEDY SC:** Now is it correct that your email was also copied to Mr Teubes?

**MS MALAHLELA:** Yes it was.

**ADV KENNEDY SC:** Alright, thank you. Now I would like you to turn to page – sorry, Chair, page 535.

**MS MALAHLELA:** Got it.

**ADV KENNEDY SC:** This appears to be an email from Mr Hendrik van den Heever. Who was he?

**MS MALAHLELA:** He was the procurement officer  
10 responsible for the components that were being bought.

**ADV KENNEDY SC:** And it is an email addressed to you and Cynthia.

**MS MALAHLELA:** Yes, Cynthia was, I believe, speaking under correction, she was his manager at the time.

**ADV KENNEDY SC:** And then there – was it accompanied by the documents that we then find from 537, supply chain manager – sorry, supply chain submission.

**MS MALAHLELA:** That looks correct.

**ADV KENNEDY SC:** Dated the 30 June and there is an  
20 analysis of the bids that we have already discussed and then at page 541 a recommendation.

“The following is recommended that a contract can be negotiated and an order placed on VR Laser Services for phase 2 of the Hoefyster contract with a total value of R262.5 million.”

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** That is the very same figure that we have referred to as being above budget, is that right?

**MS MALAHLELA:** I just have to – but we can take it as correct.

**ADV KENNEDY SC:** Right and then 712 this is a ceiling amount as further negotiations with VR Laser will take place to obtain a price below DLS budget. Who prepared this memorandum, do you know?

10 **MS MALAHLELA:** It was Henk I believe.

**ADV KENNEDY SC:** Henk?

**MS MALAHLELA:** Mr Van Den Heever.

**ADV KENNEDY SC:** Van Den Heever himself?

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** And then we see on the next page, 542 provision for signature, presumably by a number of people, your name being and title of Executive Manager Supply Chain, being at the top.

**MS MALAHLELA:** Correct.

20 **ADV KENNEDY SC:** And then also for approval by was it Mr or Ms Africa?

**MS MALAHLELA:** Mr.

**ADV KENNEDY SC:** And then Mr Thebus.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** And then on the right hand side De

Klerk and Knoetze the CFO already mentioned and then the actual approval would be by Mr Burger as CEO of DLS.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Yes. Did you sign this did you approve this as a recommendation?

**MS MALAHLELA:** No I did not.

**ADV KENNEDY SC:** Right, now we will get to your reasons in a moment. Now can I take you please to page 548.

10 **MS MALAHLELA:** 548, yes.

**ADV KENNEDY SC:** If you look at it...[intervene]

**CHAIRPERSON:** I am sorry that is five?

**ADV KENNEDY SC:** Five four eight, Chair.

**CHAIRPERSON:** Five four eight, okay.

**ADV KENNEDY SC:** This is again a trail of two emails if you look at the second one dated the 30<sup>th</sup> of June 2014. Can that be right from VR Laser to yourself?

**MS MALAHLELA:** That is correct.

20 **ADV KENNEDY SC:** Yes, that is correct and it is headed up dated quotation for the fabrication of the Hoefyster platform component it came from – I believe it is a Mr Arora CEO of VR Laser.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Do you confirm you received this email?

**MS MALAHLELA:** I do.

**ADV KENNEDY SC:** And what he says is this:

“Hi Celia please find attached the updated quotation for the Hoefyster platform components we are submitting after doing cost saving measures at our end. We are thankful for the opportunity and assure the quality - presumably of work - and best service to deliver in time.”

And was that then accompanied by the document we see  
10 from 549?

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Which appears to be there revised proposal.

**MS MALAHLELA:** That looks correct.

**ADV KENNEDY SC:** It is headed updated quotation and can you tell the Chair what the price was now being quoted in terms of the updating, the revision of the prices?

**MS MALAHLELA:** I must just find the – are you talking about the final price?

20 **ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** It was point one is talking about a quotation for the fabrication of Hoefyster platform components only so that means it is not necessarily the hub itself of 500 and has the further breakdown where you have got industrialisation unit learning curve serious

production, that is why I am asking. So I will just list all of them the three of them under point two. So point one, under point two you have got unit price of the industrialisation of house. PPM one to five which was now sitting at R1.3million and we have got point number two learning curve production which is units four to 20, which was sitting at R1.2million and series production units sitting in just over a million.

**ADV KENNEDY SC:** Yes, now how did these prices  
10 compare with the previously tendered prices from VR Laser?

**MS MALAHLELA:** If I can just – they were less if I can just summarise it, they were less than the initial quotation that we had received.

**ADV KENNEDY SC:** Can I take you perhaps to page 153.

**MS MALAHLELA:** One five three, got it.

**ADV KENNEDY SC:** This is a table that you put in your statement just explain to the Chair please what that table conveys?

20 **MS MALAHLELA:** I am at five five three so it is one five three.

**ADV KENNEDY SC:** One five three.

**MS MALAHLELA:** It will take a sec to find just opening the pages, yes.

**ADV KENNEDY SC:** Have you got it?



**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** This is part of your statement where you have set out a table, explain the table just in broad outline to the Chair please, what are you trying to convey there?

**MS MALAHLELA:** Let me just check what was here. Can I read what I said outline?

**ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** So on the same day...[intervene]

10 **ADV KENNEDY SC:** Are you in 4.2.38 are you?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** I am just trying...[intervene]

**ADV KENNEDY SC:** Yes, read it out please.

**MS MALAHLELA:** “On the same day I provided a draft submission to EXCO of Denel Land Systems to Mr Keevers for his consideration coincidentally also on the 30<sup>th</sup> June 2014 I received an email from VR Laser’s Chief Executive Officer at the time Mr JP Arora attaching a revised proposal which contained a reduced price for the production of the armour hulls.”

20

Then I included the table.

**ADV KENNEDY SC:** Yes, so what does the table refer – well let me take you halfway down you will see an item that

says series production units based on the DLS schedule initial price R120 400 986,00 revised price R100 084 487,00, right. Is this what you referring to as a reduction in prices?

**MS MALAHLELA:** If you look at the series production that is where the reduction stands out.

**ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** The other prices appear to  
10 be...[intervene]

**MS MALAHLELA:** Relatively the same.

**ADV KENNEDY SC:** To remain the same.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** And that is under the heading of quotation for armour hulls including Mine Protection and then the second half of the table is headed quotation for armour hulls excluding Mind Protection and there the unit price for units one to five and four to 20 remain the same as quoted previously, correct?

20 **MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** But then the next items series production units based on the DLS schedule there is a reduction from R100 108 446,00 to R100 100 601,00.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Thank you. Now how did it come

about that we are VR Laser in fact sent you the email we have just looked at which reflected yet again revised prices which were now in some respects substantially lower than what they have previously tendered?

**MS MALAHLELA:** I never received information as to who requested them but I know I did not request them as Supply Chain Team as far as I know did not request them to resubmit.

**ADV KENNEDY SC:** Right, now please go in your  
10 statement to page 153.

**CHAIRPERSON:** I am sorry we know that – we know what Mr Burger had said to you about talking, negotiating with them to reduce their price outside the normal channels. Now from what you have said it looks like your policies and procedures permitted a stage where you could go back to a supplier and negotiate a reduction of price under certain circumstances. Is that right?

**MS MALAHLELA:** Correct.

**CHAIRPERSON:** And that would be an official permitted  
20 process?

**MS MALAHLELA:** Through Supply Chain.

**CHAIRPERSON:** Yes, through Supply Chain. So do you have any idea why Mr Burger would have wanted the reduction of any price on the part of VR Laser to happen outside of that official process?

**MS MALAHLELA:** No.

**CHAIRPERSON:** You have no idea?

**MS MALAHLELA:** I have no idea.

**CHAIRPERSON:** Okay, alright.

**ADV KENNEDY SC:** Can I take you then in your statement page 153 your paragraph 42.39.

**MS MALAHLELA:** One five three?

**ADV KENNEDY SC:** Yes, and you refer to the email that you have received from VR Laser, is that the email setting  
10 out the reduced prices?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** And you sent that to Mr Thebus and he reacted how?

**MS MALAHLELA:** Interesting something to that...[intervene]

**ADV KENNEDY SC:** He said it was interesting?

**MS MALAHLELA:** Yep.

**ADV KENNEDY SC:** Right.

**MS MALAHLELA:** In – okay maybe you are still going  
20 there but initially he said interesting after we have done the submission he asked me to include it which I refused.

**CHAIRPERSON:** That is Mr Thebus?

**MS MALAHLELA:** Yes, it is all in writing in the emails.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** And you point out at the foot of page

153 that the revised proposals that was received on the 30<sup>th</sup> of June was still dated 24<sup>th</sup> of June. Why is that significant and if so why?

**MS MALAHLELA:** It was not really significant at my head it was that you could not really distinguish between that and the previous quotation that we received.

**CHAIRPERSON:** Well of course it created the impression that as at 24 June 2014...[intervene]

**MS MALAHLELA:** We had received that one.

10 **CHAIRPERSON:** There price was this latest one.

**MS MALAHLELA:** Yep.

**CHAIRPERSON:** Which was factually not true.

**MS MALAHLELA:** True.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** And did you receive any revised further reduced prices from LMT or DCD?

**MS MALAHLELA:** Not that I can recall.

**ADV KENNEDY SC:** And were they invited by you or anybody else to your knowledge?

20 **MS MALAHLELA:** Not that I know of.

**ADV KENNEDY SC:** Okay. Now you have mentioned in answer to the question from the Chair a moment ago that you understood your processes to allow negotiation of better prices. If that was allowed was it permissible to do that only for one of the tenderers or was it required that

everybody had to be given a chance?

**MS MALAHLELA:** So if the recommended supplier was the winning bid then that was allowed. Then we would recommend it and get mandate to go and negotiate the price further because they have already won but we will get approval first before engaging the process.

**CHAIRPERSON:** So could you have a situation where you have already where a particular supplier had won and you can still negotiate the price down?

10 **MS MALAHLELA:** Yes, in certain cases.

**CHAIRPERSON:** Was that something that could happen?

**MS MALAHLELA:** Yes, in certain cases we did that.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** Gathered within our baseline that we had.

**CHAIRPERSON:** Yes, but I guess that you would be negotiating from a weak position would you not where they have already known that they have won as opposed to negotiating before the final decision?

20 **MS MALAHLELA:** True, we would not necessarily let them know that they had won.

**CHAIRPERSON:** You would not tell them?

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Oh, okay alright so if your negotiations did not yield a satisfactory reduction...[intervene]

**MS MALAHLELA:** Then we would go back.

**CHAIRPERSON:** Then you could go back, ja okay alright.

**MS MALAHLELA:** If we did not get permission to proceed with that price.

**CHAIRPERSON:** Okay, alright, yes Mr Kennedy.

**ADV KENNEDY SC:** Thank you Chair if I can just have a moment. Right now you referred to a response that you received from Mr Thebus in your paragraph 4.2.40.1 and in 42.40.2 you say that he recommended that the reduced price contained in the revised proposal received from VR Laser Mr Arora earlier that day that evening be included in the draft submission to EXCO and it be sent to Mr Burger. Is that correct?

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Now what did you feel about that request or instruction from Mr Thebus?

**MS MALAHLELA:** How I felt?

**ADV KENNEDY SC:** Yes, what did you feel.

**MS MALAHLELA:** That it was not proper that is why I responded by saying that we could not do that.

**ADV KENNEDY SC:** And I take you to the email that your statement refers to page 562.

**MS MALAHLELA:** Page five six two.

**ADV KENNEDY SC:** At the foot of the page five six two.

**MS MALAHLELA:** I am almost there, got it.

**ADV KENNEDY SC:** Right at the foot of the page Reenen that is Mr Thebus there is an email right at the bottom says:

“Thanks Celia I suggest that you update it with the latest quote info”

Update what, Ms Malahlela?

**MS MALAHLELA:** The submission that I had sent to him.

**ADV KENNEDY SC:** Okay:

10 “That you update it with the latest quote info from VR and then email it to Stephan.”

Which Stephan is that?

**MS MALAHLELA:** Stephan Burger.

**ADV KENNEDY SC:** Burger:

“For his call and further processing.”

Then just above that seems to be an email from you in response:

“Dear Reenen are you happy with the content as is. I cannot pick up the changes you have made to the doc could be because I am doing it from IPad.”

20 And then you say:

“RE - updated proposal for governance reasons. We cannot include it in the evaluation as the evaluation is already concluded and signed. We can only take into consideration the prices as submitted by the closing date. Should the Board



give us the mandate to negotiate we can use this proposal as a starting point for negotiation.”

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Just explain that to the Chair please bearing in mind your answer to his earlier question about when and to what extent there can be negotiation?

**MS MALAHLELA:** Okay so on this I was highlighting that it would be improper of us to include that quotation as part of the quotations that we had received during the process.

10 But if the proposal that we get permission to negotiate is granted as part of our proposal that we were submitting to the Board then we could use that as a starting position.

**CHAIRPERSON:** You see that reasoning I am fine with it but in the same email you say:

“We can only take into consideration the prices as submitted by the closing date.”

Again I have no problem that sounds logical to me but why is that answer not good enough in regard to the BBEE certificates, why should they not be told if you did not have  
20 – if you did not comply with the BBEE requirements by the closing date you cannot come after you see that see where I was coming from.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** So why is that reason that you advance for saying that VR Laser cannot bring their price after the

closing date. Why is that answer not good enough to say to the other companies you cannot bring your certificates or BBBEE certificates after the closing date?

**MS MALAHLELA:** So on that on the BBBEE we did not only give one company an opportunity to submit.

**CHAIRPERSON:** After the closing date?

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** That was in your policies?

**MS MALAHLELA:** It was not in the policy but we did not  
10 give one company an opportunity to submit we gave all companies an opportunity to resubmit a valid BBBEE certificate within 14 days.

**CHAIRPERSON:** Yes, but if the policy does not allow you to do it after why is it not wrong to do it after for all three, why is it right to do it for all three if the policy does not permit you to do it for anybody after the closing date?

**MS MALAHLELA:** Okay, the policy did not – how do I put it.

**CHAIRPERSON:** They permitted, it did not say you could  
20 do it, did it?

**MS MALAHLELA:** No, it did not but...[intervene]

**CHAIRPERSON:** So why would it be right to do it you would be going outside policy would you not? Just like you would be going outside policy to accept this price from VR Laser. Would you not agree?

**MS MALAHLELA:** So if it is during the process and we had decided that we are going to ask for clarification or additional documentation that was allowed before everything else is closed.

**CHAIRPERSON:** Well I – maybe I can understand that there is a time within which you may seek clarification exactly when that time might be another point but that I can understand but I cannot understand why if you have got a closing date to say everybody must put in all their  
10 requirements by this date and the policy does not have a provision to say under the following circumstances you can allow somebody who did not meet the deadline in terms of certain requirements to come back and meet them. I do not understand why you can do it you see because the whole idea is that the parties – everybody must meet the requirements they are told what the requirements are, they are told what the closing date is. They know that they must satisfy all these requirements by that date, do you understand?

20 **MS MALAHLELA:** I do understand.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** But the reason why we allow then in this case for the BBBEE certificate which it was part of the clarification that we asked for this during the clarification. Not somebody else outside Supply Chain going to request

on our – without us asking them to request. It was Supply Chain and the cross-functional team that during the process they decided that we will allow the suppliers to submit the BBBEE certificates.

**CHAIRPERSON:** Ja, we will continue but I think VR Laser would be entitled to say no, no they did not meet the requirements by that time you cannot give them another chance your policies do not do that and if you say I cannot reduce my price after the closing dates they also cannot so  
10 but that is fine I understand what your committee is thinking was.

**MS MALAHLELA:** Okay.

**CHAIRPERSON:** Mr Kennedy.

**ADV KENNEDY SC:** Thank you Chair. Now your statement then refers to the response from Mr Thebus did he accept your concerns or properly address your concerns that you had raised about the price not being capable of being adjusted at least at that stage?

**MS MALAHLELA:** He accepted that but he stated that  
20 they as EXCO will then take this into consideration.

**CHAIRPERSON:** He said they will take it into consideration?

**MS MALAHLELA:** At EXCO.

**CHAIRPERSON:** At EXCO?

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Oh okay which suggested he did not agree with you with your point.

**MS MALAHLELA:** He agreed that we do not include it as part of the evaluation but he said that he will then go and include it – they will take a decision to include it at EXCO.

**CHAIRPERSON:** Did you understand what he was saying because it looks like it is two contradictory positions because the purpose of including it in the submission is so that it can be taken into account. So you are saying it  
10 should not be included, he agrees with you.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** But he says they will take into account anyway.

**MS MALAHLELA:** When my submission gets to EXCO they will take it into account.

**CHAIRPERSON:** Even though it will not be in the submission.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Ja, okay.

20 **ADV KENNEDY SC:** If we can look again at page 562 and look at his response to your email, the top email do you see that?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** “Hello Celia no changes made from a governance perspective I see the sequence as

follows. The team evaluated the three proposals made a formal recommendation to EXCO. We have received the team's recommendation. EXCO thereafter includes this unsolicited proposal as part of their proposal to DCO."

What is DCO?

**MS MALAHLELA:** Denel Corporate Office.

**ADV KENNEDY SC:** "Corporate Office for approvals since they believe it does not make a difference in the order of preference as recommended by the team but only strengthens the view. The Board paper is therefore the EXCO paper for approval and I am comfortable to include it in the Board paper that you are writing on EXCO's behalf."

**MS MALAHLELA:** Yep, which he also signed.

**ADV KENNEDY SC:** Which he?

**MS MALAHLELA:** Which he also signed.

**ADV KENNEDY SC:** Right, and so this would be a paper recommending to Denel Corporate Board, is that correct?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Right, and that you were to write on EXCO's behalf.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** So at that stage the process was still thaw whatever EXCO decided was merely a

recommendation it would still have to go to the Board for approval.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** And that was required on the basis of your evidence earlier in terms of the delegation.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Right, so let us go back to your statement page 154 you referred to 42.40.46 to that...[intervene]

10 **MS MALAHLELA:** One five four?

**ADV KENNEDY SC:** One five four yes please. The foot of page 154 you say:

“The submission to the Board was prepared as recommended by Mr Thebus and I provided him with a draft of the same.”

Did you in fact prepare that recommendation?

**MS MALAHLELA:** I prepared the document.

**ADV KENNEDY SC:** The document to go to the Board?

**MS MALAHLELA:** Yes.

20 **ADV KENNEDY SC:** On behalf of EXCO?

**MS MALAHLELA:** Yes, as instructed by Mr Thebus.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** So you included this reduced price of VR because he instructed you to include it?

**MS MALAHLELA:** Yes, but it was not included in the

score sheet.

**CHAIRPERSON:** Ja.

**MS MALAHLELA:** It was included in the report.

**CHAIRPERSON:** Ja, okay.

**ADV KENNEDY SC:** And if you can just keep your finger then at page 155 and just look quickly please at page 573.

**MS MALAHLELA:** Page five?

**ADV KENNEDY SC:** Five seven three.

**MS MALAHLELA:** Got it.

10 **ADV KENNEDY SC:** That is the top email is from you to Stephan Burger:

“Please find the attached document for your perusal.”

And did you attach the document we see from page 575?

**MS MALAHLELA:** Yes, I did.

**ADV KENNEDY SC:** And that is headed company confidential Denel (SOC) Ltd., Denel Board meeting to be held on and then its left blank. So was this the draft of a report that was aimed at, was meant to be submitted to the  
20 Board at a particular meeting for approval?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** And just to confirm what you just told the Chair that this was prepared on the basis of Mr Thebus recommendation that this document would reflect a reduced price of VR Laser even though the scoring would



not be changed to reflect that.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Right, now you then say in your statement that you were requested by Mr Burger to change that submission and address it to Mr Salugee. Tell us how that came about?

**MS MALAHLELA:** So on the – I think about now roughly around three or four months lapsed after I had sent the Board the submissions then that is when the conflict of  
10 interest I believe we will get to it a declaration came into play in between and all of that and out of the blue Mr Burger – a meeting was called I am not really sure; I cannot remember properly who called the meeting but I have got the invitation. We had a meeting with Mr Burger and Mr Thebus about the submission and I was requested now to change the submission from a Board submission which I had drafted now to the Group CE submission.

**CHAIRPERSON:** At that time the Group CEO was Mr  
**Salugee.**

20 **MS MALAHLELA:** True.

**CHAIRPERSON:** Okay. So this was still under the Board, Denel Board that was Chaired by Mr Mantsha or you cannot remember.

**MS MALAHLELA:** I am not really sure who was the Chair at the time I can check.

**CHAIRPERSON:** Ja, well it must be because by the time – ja know I think it must be okay, alright.

**ADV KENNEDY SC:** Alright so you were then requested by Mr Burger to change the submissions so that it was no longer a submission to the Board for approval but a submission to the GCE for approval?

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** And did he explain why there should be this change?

10 **MS MALAHLELA:** I cannot remember...[intervene]

**CHAIRPERSON:** Actually I think I may be wrong I think it might be the Board before Mr Mantsha's Board.

**MS MALAHLELA:** Ja, I think so but we can check.

**CHAIRPERSON:** Ja, I am sorry Mr Kennedy I interrupted you.

**ADV KENNEDY SC:** Thank you Chair no problem. Did Mr Burger explain why it was no longer to be a document submitted to the Board for its approval but submitted to the GCE for approval?

20 **MS MALAHLELA:** I cannot remember the exact reasons that he gave let me just look at CM37 the documents that we talking about. If you can help me to find it, which page is it on?

**ADV KENNEDY SC:** Yes, you will find it at page 584.

**MS MALAHLELA:** 584 is right at the back. Ja – I cannot

remember correctly what the reasons he that he gave were at the time.

**ADV KENNEDY SC:** Did you understand Mr Burger to be saying that he now expected that Mr Saloojee would give the final approval not the board? Or did you understand the instruction to be send it to Mr Saloojee so that he can consider it and he can then make a recommendation to the board?

**MS MALAHLELA:** That was my understanding and as you  
10 can see on page 593 of that same document that we spoke about I put recommendation to Mr Saloojee not approval.

**ADV KENNEDY SC:** Yes that was the – that was the previous formulation?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** But what he was now asking you to do as I understand it was to – was to send it...

**MS MALAHLELA:** Send it for approval.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** Well Ms Malahlela Mr Kennedy took – put  
20 two propositions to you and when he finished the second one you said that was your understanding.

**MS MALAHLELA:** Oh sorry.

**CHAIRPERSON:** It was not clear which one of the two?

**MS MALAHLELA:** Sorry.

**CHAIRPERSON:** Was you understanding that Mr Burger

wanted Mr Saloojee to make a recommendation to the Denel board after reading the submission?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Was that your understanding?

**MS MALAHLELA:** Yes. That is why if I lost that page.

**CHAIRPERSON:** Ja.

**MS MALAHLELA:** You will see that I said recommended and I put Riaz Saloojee.

**CHAIRPERSON:** Ja okay.

10 **ADV KENNEDY SC:** So this would still comply with the requirement that the board would still have to give its approval?

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Yes. Then if you can go please to page 604. That is a submission addressed to EXCO and we see at the end of the document page 611 where it is signed. There is a signature by you.

**MS MALAHLELA:** Sure.

20 **ADV KENNEDY SC:** At the foot of 611 on the 16 October 2014, do you recall signing that?

**MS MALAHLELA:** Let me just double check that is on page?

**ADV KENNEDY SC:** 611.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** And then on 612 it is also recommended by the other officials Africa, Thebus, Burger

himself, Wessels and Mhlontlo. And then at the top of page 613 there is a provision for Mr Saloojee to approve or reject – it does not seem that the relevant word was deleted it still appears approved/reject but it is signed by Mr Saloojee.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Also on the 16 October 2014. Now do you know whether the – whether the recommendation was ever approved not only by Mr Saloojee but by the board?

**MS MALAHLELA:** Let me just – I just want to check  
10 something for you. So in between the session that I had with Mr Burger and Mr Teubes I must just recall I will check my emails who I spoke to. It was – if you look at paragraph 2

**CHAIRPERSON:** At page?

**MS MALAHLELA:** That is page 606.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** You will now see that we no longer buying the quantity that we were buying. The quantity has now reduced.

**CHAIRPERSON:** Where does one see that?

20 **MS MALAHLELA:** You will see that we are talking about including 37 new variants, new requirements which are not ordered yet.

**CHAIRPERSON:** Do you want to read the relevant parts? Is it on page ...

**MS MALAHLELA:** Yes I can read the whole paragraph. So

in 203:

“The board of Denel authorised the signing of  
production contract for the 238 including...”

**CHAIRPERSON:** I am sorry, I am sorry. Are you reading  
back in your statement?

**MS MALAHLELA:** I am reading in the ...

**CHAIRPERSON:** What page are you reading?

**MS MALAHLELA:** Am I confusing myself now? Let me  
just...

10 **ADV KENNEDY SC:** Are you not at page 606?

**MS MALAHLELA:** I am at page...

**CHAIRPERSON:** You had said we must go to 606.

**MS MALAHLELA:** Yes page 606 but now...

**CHAIRPERSON:** And you said paragraph 2.

**MS MALAHLELA:** Paragraph 2. I must just follow my line of  
thought here.

**CHAIRPERSON:** It says:

“In 2013 the board of Denel authorised the signing.”

20 **MS MALAHLELA:** No I apologies I am confusing myself. I  
am confusing myself.

**CHAIRPERSON:** Okay alright.

**MS MALAHLELA:** Apologies.

**CHAIRPERSON:** Okay. Alright.

**MS MALAHLELA:** I am confusing myself.

**ADV KENNEDY SC:** Alright it has been long okay.

**CHAIRPERSON:** Well there is a question you – Mr Kennedy had put to you I guess which led to the confusion.

**MS MALAHLELA:** Ja, ja.

**CHAIRPERSON:** Mr Kennedy you want to repeat your question then?

**ADV KENNEDY SC:** I think let me – let me get to really the bottom line of this – the recommendation here. Can I take you at 611.

**MS MALAHLELA:** Yes I am there.

10 **ADV KENNEDY SC:** That is a recommendation and it reads:

“In line with the discussions articulated herein we hereby recommend the approval of

a. The Group CEO of Denel that he should approve the DLS recommended selection of the Hull supplier. That recommendation was VR Laser.”

Correct?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:**

20 “A mandate to enter into contract negotiations for the manufacturing and supply of the Hoefyster platform hulls for the 183 armoured vehicles to ensure that the total contracts price fits within the deal S budget”

So here it is 183 is that what you were referring to earlier?

**MS MALAHLELA:** Ja. That is where my brain was going.

**ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** So now the quantities had now reduced.

**ADV KENNEDY SC:** And would that then allow VR Laser to keep its original tendered price but still keep within the overall budget because less – a lesser number of vehicles was now being purchased.

**MS MALAHLELA:** Yes. But the reasons given by the  
10 program guys I must just remember but Reardon signed this as their – Mr Teubes signed this as the responsible person for – as the COO. The quantities – the data packs were not ready to order the delta between 183 and 270.

**CHAIRPERSON:** Please just make this point about the different numbers so that I understand it. Originally what was contemplated and in what numbers and now what was being contemplated and in what numbers?

**MS MALAHLELA:** Okay. So when we went out on the quotations – when the DLS went out on quotations RFO's  
20 they wanted to buying 270 I must just check correct – confirm it.

**CHAIRPERSON:** 270.

**MS MALAHLELA:** 270.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** Yes.



**CHAIRPERSON:** 217 or 270?

**MS MALAHLELA:** 217.

**CHAIRPERSON:** 217

**MS MALAHLELA:** We can just confirm it in the document.

**CHAIRPERSON:** Ja I think 217.

**MS MALAHLELA:** Ja.

**CHAIRPERSON:** Ja. Yes 217 hulls.

**MS MALAHLELA:** Huh-uh.

**CHAIRPERSON:** Yes. And then now?

10 **MS MALAHLELA:** So subsequently now after a few months had lapsed then we were told that I must just – it is in the documents somewhere. That the data packs are not ready to procure the delta between 270 and 183.

**CHAIRPERSON:** Ja.

**MS MALAHLELA:** Yes so that means we cannot actually place an order without the requirement – without the data packs essentially because it was a different variant. It is all in the documents you can just find it and refer to it.

**CHAIRPERSON:** Yes.

20 **MS MALAHLELA:** Yes.

**CHAIRPERSON:** So – so the number now would be what?

**MS MALAHLELA:** The number would then be with this 183 that you see under recommendation.

**CHAIRPERSON:** Oh okay.

**MS MALAHLELA:** So that means my client does not require

what – it is not ready to receive what they initially said they wanted.

**CHAIRPERSON:** Okay alright.

**ADV KENNEDY SC:** If I can take you at page 606 paragraph 2.

**MS MALAHLELA:** 60?

**ADV KENNEDY SC:** 6 paragraph 2.

**MS MALAHLELA:** Paragraph 2.

**ADV KENNEDY SC:** You say in 20 – the document says:

10            “In 2013 the board of Denel authorised the  
                 signing of the production contract for the 238  
                 including 34 new variants new requirements  
                 by SANDF badger vehicles systems with  
                 Armscor. In order to execute the Armscor  
                 contract DLS now wishes to sign the contract  
                 and accordingly place an order for the  
                 manufacturing and supply of the armoured  
                 hulls for these vehicles. 16 of these vehicles  
                 are manufactured in Finland and 217 will be  
20            manufactured in South Africa.”

So this is – is this the 217 that you were wanting to procure?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Locally.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:**

“At this stage DLS has not finalised the base line for the 34 new variants. We therefore cannot place an order on the full 217 intention at this stage is to place an order for only 183 platform hulls”.

**MS MALAHLELA:** That is what I was looking for.

**ADV KENNEDY SC:** Yes.

**ADV KENNEDY SC:** Is this – is this reason for why it went down for – from 217 to 183?

10 **MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Okay.

**MS MALAHLELA:** And it was also verified by Mr Teubes by his signature because he knows the requirements of his people.

**ADV KENNEDY SC:** Right.

**CHAIRPERSON:** Now in this submission it is contemplated that it was the Group CEO who was going to approve or reject. Is that right?

**MS MALAHLELA:** That is correct.

20 **CHAIRPERSON:** So – and you – you prepared the submission?

**MS MALAHLELA:** I prepared the submission with the new requirements in mind.

**CHAIRPERSON:** Sorry?

**ADV KENNEDY SC:** I prepared the submission with – for the

new requirements.

**CHAIRPERSON**: Yes.

**MS MALAHLELA**: But the initial requirements was 217 I prepared the board submissions.

**CHAIRPERSON**: Yes.

**MS MALAHLELA**: So now the quantities have gone down.

**CHAIRPERSON**: Now – but the – that the approval should come from the Group CEO was still not in order in terms of the policies of the company, is it not?

10 **MS MALAHLELA**: We can just check how much it was for?

**CHAIRPERSON**: Because we still talking – it seems to me way beyond the delegated authority that you talked – told me about in the morning.

**MS MALAHLELA**: We just need to add it up if the price is...

**CHAIRPERSON**: But was your understanding at that time that it was within his mandate?

**MS MALAHLELA**: True.

**CHAIRPERSON**: That was your understanding?

**MS MALAHLELA**: Yes.

20 **CHAIRPERSON**: Okay alright. Okay we can check later on.

**ADV KENNEDY SC**: Alright then just to go back to 611. We have dealt with a and b and then c is that there should be approved that the necessary commission for Mr Stephan Burger to sign the contract for the manufacture and supply of the Hoefyster platform hulls for the 183 vehicles. Place the

associated purchase order when the condition is in [a] is met. That is the Group CEO's approval. Contracting LMT as a single source supplier for the vehicle rear internal fit. So that is LMT would get some business.

**MS MALAHLELA:** Huh-uh.

**ADV KENNEDY SC:** And then after the completion of the joint task force design that the additional 34 vehicle hulls rear internal fit and back doors be contracted on the same principles.

10 **MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Yes. You have a view as to whether what was – what was – had been recommended here together with your recommendation was in fact compliant with the processes and procedures that regulated Supply Chain in Denel.

**MS MALAHLELA:** What was being recommended by EXCO?

**ADV KENNEDY SC:** In – by you and your colleagues in the document?

**CHAIRPERSON:** In other words was your view at that time  
20 that there was nothing wrong with processing this in this way in terms of the company's Supply Chain Management Policy? Were you aware whether it was within or outside of the policies to do it this way?

**MS MALAHLELA:** In terms of the Delegation Of Authority and the amounts?

**CHAIRPERSON:** Ja.

**MS MALAHLELA:** The price was in my view the price was...

**CHAIRPERSON:** Was within.

**MS MALAHLELA:** Was within.

**CHAIRPERSON:** Okay.

**MS MALAHLELA:** And they did not require –

**CHAIRPERSON:** The board.

**MS MALAHLELA:** They did not – when I say they I mean my client – the end user – they did not require – was not ready  
10 to order the additional quantities because the base lines were not ready.

**CHAIRPERSON:** Okay. But your recollection is that you did not pick up – you were not aware of anything that may have been in breach of the policies with the submission?

**MS MALAHLELA:** If I talk – if we look at e and d which is now bringing LMT which was not part of the original submission this was part of the EXCO recommendation.

**CHAIRPERSON:** Hm. Okay.

**MS MALAHLELA:** The cross-functional team had done its  
20 own evaluation which was not changed.

**CHAIRPERSON:** Hm. Hm. Okay. Mr Kennedy.

**ADV KENNEDY SC:** Thank you Chair. Can I take you to the same memorandum page 610.

**MS MALAHLELA:** 610.

**ADV KENNEDY SC:** At the foot of the page there is a table.

You see that?

**MS MALAHLELA:** Yes I do.

**ADV KENNEDY SC:** And that sets out the current VR Laser price of R1.209 million giving you a total price for 183 units of 221.2 million, correct?

**MS MALAHLELA:** True.

**ADV KENNEDY SC:** Does that reflect the – the prices that they had previously tendered?

**MS MALAHLELA:** I must just double check. It looks like it.

10 **ADV KENNEDY SC:** Well perhaps let me approach it a different way. Just go back to that table please.

**MS MALAHLELA:** Hm.

**ADV KENNEDY SC:** And in the very last item is the requested mandate/ maximum price of R1 050 000.00 per unit which would give you a total price for the 183 of R192.15 million.

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** Now the reduction in the numbers of vehicles you have already explained that that was not too –  
20 to adjust the overall price to bring it down under the R200 million if I understood you correctly?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Yes. It was ...

**MS MALAHLELA:** That was my understanding.

**ADV KENNEDY SC:** Yes that was your....

**MS MALAHLELA:** Unless somebody had a different intention when they said the vehicles have decreased.

**ADV KENNEDY SC:** Yes. But what you suggesting in this memorandum is firstly that VR Laser should be appointed but you have a problem with the – with the budget and their price which would give a total cost for the project of R221 million should be reduced by negotiation.

**MS MALAHLELA:** I must just read this properly.

**ADV KENNEDY SC:** I am sorry say again?

10 **MS MALAHLELA:** I must just go through this section properly.

**ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** So if it was brought down to R192 million you would not need the board approval.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Okay. But was that the objective of what was being done here? Was it to avoid the board having to consider it and give its approval?

20 **MS MALAHLELA:** Now in hindsight if I look at it and the fact that the – I was requested to change it from a board submission which I initially put forward to now a Group CEO submission it appears there.

**CHAIRPERSON:** Now was the idea that the balance of the hulls now having reduced the number to 183 would be



ordered at some other stage in the future or was the idea that the whole project now would be on the basis of 183 and not 217 as originally intended?

**MS MALAHLELA:** So the idea if you go back to page 606 under background the first paragraph the procurement of the new variants which is the delta that we were talking about – variance platform hulls will only be made once the base lines have been firmed up with frozen data packs.

**CHAIRPERSON:** Okay.

10 **ADV KENNEDY SC:** Chair it is getting close to one o'clock but I am almost finished this part of the witness' statement. May I complete that section at least?

**CHAIRPERSON:** Yes let us finish that part yes.

**ADV KENNEDY SC:** Yes thank you. Now can I take you back to your statement page 155.

**MS MALAHLELA:** 155.

**ADV KENNEDY SC:** Yes. Paragraph 4.2.48. 155.

**MS MALAHLELA:** I have got it. Paragraph?

20 **ADV KENNEDY SC:** 4.2.48 you refer to the fact that as we have seen on the document Mr Saloojee signed for his approval. Do you know whether it was ever submitted to the board?

**MS MALAHLELA:** No I got the document from Stephan saying it is approved we can place the order.

**ADV KENNEDY SC:** Right. Now 4.2.49 refers to Patria

which we have dealt with already. You refer to the fact that the memorandum says that LMT offered a price that was unreasonably too low for the number of manufacturing hours and material costs associated with the fabrication of each hull. Was that your view or did you get that information or opinion from someone else?

**MS MALAHLELA:** I – now trying to recall. I am just trying to recall whether it was discussed in the committee's part of the Adjudication that we were doing but what we did following  
10 that was that we got the prices to – from Patria in terms of the input costs. I think it was – we must just confirm it. It was mentioned as part of the cross-functional team adjudication but let us confirm it. I do not want to lie.

**ADV KENNEDY SC:** Alright. Then 4.2.50 deals with the price being over budget and the approval for negotiating to a maximum of R1 050 000.00. And then you refer in 4.2.51 to negotiations that took place with VR Laser which included the reduction of the price. That began in November 2014. There was a meeting on that date where Denel negotiated  
20 for a production price of R1 million per unit for each hull and payment with a deposit. And you refer to the people invited to that meeting – were you part of that meeting?

**MS MALAHLELA:** Yes I was.

**ADV KENNEDY SC:** Yes you refer to it – yourself as having been invited but that meeting took place and did it involve

the people at the top of page 156?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Jiyane from VR Laser, Van Der Merwe also from VR Laser, Mr Teubes and yourself.

**CHAIRPERSON:** **MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** From – from DLS.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Now what was the upshot of that? You were trying to get a – a price that did not exceed R1.05 million you proposed R1 million as the – as the unit price. Was that accepted?

**MS MALAHLELA:** No it was not accepted. We have got a few emails to that effect reflecting that they did not accept the price and then eventually they sent an email with – little bit of price reduction which I [00:22:40] that I must accept – accept including the base data.

**ADV KENNEDY SC:** Sorry just speak up a bit I did not hear that?

**MS MALAHLELA:** Oh sorry.

20 **ADV KENNEDY SC:** Teubes said what instructed?

**MS MALAHLELA:** There is an email where Mr Teubes instructed that I accept the price including the base data proposal that was made on an email. But it is all in writing.

**ADV KENNEDY SC:** If I can take you to page 616.

**CHAIRPERSON:** 616 or 615 are you starting from the

beginning?

**MS MALAHLELA:** 616 have you got that page?

**MS MALAHLELA:** Yes I do.

**ADV KENNEDY SC:** Right are these the emails that are referred to in your statement?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** In relation to whether or not the R1 million was acceptable and the deposit of 15.

**MS MALAHLELA:** Hm correct. And as you can see it says  
10 that the proposed price of R1 million unit with a deposit of  
15% so they were haggling on condi – it was on – accepted  
on condition that we agree on the November base date. So  
it was not accepted as we were negotiating it. Am I  
confusing myself. Let me just look at this. So the first  
discussion was on the 14 November 2014 where we have got  
an email from Pieter Van Der Merwe from VR Laser.

**ADV KENNEDY SC:** Is that at the foot of page 616?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Yes.

20 **MS MALAHLELA:** Yes, yes.

**ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** Sorry I am – I actually made an error a  
bit earlier Chair sorry it is all in the email. My memory is  
failing me.

**ADV KENNEDY SC:** Yes so what is the correct position?

**MS MALAHLELA:** So the correct position on here is that in light of the circumstances we would request you to confirm whether we can agree on the production price of R1 million plus 15% deposit.

**ADV KENNEDY SC:** Yes. But then he says: Should you agree we suggest a date and time be arranged. Was it in fact ultimately agreed to?

**MS MALAHLELA:** It was ultimately agreed to because on the 18 November you will see where Mr Teubes says to me  
10 we have tried our luck so that means we did not get to where we wanted to get to. My call is that we accept the base date of June 2014 and do not argue it further.

**CHAIRPERSON:** What page is that?

**MS MALAHLELA:** It is page 615.

**CHAIRPERSON:** 615?

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** It appears from these emails that what was agreed to was the base date but was it ever actually  
20 recorded that there was an agreement as to the price being R1 million per unit or for that matter R1 050 000.00 per unit.

**MS MALAHLELA:** I – I need to look at the documentation [00:26:22] might have been recorded as part of the order being placed.

**ADV KENNEDY SC:** Okay.

**MS MALAHLELA:** But we can confirm.

**ADV KENNEDY SC:** Alright. Thank you. Perhaps this would be a convenient time to suggest the adjournment Chair.

**CHAIRPERSON:** Yes. We will take the lunch adjournment we will resume at two. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES:**

**CHAIRPERSON:** Okay let us continue.

10 **ADV KENNEDY SC:** Ms Malahlela, you refer in your affidavit to a Mail & Guardian article. Can I take you please to your statement to page 156?

**MS MALAHLELA:** Got it.

**ADV KENNEDY SC:** 156.

**MS MALAHLELA:** I am on it.

**ADV KENNEDY SC:** Okay. And just sum up what actually happened. You referred to your having been sent a copy of a Mail & Guardian article. Who sent it to you?

20 **MS MALAHLELA:** It was, amongst other people, Mr Henk van den Heever.

**ADV KENNEDY SC:** Yes. And if you turn please to page 622.

**MS MALAHLELA:** 622...

**ADV KENNEDY SC:** On the... about halfway down, there is an email, apparently, from you to Mr Burger.

**MS MALAHLELA:** If I can just... 622... I found it, yes.

**ADV KENNEDY SC:** Halfway down.

**MS MALAHLELA:** I found it.

**ADV KENNEDY SC:** And you refer him to that article.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** And you... just read out what you say.

“He is the president...” Just read that out, please.

**CHAIRPERSON:** I am sorry. Reading from 622?

**ADV KENNEDY SC:** 622.

10 **CHAIRPERSON:** Okay alright.

**ADV KENNEDY SC:** Halfway down Chair.

**CHAIRPERSON:** [No audible reply]

**MS MALAHLELA:** Yes.

“Dear Stephan. Please see the attached article below. Is it the president and his family his/friends allowed to benefit from SOE procurement contract? If it is indeed true that the president has association with VR Laser, I believe that VR Laser should have declared their interest in this regard.

20 I recommend that we request VR Laser to disclose the real shareholders behind their black equity shareholding.

Can we please have a meeting tomorrow when you are back in the office to discuss the way forward.

I cannot have any further dealing with VR Laser until

this allegation has been cleared.”

**ADV KENNEDY SC:** Now it is correct that the article is attached on page 263 on a cover of an email to you from Mr Van den Heever that you mentioned earlier?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Now we do not need to go into the detail contents of the article. Just summarise what concerned you about the article. What was it saying that ran alarm bells for you?

10 **MS MALAHLELA:** It was essentially stating that VR Laser had connection to the president and they were benefiting van state owned procurement contracts, in a nutshell.

**ADV KENNEDY SC:** Your affidavit refers to allegations of connections with the Gupta Family and also Mr Duduzane Zuma.

**MS MALAHLELA:** Exactly.

**ADV KENNEDY SC:** Now if we keep at that page, page 622. We see what appears to be a response from Mr Burger at the top of the page and he says:

20 “A hundred percent Celia. Our dealings need to squeaky clean.”

And then he refers to arrangements being made for a meeting to discuss as you had requested. Is that right?

**MS MALAHLELA:** That is right.

**ADV KENNEDY SC:** Okay. Now what happened thereafter?



**MS MALAHLELA:** Thereafter... I cannot remember exactly what the exact details of the meeting but we agreed that I will sent a declaration of interest form accompanied by the letter, asking them to declare their interest if any. Because we did not know if the allegations in the newspaper article was true or not.

**ADV KENNEDY SC:** If I can take you to page 632.

**MS MALAHLELA:** I found it.

**ADV KENNEDY SC:** That is the letter with your name and  
10 signature. Is that correct?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** I am battling to see who it is addressed to. There is an address that is inserted but there is no name of the company or person to whom the letter is ...[intervenes]

**MS MALAHLELA:** It is addressed to the... the address that you see there, 10 Haggie Road in Johannesburg. It is the VR Laser address.

**ADV KENNEDY SC:** Alright.

20 **MS MALAHLELA:** And it says: Attention CEO. And it was emailed to VR Laser.

**ADV KENNEDY SC:** Right. So was it sent to VR Laser?

**MS MALAHLELA:** Yes, it was.

**ADV KENNEDY SC:** And did they respond?

**CHAIRPERSON:** Why did you not include the VR Laser's

name?

**MS MALAHLELA**: It was just an oversight.

**CHAIRPERSON**: H'm.

**MS MALAHLELA**: Yes.

**CHAIRPERSON**: Okay.

**MS MALAHLELA**: But if you look at the reference, it actually starts with VR. It was just a simple oversight.

**CHAIRPERSON**: Alright.

**MS MALAHLELA**: But if you look at the content of the letter  
10 itself, it does refer to VR Laser.

**CHAIRPERSON**: Okay.

**ADV KENNEDY SC**: Then if you can turn please to page 634 and tell the Chair please, did you receive a response to this request for a declaration of interest?

**MS MALAHLELA**: Yes, I did.

**ADV KENNEDY SC**: From VR Laser?

**MS MALAHLELA**: Yes.

**ADV KENNEDY SC**: And is that what we find at pages 634 and 635?

20 **MS MALAHLELA**: That is correct.

**ADV KENNEDY SC**: Now if you look at the letter, 635 says in the second paragraph:

“We confirm that the shareholders in VR Laser Services are Elgasolve (Pty) Ltd, 74.9% and Craig Shaw(?) Investment (Pty) Ltd, 25.1% of the

shareholders and neither have any involvement of conflict with doing business with Denel in any way whatsoever.

All shareholders and directors are private individuals who do not work for government.”

Were you satisfied with that response?

**MS MALAHLELA:** If you look at the full declaration without the necessarily referring to the last part, I was satisfied. But furthermore, I... there was a clause in the contract stating  
10 that should they found...

Should they later be found to have been unethical or a lie, we can determinate the contract at any time. So I was satisfied that with this document that I have, if they lied then we can determinate the contract to protect the company.

**ADV KENNEDY SC:** Now if you turn next to page 637.

**MS MALAHLELA:** I got it.

**ADV KENNEDY SC:** This is an exchange of emails between you and mister ...[intervenes]

**MS MALAHLELA:** Mlambo?

20 **ADV KENNEDY SC:** Mlambo. The one at the bottom is from Bennie Dejeni to yourself. He is the Chief Operating Officer of VR Laser.

“Please find attached letter and the completed declaration.”

Are those the documents we just looked at?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** And then in the middle of the page, the email from you to Denis Mlambo. You have already confirmed he is the Group Head of Procurement.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** He will be our next witness Chair.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** You then say:

10                   “Denis, please find attached the ownership details  
as requested.”

Had you any dealing with Mr Mlambo at group level in relation to this issue of ownership and possible conflict of interest?

**MS MALAHLELA:** Yes, we used to have a lot of informal discussions with regard to VR Laser and my dissatisfaction(?) with it, off the record. And in some cases, I would sent him emails and delete them but on his side, I do not think he deleted them. He would have them, I think.

20                   **ADV KENNEDY SC:** And then you appear to responded...  
Sorry. He appears to respond to you, at the top of the page on the 2<sup>nd</sup> of September.

“Thanks for the info. Who are the individual shareholders of Elgasolve and Craig Shaw. “

So what you have been given was a ...[intervenes]

**MS MALAHLELA:** Company.

**ADV KENNEDY SC:** ...information that Elgasolve and Craig Shaw were shareholders in VR Laser, an insurance in broad terms in the letter that nobody worked for government and there was no conflict. But Mr Mlambo was then saying: But let us find who the owners are.

**MS MALAHLELA:** Let us probe a bit further.

**ADV KENNEDY SC:** Yes. Was anything done by you following up from that?

**MS MALAHLELA:** No, Mr Mlambo took it over and he cc'd  
10 me on the emails to VR Laser probing further.

**ADV KENNEDY SC:** And Mr Mlambo will deal with it in his evidence but you say in your affidavit:

“Mr JP Aurora confirmed that Elgasolve which had a 74.9% stake in VR Laser was owned by Salim Essa.”

So that is what came out of Mr Mlambo's exercise to ...[intervenes]

**MS MALAHLELA:** Probing.

**ADV KENNEDY SC:** ...to find details.

**MS MALAHLELA:** Yes.

20 **ADV KENNEDY SC:** Right. Thank you. Now can we turn in your affidavit, page 158 to another agreement. This is a new topic we need to cover with you.

**MS MALAHLELA:** Okay.

**ADV KENNEDY SC:** And that is a single source supplier contracted DOS awarded to VR Laser in 2015.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Now I am just going to, if I may Chair, just to skip through a couple of paragraphs that appear to be more background that you would be able to read that.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** Relating to technical input and so forth. And may I skip then to page 159, paragraph 5.3?

**CHAIRPERSON:** Yes?

**ADV KENNEDY SC:** Now you have mentioned in the earlier  
10 paragraphs that you had been asked to deal with the procurement side for a proposed contract for a sole supplier, Single source.

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Is that correct?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** and you deal in paragraph 5.3 with a requested draft submission. So were you asked for a submission, to prepare a submission?

**MS MALAHLELA:** Yes, I was asked to prepare a  
20 submission and it is all in writing in the emails that you see here.

**ADV KENNEDY SC:** Right. And you made a recommendation. Can I take you page 651?

**MS MALAHLELA:** 651, okay. 651. Got it.

**ADV KENNEDY SC:** Now that is a brief email from you to

Mr Thebus. And it got the subject: Group CEO Submission.

“Please find attached the attached document as requested.”

And it is just the email. It seems that the attachment has not been included in the copy that has been raised. Unless it is the document. Perhaps you can help me Ms Malahlela. Is it at page 654?

**MS MALAHLELA:** Yes, I need to double-check. Yes, it is the one because in the recommendation I had included a  
10 note.

**ADV KENNEDY SC:** Thank you. Sorry about the confusion.

**MS MALAHLELA:** [No audible reply]

**ADV KENNEDY SC:** Now you made a recommendation to go out and tender for this contract.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** And why did you recommend that?

**MS MALAHLELA:** We could not appoint or contract a supplier without following a process.

**ADV KENNEDY SC:** Right. At this stage ...[intervenes]

20 **CHAIRPERSON:** I am sorry. Now that is a tender in relation to... that is in relation to which tender? I just want to ...[intervenes]

**MS MALAHLELA:** The MOU.

**CHAIRPERSON:** ...move away from the one that you have been dealing with the whole morning, is it not?

**ADV KENNEDY SC:** Yes, we have moved away from that Chair.

**CHAIRPERSON:** Yes. What are we on now?

**ADV KENNEDY SC:** And if you will look at the heading Chair to paragraph 5 on page 158. It deals with the memorandum of agreement.

**CHAIRPERSON:** Oh, that is the one that we are dealing with now.

**ADV KENNEDY SC:** 2015. It is the Single source.

10 **CHAIRPERSON:** Yes, okay, okay.

**ADV KENNEDY SC:** Sole supplier contract.

**CHAIRPERSON:** In favour of the same company?

**ADV KENNEDY SC:** In favour of the same company.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** But it is a different transaction.

**CHAIRPERSON:** Yes, okay alright.

**ADV KENNEDY SC:** Yes. So ...[intervenes]

**CHAIRPERSON:** And this one is to do what?

20 **ADV KENNEDY SC:** It is a... Well, can you just confirm Ms Malahlela?

**CHAIRPERSON:** Ms Malahlela.

**ADV KENNEDY SC:** If you look at 5.1. It is for the appointment of what?

**MS MALAHLELA:** 5.1, which page, sorry?

**ADV KENNEDY SC:** Sorry, page 158.



**MS MALAHLELA:** 158.

**CHAIRPERSON:** Oh, it is of the supply of tariffed(?) FCM's hulls and related armour deals components. Is that right?

**MS MALAHLELA:** Yes, it was complex fabrications.

**CHAIRPERSON:** Yes, okay.

**ADV KENNEDY SC:** And you start that wording with the words Single source.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Right. Is there any significance to this  
10 being a contract for a single source?

**MS MALAHLELA:** So I received a request from engineering. I will call it Engineering Technical. Substantiating why there is a need for a single... for having a single supplier to assist them with fabrication going forward. So those were submitted to me and Riaan(?) then asked me to...

Mr Thebus asked me to do a motivation but in the motivation, instead of having the name of the supplier, I wrote that a proper process should be followed if the  
20 strategic that the company wants to take and it should not be longer than three years.

**CHAIRPERSON:** Okay. The earlier transaction was also for the supply of hulls?

**MS MALAHLELA:** That one was just for hulls. So essentially, this one, my understanding was that it was going

to cover a whole lot of different fabrication on different programmes going forward.

**CHAIRPERSON**: Yes, but basically, it is also hulls just like previously? Different brands.

**MS MALAHLELA**: Yes ...[intervenes]

**CHAIRPERSON**: Different brand.

**MS MALAHLELA**: Steel plates and different stuff.

**CHAIRPERSON**: Yes.

**MS MALAHLELA**: Ja.

10 **CHAIRPERSON**: Ja, okay. And then the... and there is still components and so on?

**MS MALAHLELA**: Ja. That is why I am saying, it went beyond just hulls.

**CHAIRPERSON**: Yes.

**MS MALAHLELA**: It was a lot of steel component, complex fabrications.

**CHAIRPERSON**: Okay alright. Thank you, Mr Kennedy.

20 **ADV KENNEDY SC**: Were there various manufacturers in the marketplace which could compete for this type of product?

**MS MALAHLELA**: That is correct.

**ADV KENNEDY SC**: Once one of them was awarded the contract, it would then be the only supply to Denel of those components?

**MS MALAHLELA**: For the duration of the contract.

**ADV KENNEDY SC:** For the duration of the contract, yes. Which you recommended should be no more than three years.

**MS MALAHLELA:** Exactly. After having followed a proper process in this selection.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** So would it mean that you award the contract to appoint a particular manufacturer and say to them for this particular period, you are going to be our only  
10 supplier of these materials?

**MS MALAHLELA:** That is the understanding but we had not discussed that up to that detail up to that particular time.

**CHAIRPERSON:** Yes. No, I am talking in general to say, when you say somebody is going to be a single supplier. Is that what it means?

**MS MALAHLELA:** Yes, it is a single source. You only ...[intervenes]

**CHAIRPERSON:** Just for a certain period, they have exclusive right to supply you with whatever?

20 **MS MALAHLELA:** That is correct.

**CHAIRPERSON:** Ja, okay alright.

**ADV KENNEDY SC:** Now I mentioned earlier that the attachment had not been attached to the email, at least in the copy that we have before the Commission. Can I take you in your affidavit. I do not need to take you to the actual

paragraph but you referred to Mr Thebus responding and he changed the submission document.

**MS MALAHLELA**: Ja, that is correct.

**ADV KENNEDY SC**: And I may have confused things earlier when taking you to that document. If I can take you back to page 653?

**MS MALAHLELA**: 653... On it.

**ADV KENNEDY SC**: That is an email from Mr Thebus to yourself, 20 March 2015.

10 **MS MALAHLELA**: That is correct.

**ADV KENNEDY SC**: And he says:

“I have changed the angle but we asked for approval from Riaan(?). Please see attached submission.”

Is this the... is this the document that came back from Mr Thebus reflecting a change?

**MS MALAHLELA**: Yes, you are actually right. I see now VR Laser is already included. My recommendation did not have the name of the supplier. I would like to put that on record that my... The initial document that I sent to  
20 Mr Thebus did not have the name of the supplier which is VR Laser which he then inserted as part of the respond to me, saying that it should go to in arrears(?).

**ADV KENNEDY SC**: the initial document that you prepared did not have VR Laser because you were saying it needs to go out to open competitive price.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Would that be a proper public tender?

**MS MALAHLELA:** Yes. If you also look at the time of this particular submission, we were then using the new policy that we must check. It was based on the group policy that called for open tender.

**CHAIRPERSON:** Can we go to the document you sent to Mr Thebus that did not have the name of the supplier. It is just, I think I have missed that if you have already dealt with  
10 that.

**ADV KENNEDY SC:** Chair, I am afraid. There appears to be a problem.

**CHAIRPERSON:** Oh.

**ADV KENNEDY SC:** In that, what appears at page 651 should have an attachment.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** Attached to the email.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** The affidavit, in fact, says that it was  
20 attached.

**CHAIRPERSON:** Oh, but it is not attached.

**ADV KENNEDY SC:** For a reason, I am afraid, I do not have information Chair to convey to you know.

**CHAIRPERSON:** Yes, okay.

**ADV KENNEDY SC:** And ...[intervenes]

**CHAIRPERSON:** And that would have been the document I am looking for.

**ADV KENNEDY SC:** It would have been the... what should be here, is the original version that the witness prepared.

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

**ADV KENNEDY SC:** And I confused her by assuming that it was the document at page 654.

**CHAIRPERSON:** Okay, okay.

**ADV KENNEDY SC:** But that is now clarified that that in  
10 fact is the revised version as revised by Mr Thebus.

**CHAIRPERSON:** Okay no that is fine.

**ADV KENNEDY SC:** And Chair, may we just request leave?

**CHAIRPERSON:** Ja.

**ADV KENNEDY SC:** Must we track down that annexure that for some reason has not been included in the pack?

**CHAIRPERSON:** Ja.

**ADV KENNEDY SC:** We may present that to you.

**CHAIRPERSON:** Ja, let us do that. And then for the record, you can just announce that it has been found and it  
20 is been included and it will be page whatever.

**ADV KENNEDY SC:** Thank you, Chair.

**CHAIRPERSON:** Ja.

**ADV KENNEDY SC:** I am sure my learned juniors will ...[intervenes]

**MS MALAHLELA:** Yes, I may just as a follow up to my last

response. Under the... we can get the policy. Under the new policies and procedures there were circumstances where we would be allowed a closed tender an... and circumstances where we would follow an open tender.

**CHAIRPERSON**: Yes.

**MS MALAHLELA**: And that is all stipulated in that policy.

**CHAIRPERSON**: Ja, okay.

**ADV KENNEDY SC**: Now... Oh, sorry Chair. May I continue?

10 **CHAIRPERSON**: Sorry?

**ADV KENNEDY SC**: May I continue?

**CHAIRPERSON**: Yes, please.

**ADV KENNEDY SC**: Thank you, Chair. Now you say that Mr Thebus, it came back... he came back with the revised version which now recommended not that it should go out on open tender but that it should be awarded to VR Laser.

**MS MALAHLELA**: That is correct. The name of VR Laser was already in the submission when it returned.

**ADV KENNEDY SC**: If I can take you to page 656?

20 **MS MALAHLELA**: 656... I got it.

**ADV KENNEDY SC**: In paragraph 4, what appears is recommendation, DOS.

“Based on the supply chain process followed for the Hoefyster vehicle and the AV8 turrets hulls to date and that both these processes are or will be

industrialised at VR Laser. It is recommended that VR Laser is appointed a single source supplier for fabricated structures for a period of three years.”

**MS MALAHLELA**: Correct.

**ADV KENNEDY SC**: So Mr Thebus agreed with your recommendation that this contract should be for three years but he did not accept your view that it should go out to tender. Instead, it should be awarded immediately to VR Laser.

10 **MS MALAHLELA**: That appears.

**CHAIRPERSON**: Prior to you receiving this submission or recommendation from him, had he had a discussion with you with regard to his different view on that?

**MS MALAHLELA**: No. The only discussion that I had with him was when he came to my office alerting me that there is this request that is going to come. Then I received the email also from Martin Draven to that effect.

**CHAIRPERSON**: Okay alright. Now I... I guess from the document, there is nothing that indicates why it should not  
20 be an open tender.

**MS MALAHLELA**: Exactly.

**CHAIRPERSON**: Yes. So when you read it, you must have wondered why he took a different view but did not discuss that with you?

**MS MALAHLELA**: That is correct.



**CHAIRPERSON:** Yes, but you did not ask him?

**MS MALAHLELA:** I did.

**CHAIRPERSON:** You did?

**MS MALAHLELA:** There is an email response to him.

**CHAIRPERSON:** Mr Kennedy will read it when  
...[intervenes]

**ADV KENNEDY SC:** Thank you, Chair. Perhaps we can do  
that right away.

**CHAIRPERSON:** Ja.

10 **ADV KENNEDY SC:** Page 659.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** Should I read it?

**ADV KENNEDY SC:** Is that your... is that the email that you  
sent in response to Mr Thebus?

**MS MALAHLELA:** True.

**CHAIRPERSON:** Page 659?

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** Is that the one?

**ADV KENNEDY SC:** Yes.

20 **MS MALAHLELA:** That is correct.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** And if I can just read out the relevant  
part. I have gone through the document.

“I realise that you have taken out my  
recommendation and now the document has the

name of the supplier specified.

I do not mean to belabour the point but I am still of the opinion that should management approve this request, DOS must go out on tender or RFQ...”

What does that stand for?

**MS MALAHLELA:** Request for Quotations.

**ADV KENNEDY SC:** Right.

“...as you had done in relation to the 217 hulls contract.”

10 **MS MALAHLELA:** This was under now the new policy ...[intervenes]

**ADV KENNEDY SC:** Ja.

**MS MALAHLELA:** ...that was in place. Not under the previous ...[indistinct]

**ADV KENNEDY SC:** Right. And then to continue.

20 “...for the appointment of a single source for this scope of work. Once we have identified the supplier that meets the DLS requirements through a competitive process, then we can appoint such a supplier for a maximum of three years as a single source. The specification and evaluation criteria must be send, et cetera.”

And then you raised another point.

“Furthermore, I think that it will only be fair to allow LMT to compete for this work. Firstly, we had a

contract with them for Tranium(?) FCM Machine which is part of the proposed scope of work in this request which was later cancelled due to reasons unknown to me because it was before my time as that Executive Manager of Supply Chain.

Secondly, when we suspended the order for the AV8 FCM, we wrote a letter to LMT, where we stated that the intend of the time was to continue or finish off the execution of that particular order as part of the Hoefyster FCM order.

10

I am not saying that the work must be given LMT. All I am saying is that LMT and other capable suppliers must be given a chance to prove themselves through a transparent, competitive and fair RFQ or tender process.

I do not think we should piggyback on a process that was followed for the platform. We should go out on a separate RFQ tender process where we invite all suppliers that we think are capable and then do such an appointment. I will ask Michelle to schedule a meeting.”

20

So you reinforced your point raised earlier that it should be a tender process. You were not suggesting as I understand it, that LMT should automatically get the business.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** But you were envisaging still a tender process in which LMT could tender, other competitors could tender and so could VR Laser.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Right.

**CHAIRPERSON:** A single source is not necessarily in conflict with an open tender process?

**ADV KENNEDY SC:** No.

10 **MS MALAHLELA:** No.

**CHAIRPERSON:** You can go through an open tender process and end up with a single source supplier?

**MS MALAHLELA:** That is correct.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** So would the opposite arise in this situation? If there is a single supplier in the world for something that you require, you would have to go to that person and you would not have to follow a tender process?

20 **MS MALAHLELA:** That is correct. And we had a process that was stipulated in the policy and procedure where there is just one only supplier in the world and we can prove there is only one supplier in the world, which is usually the case in case of OEM, Originally Equipment Manufacturer.

**ADV KENNEDY SC:** Right.

**CHAIRPERSON:** Is the terminology used in terms of

National Treasury Regulations the same as sole supplier or something?

**MS MALAHLELA:** Ja, I think it is something to that effect but I have not worked on procurement forum for many years.

**CHAIRPERSON:** Ja, I think that is why I am asking whether ...[intervenes]

**MS MALAHLELA:** Ja.

**CHAIRPERSON:** ...your concept of sole supplier here is in conflict with an open tender. Because I think in terms of  
10 National Treasury Regulations, as well as Supply Chain Management Policies of many state owned entities, there will be a provision which says if that is the only entity that can provide ...[intervenes]

**MS MALAHLELA:** The sole supplier.

**CHAIRPERSON:** Ja. And I think it is referred to, if I am not mistaken, a sole supplier.

**MS MALAHLELA:** It is.

**CHAIRPERSON:** But then, it means you do not go open tender.

20 **MS MALAHLELA:** Correct.

**CHAIRPERSON:** You just go to that supplier and your justification is that they are the only ones.

**MS MALAHLELA:** Correct. And you need evidence to support that.

**CHAIRPERSON:** Yes, but your sole supplier is not along

those lines. Your sole supplier is one that you achieved after an open tender process.

**MS MALAHLELA:** That is why I prefer to call it a single source. After you have now ...[intervenes]

**CHAIRPERSON:** Yes, okay.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Now maybe it is the single supplier and sole supplier that [laughing]

**MS MALAHLELA:** Ja, I do understand.

10 **CHAIRPERSON:** Because if it is a single supplier, it must be a sole supplier ...[intervenes]

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** ... as well.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** [laughing] Okay so ...[intervenes]

**MS MALAHLELA:** Ja but ...[intervenes]

**CHAIRPERSON:** Ja, but your single supplier concept does not exclude using open tender whereas the sole supplier concept under the National Treasury Regulations excludes  
20 open tender process.

**MS MALAHLELA:** It would not make sense to follow an open tender process.

**CHAIRPERSON:** Ja.

**MS MALAHLELA:** Because it will just be one company that can provide you with that.

**CHAIRPERSON:** Ja, alright. It is just necessary to understand these things.

**MS MALAHLELA:** Ja, totally.

**CHAIRPERSON:** Because we do not deal with them every day. So one could end up getting confused.

**MS MALAHLELA:** Denel has the same definition that we are working on.

**CHAIRPERSON:** Ja, okay.

**ADV KENNEDY SC:** It is complicated Chair.

10 **CHAIRPERSON:** Ja. [laughing]

**ADV KENNEDY SC:** I believe the PFMA and the Treasury Regulations and the SCM Policy and so forth, as you rightly say with respect, refers to sole supplier but there is defined in a particular way that ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** ...there is only one supplier effectively available.

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

20 **ADV KENNEDY SC:** But Chair, can I just get you to confirm? Here there were various manufacturers in the marketplace who could compete for this business. And if you awarded one of them the contract, they would then be... perhaps I can use the terms single source as far as Denel is concerned for the period of the contract.

**MS MALAHLELA:** Now that is my believe.

**ADV KENNEDY SC:** Alright. But now ...[intervenes]

**CHAIRPERSON:** Actually... I think Mr Kennedy it is good you raised that point because what I said earlier may cause more confusion, I think.

When you talk about a single supplier it is not as if that supplier is the only supplier who can provide you whatever services or products that you want.

It is just that for a particular period, you are committing yourself to obtaining those services or those products from  
10 that supplier.

**MS MALAHLELA:** In this context, yes.

**CHAIRPERSON:** But would it not be the same thing? Would it... Is it not the position that you would not need to actually say, to commit yourself like that because if you say we want somebody who is going to supply us with X for the next three years, necessarily, where you are going to get it. You cannot go elsewhere.

**MS MALAHLELA:** Sorry?

**CHAIRPERSON:** If you leave the technology of single  
20 suppliers.

**MS MALAHLELA:** Yes?

**CHAIRPERSON:** You say we want somebody who is going to provide us with x product for the next three years. They compete and one wins, automatically that one who has won...[intervenes]



**MS MALAHLELA:** Becomes a single source.

**CHAIRPERSON:** He is the only one who is going to give you.

**MS MALAHLELA:** Technically it is the same.

**CHAIRPERSON:** So even if you do not use the single supplier's terminology.

**MS MALAHLELA:** It is the terminology.

**CHAIRPERSON:** Ja, okay. Mr Kennedy?

**ADV KENNEDY SC:** Thank you, Chair. Now Ms Malahlela  
10 you – so your approach was, to sum up, we must go out to  
open tender. At that stage that you sent that memorandum  
for approval to Mr Teubes before he changed it to reflect  
VR Laser had you been told by anybody that you must  
actually do it on the basis that VR Laser will be awarded  
the contract without a procurement process?

**MS MALAHLELA:** I cannot recall specifically.

**ADV KENNEDY SC:** Okay. So he raises then in the  
email, the attachment which he had changed, he raised an  
approach which was no tender, no public procurement, it  
20 must go to VR Laser. You respond at page 659 – we have  
just been through that – did he come back to you in answer  
to these questions that you raised or these opinions that  
you expressed that this was not appropriate?

**MS MALAHLELA:** I believe that we have got an email to  
that effect, I must just look for it, where – I am not sure it

was before this email or after this email, I just look and confirm now with my statement. There was one email where he is saying that his view is that it is fine, we will proceed and take this to Exco but it will be to get strategic direction not to approve VR Laser. So my understanding was that VR Laser now is out of the equation and Exco will be approving the strategic decision to do the single source work for us to issue it out, that they are okay with it as a strategy direction not to approve it.

10 **CHAIRPERSON:** So you understood his response to be that he was abandoning the idea that this should go to VR Laser?

**MS MALAHLELA:** That is correct.

**CHAIRPERSON:** And that this would go to Exco and what would Exco – what direction must it ...[intervenes]

**MS MALAHLELA:** They will approve. I think there is an email to that effect. I will find it.

**CHAIRPERSON:** Ja.

20 **MS MALAHLELA:** They will approve the principle of having this work being issued out as – having a contract, a single source contract.

**CHAIRPERSON:** Oh, okay, alright.

**MS MALAHLELA:** That is the strategic decision.

**CHAIRPERSON:** Ja, okay.

**ADV KENNEDY SC:** Do you know whether an agreement

was eventually signed with VR Laser for this particular single source supplier?

**MS MALAHLELA:** Yes, I believe it was in May. We have got the attachment here, we can refer to it, where I went to go and motivate procurement I believe from LMT for work that has to do with a scope that is included in here and in that particular meeting I was told – I was asked first why am I bringing motivation for LMT to get the work while we have a contract with VR Laser, which I was not aware of .

10 All that is minuted in there, we have got the annexure. The minutes as the annexure.

**CHAIRPERSON:** Does it look like VR Laser got appointed without your knowledge?

**MS MALAHLELA:** Yes, it was.

**CHAIRPERSON:** Ja, okay. Yes, Mr Kennedy?

**ADV KENNEDY SC:** Thank you. If I can take you back to page 159?

**MS MALAHLELA:** 159, got it.

20 **CHAIRPERSON:** So just before Mr Kennedy asks you further, so did Mr Teubes ever advance any argument to you as to why the open tender should not be used?

**MS MALAHLELA:** Not that I can remember.

**CHAIRPERSON:** Because you had made that point very emphatically to him.

**MS MALAHLELA:** Ja. No, he did not.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** Thank you. Page 159, paragraph 5.8 in your statement you say:

“No further response was received regarding my email of the 23 March 2015. I was no longer updated as to the progress of the approval of the draft submission under discussion.”

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** And then you go on to deal with what  
10 you have just told the Chair that you later found in a meeting where you tried to motivate for an award of some work to LMT that in fact there was already a Memorandum of Agreement that had been concluded with VR Laser that gave them the single source supplier status for that type of work.

**MS MALAHLELA:** That is correct, Chair.

**ADV KENNEDY SC:** Okay. Now your affidavit goes on in some detail to say that the appointment of VR Laser as  
20 DLS as single source supplier raised a number of challenges from a supply chain management point of view because it was in conflict with the procurement policy. Now if I can take you please to in the annexures to the document that you have attached to your statement at page 662.

**MS MALAHLELA:** Which is the policy. Okay, got it.

**ADV KENNEDY SC:** Sorry you said, as an aside, which is the policy?

**MS MALAHLELA:** Which is the policy.

**ADV KENNEDY SC:** Yes, that is really the question I wanted to raise. So this is the one that you referred to in your affidavit, effective from the 19 November 2014. Was that the new policy that you referred to earlier?

**MS MALAHLELA:** Yes, it is the one.

**ADV KENNEDY SC:** And what is the bottom line of this  
10 policy as far as it was relevant for this contract that was awarded to VR Laser without a procurement process that you had recommended?

**MS MALAHLELA:** Sorry, what is the question again?

**CHAIRPERSON:** What was the relevance, what is the bottom line of what you were saying here in relation to VR Laser having been given this contract without open tender?

**MS MALAHLELA:** Okay. So essentially the document corroborates what I said in the email to say that we were actually supposed to follow a process to appoint VR Laser  
20 instead of just putting it in a document and motivating it.

**CHAIRPERSON:** So – and I am taking you back a little bit, this contract that you found out had been given to VR Laser without your knowledge was still the same contract that you had been involved in except that it was now, I see here in your paragraph 5.9, it was now for ten years

instead of three years that you had recommended?

**MS MALAHLELA:** Not only that, Chair, I was actually very angry at some point because – and the submission that was taken to corporate office, there was reference to supply chain that we supported the document which is not true.

**CHAIRPERSON:** And who would have done that, do you know? Who would have made that misrepresentation about your department?

10 **MS MALAHLELA:** I have no idea whether the document was updated at DLS or at DCO, so – and the meeting where I found out, I was told that the document, the new signed document and the motivations will be sent to me after the meeting and I believe that we have an email to that effect where the divisional legal executive sent me the ...[intervenes]

**CHAIRPERSON:** The documents.

**MS MALAHLELA:** The documents with a new submission. So I am not sure who did it.

20 **CHAIRPERSON:** So is the position that a submission that you had prepared which did not reflect support for this was amended to make it look like you supported this new thing?

**MS MALAHLELA:** That is correct.

**CHAIRPERSON:** Okay. Yes, Mr Kennedy?

**ADV KENNEDY SC:** Thank you, Chair. Ms Malahlela,

there is another point relating to the policy that you highlight in your affidavit. If I can take you to page 669.

**MS MALAHLELA:** Found it.

**ADV KENNEDY SC:** Clause 6.10, intergroup and group procurement contract 6.10.1 says:

10           “Under no circumstances shall products or services that can be procured from a group entity or division be procured from an external supplier or non-Denel company unless there is approval by the group supply chain executive based on sound business reasons.”

Now you have mentioned previously that you had raised concern about LMT partly because it had had a contract cancelled and you felt it was fair to at least allow it to participate in a tender but you have also mentioned that LMT was part-owned – majority owned by Denel itself.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Would LMT fall under the scope of what is referred to her as a group entity?

20   **MS MALAHLELA:**       There were actually conflicting interpretation with regard to LMT since it was not – I would use DV as the previous BAE, as an example. So with the BAE or DV as it was clear that it was group entity or what we were referring to but with LMT sometimes it was treated as an outsider where it had to follow a process.

**ADV KENNEDY SC:** Now you have referred in your affidavit to an Exco meeting of DLS, DLS Exco, where there was a discussion about the agreement that was in place with VR Laser, this particular agreement and you have referred in your affidavit to the committee taking a decision that the agreement with VR Laser takes precedence. Can you tell the Chair please what happened, what was in fact discussed. Were you present at that meeting?

10 **MS MALAHLELA:** I was. If I may digress a little bit. So following having received the documents that were signed, I felt a bit aggrieved and I did not know which avenue to explore now because it looked like my management was part of, how do I put this, my management was instrumental in that documents getting signed so I spoke to the Group CFO ...[intervenes]

**CHAIRPERSON:** Your management being Mr Teubes?

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Yes.

20 **MS MALAHLELA:** And Mr Teubes and Stephan Burger.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** So it would have been a futile exercise to try to speak to them about a document that is already signed. So I spoke to Mr Fikile Mhlontlo – sorry, I might be pronouncing surname incorrectly.



**CHAIRPERSON:** Yes, the CFO at the time.

**MS MALAHLELA:** Yes, the Group CFO at the time. That was around quarter three of the same year and I highlighted what had happened and also that I was unhappy with what had happened and I was hoping that he would be able to assist me to resolve this. Lo and behold, I think about few weeks or a month after that, he was gone.

**CHAIRPERSON:** That is when he was suspended?

**MS MALAHLELA:** That is when he was suspended.

10 **CHAIRPERSON:** But does this mean that time you were able to put in front of you the submission that you sent and the submission that was amended by people you do not know?

**MS MALAHLELA:** That is correct.

**CHAIRPERSON:** And you could tell where the differences were.

**MS MALAHLELA:** That is correct and I can still do that today.

20 **CHAIRPERSON:** Yes, okay. And you have got those in the file ...[intervenes]

**MS MALAHLELA:** I can just look through the file.

**CHAIRPERSON:** I see.

**MS MALAHLELA:** Because I go this file this morning, so I can just look through the file.

**CHAIRPERSON:** Okay, you do not have to look for it now,

as long as we have got it. That is fine.

**MS MALAHLELA:** And now going back to the question that was asked. So after having explored that avenue and it did not bear any fruit I then decided to raise it in the committee where there is a lot of Exco members. Perhaps they would take a different decision and raise a concern, everything is in writing, perhaps people will feel a bit afraid to go on with whatever was going on and the decision was taken, we have got an attachment of the minutes which was  
10 taken more than once because I kept on repeating the same thing over and over again and I also asked my team to start to ensure that we keep the recording. So not only did we type the minutes but we also kept the recording of the minutes.

**CHAIRPERSON:** A mechanical recording?

**MS MALAHLELA:** Yes, was a mechanical recording of the minutes.

**CHAIRPERSON:** Ja.

**MS MALAHLELA:** So where it was – I raised the concern  
20 that I have a problem with this MOU, MOA, I think there is a lot of confusion with regard to what it is, that contra against the policies and we have to continuing applying it over and over again, is that really also sustainable to keep on piling all this work on the same supplier for such amount of time?

**CHAIRPERSON:** Okay, alright, but the committee with whom you raised this did not go along with your views?

**MS MALAHLELA:** No, they took a decision to say that the MOU supersedes the company policy.

**CHAIRPERSON:** Oh ...[intervenes]

**MS MALAHLELA:** Which is also documented in the ...[intervenes]

**CHAIRPERSON:** I think I have seen that, ja. Mr Kennedy?

10 **ADV KENNEDY SC:** May I take the witness to what I think she is referring to?

**CHAIRPERSON:** Ja.

**ADV KENNEDY SC:** Page 672.

**CHAIRPERSON:** It is quite an interesting strange thing because agreements are supposed to be in line with policies.

**MS MALAHLELA:** Absolutely.

**CHAIRPERSON:** To say the agreement supersedes the policies. The agreement supersedes the law. Yes, okay.

20 **ADV KENNEDY SC:** Now, Ms Malahlela, will you not just please have a quick look at that? You will see in the middle of the page under the heading General 1.1:

“A concern was noted with regard to placement ...[intervenes]

**CHAIRPERSON:** I am sorry, I missed the page, where we

must go?

**ADV KENNEDY SC:** 672, Chair.

**CHAIRPERSON:** 672. Okay, alright, continue.

**ADV KENNEDY SC:** This records in the minutes that a concern was noted with regard to placement of orders. It relates to a deviation with the Group SCM policy. Was that the concern that you had raised?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Right. And then under the heading  
10 Resolution does this reflect what was resolved by Exco?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** “The committee took a decision that the MOU takes precedence over the GSCE’s condition and the group supply chain policy and the DLS supply chain procedure. The committee also stated that given the...”

recent presumably, not resend.

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** But:  
20 “..recent history with regards to price and turnaround time, VR was the preferred supplier with all opportunities. It was further stated that in terms of the MOU VR Laser prices must be market-related and in line with the provisions of the MOA before an order can be placed on them. Due to this reason

and previous experience with VR Laser the committee felt confident that the VR Laser prices will be market-related and reasonable. Celia Malahlela was asked to draft a letter to the GSCE and explain the decision taken in this regard.”

Now before we get to whether you sent a letter, as instructed, did you agree with this, did you – were you persuaded by the reasons given for the resolution that was adopted?

10 **MS MALAHLELA:** No, I was not.

**ADV KENNEDY SC:** Did ...[intervenes]

**CHAIRPERSON:** Were you a sole lonely voice along this liner in this meeting?

**MS MALAHLELA:** I cannot remember anybody disagreeing but I might have forgotten but the decision was taken. The recordings should be at DLS so we should be able to find out what happened.

**CHAIRPERSON:** Okay. And what is GSCE?

**MS MALAHLELA:** Group Supply Chain Executive.

20 **CHAIRPERSON:** Oh, okay. Who would have been?

**MS MALAHLELA:** Mr Mlambo.

**CHAIRPERSON:** Mr Mlambo, okay. Had anything like this happened before in your experience?

**MS MALAHLELA:** No. Not where ...[intervenes]

**CHAIRPERSON:** Where an agreement or memorandum of

understanding is said to be above the policies of the company?

**MS MALAHLELA:** No.

**CHAIRPERSON:** Ja.

**MS MALAHLELA:** Not to my recollection that I saw. I would have opposed it in any case, but anyway.

**CHAIRPERSON:** Ja.

**ADV KENNEDY SC:** Now may you turn please to page 677? 675, in fact.

10 **MS MALAHLELA:** 675, okay. Got it.

**ADV KENNEDY SC:** That is an email from you to Exco subject Conflict between Policy and the Signed MOU and then you say:

“Find the attached for your final input.”

Now is the document from 677 what you attached for their final input?

**MS MALAHLELA:** Yes, it is.

20 **ADV KENNEDY SC:** And why did you – and just identify the document at 677 please? Who prepared this and what is it?

**MS MALAHLELA:** I prepared it on instruction from Exco as stated in the minutes on 670. So we were actually discussing an order with regard to T5 which is product of DLS which included fabrications. So that is why that subject has reference to T5.

**ADV KENNEDY SC:** Now did you actually sign this letter, 677. At 678 I see your name but there is no signature there. Did you ever sign it?

**MS MALAHLELA:** I cannot recall, I might have signed it. I was asked to send this to Mr Mlambo but at the same time I spoke to Mr Mlambo about it.

**ADV KENNEDY SC:** Yes. Did Mr Mlambo in fact sign it?

**MS MALAHLELA:** No, he did not sign it. I think it is this one ...[intervenes]

10 **CHAIRPERSON:** Let us talk about first, if we may, it is just the important features of what you say here.

**MS MALAHLELA:** Okay.

**CHAIRPERSON:** Ja, just – I deal with that to say this is what – these are the main points you say in the letter.

**MS MALAHLELA:** Okay. Can I read it quickly?

**CHAIRPERSON:** Ja, if you can. Not the whole thing, just ...[intervenes]

20 **MS MALAHLELA:** So essentially I was saying that the MOU conflicts with the provisions of the policy that was in place in the company and I was also stating that the committee had taken a decision to say that the MOU supersedes.

**CHAIRPERSON:** Ja.

**MS MALAHLELA:** The company policies. And I was informing Mr Mlambo, as instructed by the committee.

**CHAIRPERSON:** Okay, alright. Okay.

**ADV KENNEDY SC:** So, as you pointed out earlier, Ms Malahlela, there is a bit of confusion. Sometimes people are referring to the agreement as an MOU and sometimes it is an MOA but let us leave aside that terminology. What was being referred to here was that there had been an agreement concluded with VR Laser, it had been picked up that there was a breach of the Group's policy and the division's policy. And then if you can look at the last  
10 paragraph please on page 677, you say:

“Due to these contradicting positions, supply chain approached DLS Exco.”

Supply chain being yourself, is that right?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** And so you approached Exco to make a decision as to whether to honour the MOA and place the order on VR Laser or to follow the supply chain policy and procure from intergroup, namely DVS or LMT for this project. DVS is Denel Vehicle Systems.

20 **MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Is that another Denel division like DLS was a division, DVS also?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Right. So you were saying:

“...either DVS or LMT, both of which were either



wholly-owned or partly owned by Denel could have been given the project if there had been compliance with this provision of the supply chain policy.”

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Do I understand it correctly?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Right. And then you say:

10 “Given the timeframe, urgency and history, Exco has recommended that the work be done by VR Laser.”

And then you say:

“I request permission to implement the Exco decision in this regard.”

**MS MALAHLELA:** That is correct..

**CHAIRPERSON:** In a way did you want written instruction to say you can go ahead?

**MS MALAHLELA:** Exactly.

**CHAIRPERSON:** Ja, okay. To cover yourself.

**MS MALAHLELA:** Something like that?

20 **CHAIRPERSON:** Huh?

**MS MALAHLELA:** It got to that point unfortunately.

**CHAIRPERSON:** Okay, alright. But you say Mr Mlambo did not sign it.

**MS MALAHLELA:** he did not sign.

**CHAIRPERSON:** Okay.

**MS MALAHLELA:** I think there is a response from Mr Mlambo somewhere in the documentation that we can refer to. I am getting a bit fuzzy with these documents.

**CHAIRPERSON:** Okay. No, Mr Kennedy will get us to it if it is important.

**ADV KENNEDY SC:** Thank you, Chair. Sorry, I was just ...[intervenes]

**CHAIRPERSON:** Oh, no, she just confirmed that Mr Mlambo did not sign this.

10 **ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** And but she says somewhere in the bundle there is a response, is that correct? Or a letter?

**MS MALAHLELA:** There is a response. I think he scribbled at the back instead of signing.

**CHAIRPERSON:** Ja, no, that is fine but Mr Kennedy will get to it when it is convenient.

**ADV KENNEDY SC:** Yes, Chair. May I just draw attention to an issue that is just apparent to me now and that is the – that the affidavit refers to a note rejecting approval by Mr  
20 Mlambo.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** And it is annexure CM52. You will see – unfortunately, and I do not have immediately an explanation for this, when you get to page 680 this annexure was not available at the time of bundling the

exhibit.

**CHAIRPERSON:** Oh.

**ADV KENNEDY SC:** So I am afraid I cannot put it to the witness.

**CHAIRPERSON:** Yes, okay.

**ADV KENNEDY SC:** But the next witness will be Mr Mlambo himself.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** And he will give evidence that he in  
10 fact refused to approve this.

**CHAIRPERSON:** Yes, okay.

**ADV KENNEDY SC:** And if the document is available in his bundle then we will draw your attention to that.

**CHAIRPERSON:** No, that is fine. That must be the document because the witness also says he scribbled at the back.

**MS MALAHLELA:** He scribbled at the back.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** Okay.

20 **ADV KENNEDY SC:** But I do not believe that there is any dispute between any of the people whose names have been raised in relation to these proceedings or in the documents that Mr Mlambo was asked to approve the deviation retrospectively.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** And he refused.

**CHAIRPERSON:** Okay, alright.

**ADV KENNEDY SC:** Right. Ms Malahlela, may we now turn to the next contract. We have already dealt this morning with the first contract awarded to VR Laser for 217 hulls. The second contract that we have just dealt with this afternoon was the single source supplier for various components.

**MS MALAHLELA:** Correct.

10 **ADV KENNEDY SC:** In the same project. And that was awarded to VR Laser where you had said it should be for three years and subject to a tender process and instead what was decided was it was for ten years and it was given to VR Laser.

**MS MALAHLELA:** Ja, I recommended that we follow due process.

**ADV KENNEDY SC:** I am sorry, you recommended?

**MS MALAHLELA:** That we follow due process.

20 **ADV KENNEDY SC:** Yes. Can you just comment on the 10 years, was that – did that happen frequently within Denel, to your knowledge, that as single source supply contract would be awarded ever to a party for 10 years?

**MS MALAHLELA:** Unless it was linked to a specific project so that it was running for ten years with clear deliverables, I cannot remember any contract of such

nature.

**CHAIRPERSON:** Whereas you had been the – you were the one who came up with three years, you never got to know who came up with ten years.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Now we come to a third contract that you deal with in your affidavit. You deal with it at page 161, paragraph 6 and that is an award of a contract to VR Laser in 2016, correct?

10 **MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** A year after the contract that we have just dealt with, the second contract and you refer to an order having previously been placed the previous year in 2015 on LMT for specific items and LMT, there was a problem with meeting the deliverables, delivery schedule for that. Can you just tell the Chair please very briefly, why was that relevant to the appointment of VR Laser in this third contract?

20 **MS MALAHLELA:** So the order had already been placed on LMT. DLS changed the spec and LMT could not meet – I believe the timelines because I am – this is based on the information that I got, the timelines and the pricing as well.

**ADV KENNEDY SC:** Now just to be specific, to make it clear, the distinction between this contract and the other two, as your heading indicates, this was a contract in 2016

to supply cradles, FCM outer shields and armour components.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** And you say that an order had been placed on LMT which it had not fulfilled properly within time and then what happened in relation to VR Laser?

**MS MALAHLELA:** No, that is not what I am saying. So Denel Land System has placed – had placed an order on LMT for the production of FCMs for AV8 project.

10 **ADV KENNEDY SC:** AV8 project?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Yes?

**MS MALAHLELA:** The order was suspended due to inability of LMT to meet the delivery schedule for the new configuration, not the one that ...[intervenes]

**ADV KENNEDY SC:** I see.

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** So it was not the original one it was the later configuration.

20 **MS MALAHLELA:** The change in spec during – after the order had been placed.

**ADV KENNEDY SC:** Yes. And then you make reference to a proposal by VR Laser. To do what?

**MS MALAHLELA:** To do the same work.

**ADV KENNEDY SC:** The same work that had already been

placed as an order on LMT?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** How did it come about that they submitted a proposal?

**MS MALAHLELA:** I just – so how it worked, my team had managers, so on the day-to-day running, doing the day-to-day business they would go out on quotations unless I need to get involved in it.

**ADV KENNEDY SC:** Had there been any process – had  
10 there been any decision to replace LMT under the previous order?

**MS MALAHLELA:** So the discussions that were happening between LMT and management, it was my understanding at the time that following this issue where LMT couldn't meet our requirements there was some discussion with management of LMT and Mr Teubes came to me to ask me to draft a letter which I am sure you have seen, and there were emails, there are also emails, where I am sending this email to say that the order will then be  
20 placed under – instead of totally cancelling the order, on LMT we're just going to move it to a different programme and that, Mr Teubes asked me to do.

**ADV KENNEDY SC:** Now, what's then happened Ms Malahlela?

**MS MALAHLELA:** So, the jigs and fixtures were removed

from LMT and were then delivered to VR Laser to proceed with the work.

**ADV KENNEDY SC:** What concerns did you raise with your colleagues as to whether or not that was correct?

**MS MALAHLELA:** With regard to moving the order?

**ADV KENNEDY SC:** And placing it on VR Laser?

**MS MALAHLELA:** At the time we had this MOU which we were now being told that we need to follow. So, under the MOU if we are following the provisions of the MOU, we can  
10 place that order and then at the same time we could give that other one to LMT later.

**ADV KENNEDY SC:** Okay, did EXCO deal with the matter?

**MS MALAHLELA:** Not that I can recall, later on we're talking about different issue, if you go to 6.5 then we are now moving into – DLS have been communicated to LMT that it has the intention of placing the Hoefeyster order for the FCM on LMT – sorry I actually did – it slipped my mind. I raised the concern at EXCO on the 7<sup>th</sup> of March 2016 and  
20 there are minutes to that effect, apologies for that.

**ADV KENNEDY SC:** Is that what you refer to in 6.4?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** So, you raised the concern with EXCO at this meeting that DLS was now placing the very same order on VR Laser without going back to LMT?



**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Right, then there's reference to EXCO taking legal advice, do you know whether that was taken?

**MS MALAHLELA:** Yes, it was done, if you look at 6.6 there is communication with the Executive Legal as her capacity in that position.

**ADV KENNEDY SC:** Yes, and you refer to her saying that LMT should be afforded a right of first refusal.

10 **MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** To submit a proposal.

**MS MALAHLELA:** Ja.

**ADV KENNEDY SC:** On the Trunnion Machining contract, yes. Then you refer to your raising concerns, again at another EXCO meeting, 22<sup>nd</sup> of March but what was the outcome of all of this, was an agreement in fact concluded with VR Laser for this third lot of items?

**MS MALAHLELA:** We just need to refer to the minutes, so, Mr Burger in his capacity, so this is part of the minutes,  
20 in his capacity as the CEO of DLS, advised that the memorandum of argument – in this case we're calling it the memorandum of argument but I think everybody knows what we're referring to, was signed by the Group's Chief Executive of Denel and should therefore supersede the Supply Chain Policy of Denel SOC in instances where two

documents are in conflict.

**ADV KENNEDY SC:** Alright, thank you.

**MS MALAHLELA:** Then if I can take you to page 686.

**CHAIRPERSON:** What's the page?

**ADV KENNEDY SC:** 686 Chair.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** 686 appears to be a letter from Ms Govender to yourself.

**MS MALAHLELA:** Correct.

10 **ADV KENNEDY SC:** On page 688, the second last paragraph...[intervenes].

**MS MALAHLELA:** Which one?

**ADV KENNEDY SC:** 688.

**MS MALAHLELA:** 688.

**ADV KENNEDY SC:** Second last paragraph,

“In my view, LMT needs to be given an opportunity to, at least, quote on the FCM's as DLS was furnished with its costings etcetera”,

20 Is that a reference to what you mentioned earlier as a right of first refusal?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Right, and then the document at 689, that appears to be a letter from you...[intervenes].

**MS MALAHLELA:** So if you refer to the minutes, you will see that I was asked to draft cryptic notes, if you can just

go to the exact minutes there now, you will see it.

**ADV KENNEDY SC:** Are those the minutes at page 693?

**MS MALAHLELA:** I just need to confirm because it refers to cryptic notes that I was to make and send to the Group CEO, I must just get to the exact reference but essentially – we can find the minutes and search for it properly but there were minutes. So, essentially, I was requested to write cryptic notes to Stephan hence that email going to Stephan.

10 **ADV KENNEDY SC:** Okay let's move on from why there were cryptic notes and so forth, the agreement was, ultimately...[intervenes].

**MS MALAHLELA:** Oh sorry, I found it, it is on page 693 if you look at the last comment.

**ADV KENNEDY SC:** The last bullet?

**MS MALAHLELA:** The last bullet yes.

**ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** As CEE to provide CEO with cryptic notes on the summary of developments around the issue,  
20 which is what I did in the email but if you page through you will see that I've actually also bolded it as part of the minutes, I asked the guys to bold it so that everybody knows what they're doing. You will see the last – not the last, the second last bullet on the third column on page 2 on top it says,

“CM voiced concern and sought clarity from the Committee on where the Supply Chain should comply with the policy or the single source agreement”,

So, he’s saying chair, reiterating the same points that I’ve been reiterating over and over again.

**ADV KENNEDY SC:** Okay, thank you, there’s one last issue which I would like to deal with before we close with your evidence Ms Malahlela, can I ask you please to turn to page 699.

10 **MS MALAHLELA:** I’m here.

**ADV KENNEDY SC:** Now this appears to be a letter, or an email sent by you on the 20<sup>th</sup> of April 2016 addressed to Stephan, is this again, Mr Stephan Burger?

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** Now I’d like just to remind you of the relevant parts of the letter, you say this,

20 “Having signed the preferred supplier agreement with VR Laser, Denel, having been in the media with regard to its strategic alliance with VR Laser, having read several media reports about allegations of state capture by the Gupta family, more concerns are raised about the viability of the partnership and the risks that Denel will be exposed to, should Denel decide to continue its relationship with VR Laser. I’m struggling to turn a blind eye to this phenomenon”,

Just tell the Chair, how you felt it appropriate to raise this with Mr Burger rather than Mr Teubes, your immediate superior and why you felt it appropriate to express that you couldn't turn a blind eye to these issues?

**MS MALAHLELA:** In 2016 the structure had been changed a few times and 2016, I must just confirm, I believe that that was the time I was reporting to Mr Burger himself.

**ADV KENNEDY SC:** Right and...[intervenes].

10 **CHAIRPERSON:** Why did you feel this way?

**MS MALAHLELA:** So, I think somewhere in the email I am actually – I'm not sure if it's this email but we can just check, I'm referring to – yes if you look at paragraph three, I'm referring to the meeting that I had with the CEO of VR Laser.

**ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** Where he acknowledged the ties in passing.

20 **ADV KENNEDY SC:** The ties with the Gupta's...[intervenes].

**CHAIRPERSON:** Who was the CEO of VR Laser?

**MS MALAHLELA:** It was Pieter van der Merwe.

**CHAIRPERSON:** Pieter van der Merwe?

**MS MALAHLELA:** So, before that it was hearsay in media articles and all of that but for the first time, I had heard it

from somebody that it was just in front of me.

**ADV KENNEDY SC:** Your letter says that he acknowledged ties with the Gupta family and the then, President's son, Duduzane Zuma.

**MS MALAHLELA:** Yes, in passing.

**ADV KENNEDY SC:** Through – in direct shareholding?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** As alleged by the media?

**MS MALAHLELA:** Yes.

10 **ADV KENNEDY SC:** Right, now you jumped to the third paragraph, if I can just remind you what you said in the second paragraph, in addition to the media reports and acknowledgment by Mr van der Merwe that there were ties between VR Laser and the Gupta family and the, then, President's son you also mentioned in the second paragraph, that it was your humble opinion as you put it, that,

20 "DLS had failed to follow the correct process when appointing VR Laser as a preferred supplier for the supply of steel components and fabrications, amongst other irregularities there was no RFQ or tender issued for the award of the contract. In this regard I believe DLS should have approached the market to ensure good governance".

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** Right.

**CHAIRPERSON:** Now going back to the paragraph where you refer to the CEO of VR Laser you were telling Mr Burger here – you were telling Mr Burger something that Mr Pieter van der Merwe had said in your presence on the 19<sup>th</sup> of April 2016 as reflected here.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** Yes, so it's something that he had said in your presence?

10 **MS MALAHLELA:** Yes.

**CHAIRPERSON:** Yes, okay.

**ADV KENNEDY SC:** Then if you would refer to the last paragraph on this page, what, essentially, were you asking Mr Burger to do?

**MS MALAHLELA:** I was asking him to reconsider the arguments that we had with VR Laser and terminate them.

**ADV KENNEDY SC:** You gave credit to him for showing great leadership and having achieved a turnaround in the division from R300million turnover to over R2billion  
20 turnover over less than five years. So you complimented him for that and you expressed the feeling that you had as a Denel employee, a proud Denel employee but what you say at the end of this page, the second last line,

“With the rate that this controversy is unfolding, I’m not certain that this company will even survive long

enough for my children to see it. We ought to be proud of what we have accomplished, equally so, we should do whatever it takes to protect this great legacy”,

Those are very firm and strong words. Why did you express your opinion in terms such as these, Ms Malahlela?

**CHAIRPERSON:** And maybe, Mr Kennedy, if you don't mind, we need to take a few minutes if we – if it's  
10 necessary – sorry Ms Malahlela but I would like you, in your own words to read that whole paragraph into the record, I think it's a very important paragraph.

**MS MALAHLELA:** The last paragraph?

**CHAIRPERSON:** The last paragraph, but maybe you need a few minutes to drink water?

**MS MALAHLELA:** I think so.

**CHAIRPERSON:** Yes, okay right, then let's take a few minutes – five minutes adjournment.

**ADV KENNEDY SC:** May we ask, through your associate  
20 or may we indicate when the witness has composed herself.

**CHAIRPERSON:** Ja that's fine.

**ADV KENNEDY SC:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**



**INQUIRY RESUMES**

**CHAIRPERSON:** I've changed my mind Ms Malahlela, rather than read the last paragraph I want you to read the whole.

**MS MALAHLELA:** The whole email?

**CHAIRPERSON:** Ja.

**MS MALAHLELA:** “Hi Stephan, having signed the preferred supplier agreement with VR Laser, Denel having been in the media with regards to its strategic alliance with VR Laser, having read several media reports about allegations of state capture by the Gupta family, more concerns are raised about the viability of the partnership and the risks that Denel will be exposed to should Denel decide to continue its relationship with VR Laser. I am struggling to turn a blind eye to this phenomenon. I would like to reiterate that, it is my humble opinion that DLS failed to follow the correct process when appointing VR Laser as the preferred supplier for the supply of steel components and fabrications. Amongst other irregularities there was no RFQ or tender issued for the award of this contact. In this regard I believe that DLS should have approached the market to ensure good governance. I would also like to bring it to your

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attention that the current CEO of VR Laser has acknowledged that there are ties with the Gupta family and the President's son (through indirect shareholding) as alleged by the media in the meeting we had yesterday, the 19<sup>th</sup> of April 2016 at 3 o'clock in the afternoon. In light of all these facts I would like to request that DLS, carefully reconsiders the relationship with VR Laser as a preferred/strategic supplier. Denel is a strategic asset of this country and I'm proud to be associated with it. It gives me great pleasure to wake up each morning to serve this country. I have had the privilege of seeing you turn this division from a R300million turnover to over R2billion turnover in less than five years. We are, no doubt a great company, furthermore I have great confidence that, under your great leadership we will achieve even more greater success. However, with the rate that this controversy is unfolding I am not certain that this company will even survive long enough for my children to see it. We ought to be proud of what we have accomplished, equally so, we should do whatever it takes to protect this great legacy. Kind regards".

**CHAIRPERSON:** Thank you.

**ADV KENNEDY SC:** How do you feel now, some years after you sent this letter about what actually happened?

**MS MALAHLELA:** I think that, actually what brought me to tears, because it's actually what is happening right now.

**CHAIRPERSON:** Was your plea in this email not heeded by Mr Burger...[intervenes].

**MS MALAHLELA:** He responded harshly, there's an email to that effect where it was also part of a report that was issued – I'm not sure if it formed part of the newspaper  
10 article that was...[intervenes].

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** I take the witness to the foot of page 697 and onto page 698.

**MS MALAHLELA:** Yes, found it.

**ADV KENNEDY SC:** Is that the email that you're referring to?

**MS MALAHLELA:** That's the email, that's the response.

**ADV KENNEDY SC:** That's an email from Stephan Burger himself and he will be given the opportunity to give his  
20 evidence before this Commission in due course, we have him lined up to. May I just read some relevant parts, Ms Malahlela so that you can respond. Can you just confirm, this is the response to the letter that you've just read out in full, at the Chair's request?

**MS MALAHLELA:** 20<sup>th</sup> April – yes, it is.

**ADV KENNEDY SC:** It says,

“Dear Celia, I must say I’m very surprised and disappointed in having to receive an email of this gravity whilst I’m abroad and also given the fact that the appointment of VR was done a very long time ago and in a time you were intimately involved in the process of the selection of VR Laser as our strategic supplier of complex fabricated components”.

10 Was this the first time that you had raised this – these concerns?

**MS MALAHLELA:** If you look at the minutes, there’s evidence that I had been raising it.

**CHAIRPERSON:** Actually, isn’t the position that, earlier on, we went through even emails where you pointed this out time and again that proper procedures were not followed?

**MS MALAHLELA:** Yes, so directly I raised it with Mr Teubes when he was sending me the submission but from  
20 late – I think it’s 2015, yes 2015, late 2015 I was raising it in the committee with regards to conflict and Mr Mlambo was also responding to a lot of issues relating to this MOU – MOA.

**CHAIRPERSON:** So, is the position that, he might be right in saying he only heard, recently of your concern

because you had raised it in communication with other people, not him or is the position that he had raised it with him, he was aware of your issues in this regard?

**MS MALAHLELA:** I had not raised it directly with him, I had raised it with Reenen when he was asking me to do the motivation and I raised it in the EXCO meeting which we have minutes of in the package and we've read already.

**CHAIRPERSON:** Would he have been part of EXCO?

**MS MALAHLELA:** He's part of EXCO, he's actually the  
10 Chair of EXCO...[intervenes].

**CHAIRPERSON:** So, he certainly knew you had raised those.

**MS MALAHLELA:** Ja.

**CHAIRPERSON:** At least at the EXCO meeting?

**MS MALAHLELA:** The minutes are there, it was discussed in the meetings...[intervenes].

**CHAIRPERSON:** Ja but your recollection is that he was there at EXCO meetings where you raised it?

**MS MALAHLELA:** Yes.

20 **CHAIRPERSON:** Yes, okay.

**MS MALAHLELA:** As far as I can recall, and the minutes are there which are circulated to him as well.

**CHAIRPERSON:** Ja, okay, Mr Kennedy?

**ADV KENNEDY SC:** Thank you. Can you comment on his remark, that you had been intimately involved in the

process of the selection of VR Laser, it appears to suggest this, that you were part of that process, you went along with it and are now raising it for the first time a long time later, while he's travelling, he, Mr Burger, he's travelling overseas. In other words, you seem to be happy with it now, you haven't raised it before you're raising it now, any comment on that?

**MS MALAHLELA:** As you have already – sorry what was the – I'm losing my train of thought, what was the question  
10 again?

**ADV KENNEDY SC:** He seems to be suggesting that this is an afterthought by you because you were involved, previously in the process of VR Laser, so why are you complaining about it now if you were part of that process?

**MS MALAHLELA:** I collected my thoughts. So, as you know I was not, at this stage, you've seen the document, I was not involved in the process of appointing VR Laser as the preferred supplier of fabricated components.

**CHAIRPERSON:** But is the position – as I understand the  
20 position is that you had a role to play in a process that ended up with VR Laser being appointed but you were not involved in the appointment, actual decision to appoint and you did not support that, you appointment was earlier, that's why you took the point that there should be an open tender?

**MS MALAHLELA:** Correct I said out, right at the beginning that, due process should be followed.

**CHAIRPERSON:** Yes, so is – so the position is, not that you had no involvement in the process. Where you had no involvement is, in the decision to appoint but in the process that preceded that there was some involvement and you took the position that there should be an open tender, you made it known, it was not supported and without your knowledge, VR Laser was appointed?

10 **MS MALAHLELA:** Yes.

**CHAIRPERSON:** Ja, okay.

**MS MALAHLELA:** So, it also depends – I don't want to waste time, it also depends on how you interpret it. I was not involved in the appointment of VR Laser.

**CHAIRPERSON:** Yes, no, no I think we are agreeing that on that, you were not involved in the appointment but there is a stage...[intervenes].

**MS MALAHLELA:** When the process started.

20 **CHAIRPERSON:** In which you were involved, and that stage allowed you the opportunity to say, what process, in your view, should be followed.

**MS MALAHLELA:** Correct.

**CHAIRPERSON:** You articulated that – your views to those to whom you're supposed to articulate it, they did not follow your opinion and without your knowledge, VR Laser

was appointed.

**MS MALAHLELA:** Correct.

**CHAIRPERSON:** Ja, Mr Kennedy?

**ADV KENNEDY SC:** Thank you. Then he says at the foot of the page, 697, Mr Burger says,

10 “I also question the fact that you want to reiterate that the correct processes were not followed. The first time I heard you say that was very recently in the passing and was after the media was questioning the Gupta’s involvement and painting a negative picture of Denel”,

So, again, he seems to be making the point, you’re raising this for the first time very late. You raised it in passing after there was media coverage but that was very recent – a very recent comment by you and you didn’t raise it at the time of the actual procurement process. Do you have anything to add to what you’ve said already?

**MS MALAHLELA:** I think I’m going to be repeating myself.

20 **CHAIRPERSON:** Yes, so if it is true that he was present at the EXCO meetings, I don’t know if it was meetings or meeting where you raised your issues with this, then he cannot be genuine in saying he’s hearing for the – he only heard recently.

**MS MALAHLELA:** That is my point exactly Chair.



**CHAIRPERSON:** Ja, that's your point.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Ja, obviously if he was not present, that might change the picture, but your recollection is that he was present and he was Chairing the EXCO.

**MS MALAHLELA:** And the minute was circulated to him as well.

**CHAIRPERSON:** Yes, okay, Mr Kennedy?

**ADV KENNEDY SC:** Thank you. The top of page 698,

10           “However, I do agree that it is not pleasant to hear the Denel name in a negative connotation and I'm equally proud of the successes of DLS”,

          That seems to be a reference to your statement in your letter that he was replying to, that you were proud to be an employee of DLS and Denel, but he then proceeds to say this,

          “But I want to categorically state that I do not agree with your statement, that proper processes were not followed. Surely, we did not send out an RFP for  
20           the appointment of a strategic supplier”,

          So, he agrees that the company didn't go out as you had recommended to go out in a competitive process.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** But then he says,

          “But we did identify the most complex of complex

fabricated systems and went out on open tender and we did this twice,

Do you know what open tenders he's referring to there?

**MS MALAHLELA:** I...

**ADV KENNEDY SC:** And he says,

10            "And this VR – and this, VR won by following the correct processes, only thereafter, VR was selected and motivated as a strategic supplier. The approval thereof at DCO was done by following due processes",

          Now perhaps Mr Burger, you're not sure what he's meaning but let's just assume for the moment that I'm right when I raise this as a possible suggestion that Mr Burger may have been trying to raise. He may have been referring to the original contract before the single supplier contract. Single supplier contract, you said, has to go out on open tender and he's confirmed in his letter, they didn't – you didn't go out – your company didn't go out on open tender  
20 then. Perhaps he's referring to the previous process in which there was a RFO where LMT submitted proposals, so did VR Laser, so did the other company. If that suggestion that I'm putting to you is right, do you have a comment on what he's seems to be saying?

**MS MALAHLELA:** So as part of my email that I had

written to Reenen, I had clearly said that we cannot piggyback on previous processes.

**ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** So that is not due process.

**CHAIRPERSON:** So your answer would be ...[intervenes]

**MS MALAHLELA:** If that is what you are referring to.

**CHAIRPERSON:** Your answer would be at a factual level with regard to this particular appointment that we are talking about no open tender had been followed, and your  
10 view is and was at the time there was no justification for not following an open tender in regard to this particular appointment.

**MS MALAHLELA:** There was no justification and not following due process. Remember the ...[intervenes]

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** But the due process would mean the open tender process.

**MS MALAHLELA:** In some cases it would be a closed  
20 tender under the conditions that are stipulated in the policy.

**CHAIRPERSON:** Yes, but in this case do you know whether, which one would have applied?

**MS MALAHLELA:** It would have most probably been closed tender.

**CHAIRPERSON:** Closed tender.

**MS MALAHLELA:** Because of the nature of the business.

**CHAIRPERSON:** Which would be what, asking for quotations?

**MS MALAHLELA:** The IP that is involved this – we didn't get to that point so now I am just – so there is a whole lot of things that you need to take into consideration, then you motivate to Mr Mlambo. The policy called for motivation to Mr Mlambo.

10 **CHAIRPERSON:** So on your understanding of the policies of the company at the time, it would be wrong to say what should have been followed would have been an open tender process.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** But what you say should have been followed is a closed tender process, is that right?

**MS MALAHLELA:** Most ...[intervenes]

**CHAIRPERSON:** But it was not ...[intervenes]

**MS MALAHLELA:** Yes, most likely because of the nature.

20 **CHAIRPERSON:** Most likely yes. But not what was done?

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Okay, alright.

**MS MALAHLELA:** And if I ...[intervenes]

**CHAIRPERSON:** On what was done you say there was no

due process?

**MS MALAHLELA:** There was no due process.

**CHAIRPERSON:** Ja, okay.

**MS MALAHLELA:** And if I may, if Mr Burger is referring to – if he is saying that an open tender process was followed we all know that open tender process was not followed for the previous processes hence I am shrugging my shoulders, if he is talking about open tender, unless he is talking about a process which is an RFQ or an RFO, that is  
10 a different case altogether, but I had also clearly stated that you cannot piggy-back on that.

**CHAIRPERSON:** Yes, ja, okay.

**ADV KENNEDY SC:** Just clarify if you would please what you mean by the piggy-back, don't piggy-back on that.

**MS MALAHLELA:** So essentially what they are – it is also said here to say that we have gone out on a process to appoint the supplier for this and this and this and this, because of that process that we followed we now appoint the same supplier for additional work, which was not part  
20 of the original scope.

**CHAIRPERSON:** Yes, you cannot rely on the previous ...[intervenes]

**MS MALAHLELA:** Exactly.

**CHAIRPERSON:** Ja, you can't rely – you can't have a situation where if you have had an open tender process in

regard for – in regard to the provision of ABC products to the company ...[intervenes]

**MS MALAHLELA:** And you add ...[intervenes]

**CHAIRPERSON:** And that process has been completed you cannot later on when you want a service provider which will give you or provide you with DEF products say I will take the one who succeeded in the other or in the previous tender process because it won in that process, you can't say that.

10 **MS MALAHLELA:** Yes.

**CHAIRPERSON:** You have to embark upon a new process.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** That is what you say.

**MS MALAHLELA:** Yes and furthermore there are provisions with regard to extensions of contracts under what circumstances you can extend contracts and the percentages.

**CHAIRPERSON:** Ja.

20 **MS MALAHLELA:** So in this case we are talking about a totally different scope and yes it was the armour plate and all but it was for different vehicles and different – it was for vehicles, it was for a whole lot of different stuff that we have seen in the documentation, but on top of that as it was obvious that it was also going to exceed the threshold that you are allowed to extend the contract for.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** Thank you, if I can continue then in this paragraph of Mr Burger at page 698, it is the second paragraph there, the third line, it is to overlap with what we raised earlier, but we did identify the most complex of complex fabricated systems and went out on open tender and we did this twice and this VR1 by following the correct processes only thereafter VR was selected and motivated as a strategic supplier, strategic supplier in the context of  
10 this letter appears to be a single source supplier, if you look at other parts of the letter.

He then says the approval thereof a DCO, that's corporate level, is that right?

**MS MALAHLELA:** Yes.

**ADV KENNEDY SC:** Was done by following due processes, do you agree with that assertion by him?

**MS MALAHLELA:** No I said in my previous statement I will use the piggy-back again, you cannot latch onto another process that was done.

20 **ADV KENNEDY SC:** Yes, and then he says to now say that processes were not followed just because we don't like the owners or what is written in the papers, presumably the newspapers, or that the CEO of VR is acknowledging certain connections with the Gupta Family is also a concern to me. Now may I just stop for a

moment and ask your comment, you raised in your letter, I took you to that earlier, there were two main issues that you raised, the one was that you felt proper processes for procurement had not been followed.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** And secondly you raised concerns about ties with the Gupta Family and the consequent problem, potential problem for Denel and its reputation.

**MS MALAHLELA:** Correct.

10 **ADV KENNEDY SC:** Right, what he seems to be suggesting here is that you were using the Gupta Family connections as a reason for only now, as he puts it, complaining that processes were not followed, he says to now say that processes were not followed just because we don't like the owners, or what is written in the papers or what the CEO has acknowledge is of concern to you. What do you say about that concern?

**MS MALAHLELA:** So what I see here he is alleging that I didn't like the owners of VR Laser and it was – for me it  
20 was not necessarily the people behind, it was – how do I put this – it was more how business was being done and the connections that were being alleged. Everybody knows about it, it was in the media, and it was not because it was in the media that I had a problem – how do I – I am trying to find ...[intervenes]



**CHAIRPERSON:** It has to be that if you have the interest of the company at heart you would be concerned if you find that ...[intervenes]

**MS MALAHLELA:** Absolutely.

**CHAIRPERSON:** ...the company is doing business with entities who damage the reputation of the company.

**MS MALAHLELA:** Absolutely, but ...[intervenes]

**CHAIRPERSON:** Apart from processes if you find out that the type of entity that you have contractual relationship with is not the type of entity that you would like to be associated with, obviously that must be a concern if you have the interest of the company at heart.

**MS MALAHLELA:** Absolutely, what I wanted to highlight I believe that did not like or I would just use hate, it is a strong word, I did not hate VR Laser and I did not dislike VR Laser, it was what was happening that I had a problem with.

**ADV KENNEDY SC:** Ms Malahlela his next paragraph starts, and I am not going to read the whole thing he says:

20           “I am convinced that the successes DLS recently had was amongst others also due to VR Laser sterling performance as strategic supplier...”

And here I am just going to paraphrase if I may Chair, he refers to the Tarratel contract in Malaysia involving VR going extremely well, he doesn't believe any other current

supplier could have achieved this, he refers to the UN for a contract for the supply of Caspers that they required that when the matter, when the contract was awarded to DLS it was on condition VRU was used to fabricate because of their vast experience and also he refers to Patria in Finland finding that VR was the most competent.

So in other words he is saying we did the right thing by appointing VR Laser because they are excellent at their job Any reaction to that?

10 **MS MALAHLELA:** So as I just said previously I did not hate or dislike VR Laser, it was the way of doing business that I had a problem with.

**ADV KENNEDY SC:** Then he concludes his letter by saying this:

20 “Therefore Celia what I am trying to say is that VR Laser is widely acknowledged as one of our very best suppliers. They are black-owned and I believe that proper processes were followed in their selection. We cannot now cancel their contracts just because the papers paint a negative picture of their involvement with the Guptas and a possible risk on our reputation in dealing with the VR is not something we are supposed to take a view on.”

What he seems to be suggesting, if I might just stop there, is that it is not appropriate for you as the head of

procurement within the DLS Division to be troubling yourself or troubling others in relation to reputational damage to Denel because of publicity attached to links with the Guptas which could imply something improper. What do you say about that?

**MS MALAHLELA:** That is my understanding as well.

**ADV KENNEDY SC:** Yes was that criticism of you valid?

**MS MALAHLELA:** That I should not be concerning myself?

10 **ADV KENNEDY SC:** Yes.

**MS MALAHLELA:** As a manager in the company that I am proud of and is a State owned company I ought to be concerned about such matters.

**ADV KENNEDY SC:** Then he ...[intervenes]

**CHAIRPERSON:** Because – there may be many reasons for that but simply at a pure level you were saying in your email to him how proud you were to be associated with Denel – then systems and Denel, obviously if because of the company doing business with people who have very  
20 bad reputation that may impact on the reputation of the company you work for as well, you might not be so proud in the future to be associated with Denel if whenever Denel's name is mentioned it is mentioned in the same sentence as an entity that has a bad reputation.

**MS MALAHLELA:** Absolutely and it might actually go

beyond that to the extent that our customers or business people that we do business with all over, people meaning companies and different people that we dealt with around the world would have a problem doing business with us because of the reputation, they would not want to be associated with us.

**CHAIRPERSON:** Yes, they might not want to deal with you, actually I heard evidence last year banks might – they look at their clients reputation and if you are associated  
10 with negative things and negativity they don't want you as a client, so it is maybe Mr Burger when he comes here will explain this and maybe when he does we will understand his point of view but for now I would have thought that everybody would want their company not to be impacted negatively in terms of their reputation because of who they do business with.

**MS MALAHLELA:** Absolutely.

**ADV KENNEDY SC:** Thank you. Now how did you feel, we will get to your response in a moment, in fact can I just,  
20 perhaps I must just finish off reading the letter from Mr Burger, he says after saying it is not something we are supposed to take a view on –

“This is something for DCO to consider and I would take it up with them.”

You indicated earlier that is the corporate office, that is at

head office level of Denel, above the Division.

**MS MALAHLELA:** Correct.

**ADV KENNEDY SC:** And so he said it is not for you to trouble yourself with this, he will raise it with DCO and then he says:

“So Celia may I please request that we discuss this matter when I am back in the office on Monday.”

How did you feel though when you got this response from him?

10 **MS MALAHLELA:** I was intimidated to say the least and I was wondering what he was going to say to me when he gets to the office.

**ADV KENNEDY SC:** Did you have a meeting with him?

**MS MALAHLELA:** We did and the meeting he just kept on going round and round, we did not get to the solution where we get to – as you know today the contracts were never terminated.

**ADV KENNEDY SC:** Did he give you any feedback to the effect that he had or had not raised it with DCO, with Head  
20 Office?

**MS MALAHLELA:** No.

**ADV KENNEDY SC:** Did you at any stage consider yourself raising your concerns at a level higher than Mr Burger?

**MS MALAHLELA:** I did.

**ADV KENNEDY SC:** And did you take any steps in that regard?

**MS MALAHLELA:** Yes I spoke to the Group CFO as I mentioned a bit earlier and unfortunately he left the company after that and I felt that I was running out of avenues and I started saving money so that I would be able to leave the company and be self-sustainable and be able to pay my bills, even if I resign without a job.

**CHAIRPERSON:** That is how strongly you felt about what  
10 you – these issues?

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** But I needed to be – should I say – I am looking for the word it is right on top of my – I needed to ensure that I am not taking a risky decision.

**CHAIRPERSON:** Just say that again?

**MS MALAHLELA:** I needed to ensure that I am not taking a – too much risk when it comes to my personal finances.

**CHAIRPERSON:** Oh in terms of leaving before you made  
20 proper...

**MS MALAHLELA:** Before I have a job then I end up in...

**CHAIRPERSON:** Ja okay.

**MS MALAHLELA:** Financial difficulties.

**CHAIRPERSON:** Okay.

**ADV KENNEDY SC:** Did you stay in Supply Chain at DLS for

the rest of your time at Denel?

**MS MALAHLELA:** No I left Denel in 2016.

**ADV KENNEDY SC:** Sorry when did you leave Denel?

**MS MALAHLELA:** I left – sorry I left DLS in 2016.

**ADV KENNEDY SC:** DLS in 2016. Where did you go to?

**MS MALAHLELA:** I resigned without a contract at the time and on ...

**CHAIRPERSON:** You said you left at the end of 2016?

**MS MALAHLELA:** At the end of the same year.

10 **CHAIRPERSON:** Yes.

**MS MALAHLELA:** [Inaudible].

**CHAIRPERSON:** Ja same year ja.

**MS MALAHLELA:** During the time when I was serving notice I was then asked what happened. I did not want to go into a lot of details but essentially I was asked to come and work at DCO and I worked with Mr Mlambo and the COO.

**CHAIRPERSON:** Okay let me understand that. At a certain stage towards the end of the year or 2016 you decided you were going to leave Denel.

20 **MS MALAHLELA:** Yes.

**CHAIRPERSON:** But before you could leave you were asked to work at Denel Corporate Office.

**MS MALAHLELA:** That is correct.

**CHAIRPERSON:** That request had nothing to do with your impending departure at the time.

**MS MALAHLELA:** No.

**CHAIRPERSON:** Oh they just...

**MS MALAHLELA:** The request did not exist.

**CHAIRPERSON:** Oh they did not know any – about your plans.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Okay alright.

**MS MALAHLELA:** And...

**CHAIRPERSON:** And then what happened? How long did  
10 you work DCO – DCO?

**MS MALAHLELA:** I may just add on that maybe something – maybe this point it is also important. So on the day of my farewell at DLS as I was driving back to the office Stephan gave me – Mr Burger gave me a call that I should come to his office.

**CHAIRPERSON:** This is now on the last day at DLS?

**MS MALAHLELA:** On the last day.

**CHAIRPERSON:** Ja but as you were arriving in the morning?

20 **MS MALAHLELA:** We went to go and have a farewell breakfast.

**CHAIRPERSON:** Oh and then when you came back.

**MS MALAHLELA:** When I was now driving back.

**CHAIRPERSON:** Ja.

**MS MALAHLELA:** So he asked me to have a meeting with



him.

**CHAIRPERSON:** So you made a decision you were going to leave Denel.

**MS MALAHLELA:** Correct.

**CHAIRPERSON:** And you made that decision in circumstances where you had not obtained another employment?

**MS MALAHLELA:** Correct I did not have a new contract.

**CHAIRPERSON:** You did not have any contracts?

10 **MS MALAHLELA:** Yes.

**CHAIRPERSON:** But you had reached a point where you said you could not continue.

**MS MALAHLELA:** Exactly.

**CHAIRPERSON:** At Denel.

**MS MALAHLELA:** Exactly.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** So the intention at the time was that I would do volunteer work and I will talk to different people and see who is willing to ...

20 **CHAIRPERSON:** Ja.

**MS MALAHLELA:** Ja.

**CHAIRPERSON:** Okay alright. So he asked you to come and see him?

**MS MALAHLELA:** He asked me to come and see him and when I got to his office he actually made me an offer to stay.

And I believe – this is what I heard later on that he had gone and asked HR – so I – I do not have evidence I heard from different people – from somebody else that he had gone and asked HR the salaries of the other EXCO members that were highly paid. And he used this as the benchmark as to how much he can offer me to stay. But now he was bidding against corporate people now which was...

**CHAIRPERSON:** Oh yes.

**MS MALAHLELA:** Yes.

10 **CHAIRPERSON:** DPO.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Wanted you at a certain salary as well.

**MS MALAHLELA:** Exactly. No, no D – I left without an increase in my salary.

**CHAIRPERSON:** Oh DCO was going to take you without an increase on your salary.

**MS MALAHLELA:** I did not get an increase.

**CHAIRPERSON:** Yes okay.

**MS MALAHLELA:** Yes.

20 **CHAIRPERSON:** But he was offering you.

**MS MALAHLELA:** More.

**CHAIRPERSON:** More.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** Yes okay. And what did you do?

**MS MALAHLELA:** And I told him I will think about it and

there was nothing to think about. I just wanted to appease him. I went back and I told him I cannot take it and I left. And following that the environment or rather the relationship has not been – the greetings were less – we would meet at DCO sometimes it will be like – ja anyway.

**CHAIRPERSON:** To what extent did the tone and content of his response to you in terms of this email at – starting at 697? Contribute to your decision to leave.

10 **MS MALAHLELA:** I felt powerless and I believe that if you can no longer make a contribution in a company then you should not be there just for the sake of just sitting there doing what?

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** Your role in a company is to make a meaningful contribution.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** And if the company does not serve you or provide you with that kind of environment anymore then you should not be there.

20 **CHAIRPERSON:** Yes. And how long did you work at DCO?

**MS MALAHLELA:** I worked there roughly for about seven months without being in any particular role and around August I was asked to act in a position and when I left I was acting in this position. I had no real position that I was appointed in.

**CHAIRPERSON:** So the notice that you had served or you were serving at the time you went to have break – a farewell breakfast or whatever that was a notice of resignation from DLS.

**MS MALAHLELA:** Which was revoked.

**CHAIRPERSON:** Which was revoked.

**MS MALAHLELA:** When I ...

**CHAIRPERSON:** When you went to DCO?

**MS MALAHLELA:** Yes it was handled as a transfer.

10 **CHAIRPERSON:** Oh and then you had to do a fresh resignation later on from DCO?

**MS MALAHLELA:** In 2017 – 2017 I then left.

**CHAIRPERSON:** Oh.

**MS MALAHLELA:** Was it in 2017 I have got the – the facts in here.

**CHAIRPERSON:** Okay, okay. So earlier on you said you left them.

**MS MALAHLELA:** Sorry not in 2017 I started at DCO in 2017 I left Denel in 2019 sorry.

20 **CHAIRPERSON:** Oh you left DLS towards the end of 2015.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** And went to DCO.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** And then you left DCO and Denel in its entirety in 2019?

**MS MALAHLELA:** That is correct.

**CHAIRPERSON:** Okay alright. Okay alright. Ms Kennedy I continued because I thought you were still – so you can – you can continue or finish off.

**ADV KENNEDY SC:** Thank you Chair.

**CHAIRPERSON:** Or whichever.

**ADV KENNEDY SC:** Thank you very much. I just have one further question of the witness and it relates to a problem that arose earlier in her evidence. Because and we  
10 apologise for this the annexure was omitted.

**CHAIRPERSON:** Yes.

**ADV KENNEDY SC:** Ms Malahlela I am going to – just going to read out the paragraph if I may of your affidavit where this arose just for the Chairperson’s assistance. It is at page  
161 paragraph 5.17 and 5.18. What you said is this:

“As is apparent from the draft letter the  
Group Supply Chain Executive and you  
mentioned that was Mr Mlambo was  
requested a grantees’ approval in the imple –  
20 for the implementation of the DLS EXCO  
decision of 29 October 2015”

That was the memorandum of agreement with VR Laser and that that took precedence over the procurement policy. And then you said:

“Mr Mlambo did not co-sign the letter.”

And you attach a copy of the letter and you may recall Chair that that is the unfortunately in a copy in process that was not apparently available and that you will find Chair at page 5 – sorry 680. 680 of the same bundle. And we indicated that we would deal with that in evidence of Mr Mlambo but when the document became available we would refer to it to your attention. My learned colleagues have efficiently found the document in the very same bundle as an annexure to Mr Mlambo's affidavit. I am not going to take the witness to the  
10 affidavit but if I may refer her to the relevant page and just ask her to confirm is this the letter that she had in mind that Mr Mlambo was not prepared to approve. Can I take you please Ma'am to page number 840. Do you have that?

**MS MALAHLELA:** Page 840?

**ADV KENNEDY SC:** 840.

**MS MALAHLELA:** Oh that is now beyond my section.

**ADV KENNEDY SC:** That is correct.

**MS MALAHLELA:** Ja. Yes that is the one.

**ADV KENNEDY SC:** This is the letter that we looked at  
20 earlier in draft form I believe which here is signed by you and am I correct in understanding it was then sent for approval by Mr Mlambo. Are you able to say there appeared to be two signatures further down the page – there is a note – a handwritten note that starts NB and that is followed by a signature and then further on it appears to be a different

handwriting and another signature from Mr Nsepe.[?] The first signature do you recognise that?

**MS MALAHLELA:** Yes I do.

**ADV KENNEDY SC:** Whose signature is that?

**MS MALAHLELA:** It is looks like Mr Mlambo's signature just after the comment.

**ADV KENNEDY SC:** Right. So did he sign where you typed approval – was he meant to sign there if he did approve it?

**MS MALAHLELA:** That was my understanding.

10 **ADV KENNEDY SC:** Yes. Did he sign it?

**MS MALAHLELA:** No as...

**ADV KENNEDY SC:** And what is – what his note says is a DVS and LMT must submit proof that they cannot meet the requirements prior to the contract being awarded to VR Laser.

**MS MALAHLELA:** That is correct.

**ADV KENNEDY SC:** And...

20 **CHAIRPERSON:** I am sorry Mr Kennedy. I am trying to follow what he is saying here. What you had said in the letter that he is not signing is that you had expressed your view that this should follow due process but EXCO had decided that it was not going to happen and that they had asked you to draft a letter to him.

**MS MALAHLELA:** Correct.

**CHAIRPERSON:** Which you had done.

**MS MALAHLELA:** Correct.

**CHAIRPERSON:** Now you expected him sign approval he does not.

**MS MALAHLELA:** Yes I thought.

**CHAIRPERSON:** So what is the context of saying DVS and LMT must submit proof that they cannot meet the requirements. What is he talking about?

**MS MALAHLELA:** As you may recall earlier we spoke about inter group procurement.

10 **CHAIRPERSON:** Yes.

**MS MALAHLELA:** So LMT and DVS are in – yes.

**CHAIRPERSON:** Are they group entities?

**MS MALAHLELA:** So he was saying that they must then say that they cannot do the work before we can approach somebody else to do the same work.

**CHAIRPERSON:** Yes. But they are both group entities. I know that you said LMT is sometimes...

**MS MALAHLELA:** LMT – yes.

**CHAIRPERSON:** Regarded as group entity sometimes not.

20 **MS MALAHLELA:** With that understanding then.

**CHAIRPERSON:** Yes.

**MS MALAHLELA:** You can say they are group entities.

**CHAIRPERSON:** Oh okay.

**MS MALAHLELA:** And I say with regard to LMT [00:12:23].

**CHAIRPERSON:** But he was addressing a concern you had



not raised here.

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** It was just his own issue.

**MS MALAHLELA:** So conflicts between policy and signed MOU's. So policy said inter group you must go to inter group companies.

**CHAIRPERSON:** Yes okay.

**MS MALAHLELA:** So it was related to what I had raised in here – what I sought guidance on.

10 **CHAIRPERSON:** Oh.

**MS MALAHLELA:** Because we are referring now on paragraph 2.

“Under no circumstances shall products or services that can be procured from group entity or division be procured from an external supplier on non-Denel companies unless there is an approval by the Group Supply Chain Executive based on sound reasons.”

20 **CHAIRPERSON:** Yes. So this would address the requirement that group entities must be given an opportunity to do the job.

**MS MALAHLELA:** Absolutely.

**CHAIRPERSON:** And only if they cannot do it do you go outside?

**MS MALAHLELA:** Yes.

**CHAIRPERSON:** It would have addressed that issue what he is talking about.

**MS MALAHLELA:** If they have sound reason. Absolutely.

**CHAIRPERSON:** But it would not have addressed your due process concerns.

**MS MALAHLELA:** Concerns. No.

**CHAIRPERSON:** It would not have addressed that.

**MS MALAHLELA:** No.

10 **CHAIRPERSON:** Okay alright.

**MS MALAHLELA:** I believe but I am sure Mr Mlambo will speak to it. There was a point where he addressed the MOU itself.

**CHAIRPERSON:** He?

**MS MALAHLELA:** He addressed the MOU itself.

**CHAIRPERSON:** Okay.

**MS MALAHLELA:** But I am sure he will speak to that in his testimony.

**CHAIRPERSON:** Okay. Okay. Mr Kennedy.

20 **ADV KENNEDY SC:** Thank you. And just to provide clarity to a question that the Chair raised earlier. You have confirmed LTN was a group entity. DVS stands for what?

**MS MALAHLELA:** Denel Vehicle Systems.

**ADV KENNEDY SC:** And that is – was also a group entity?

**MS MALAHLELA:** Yes which is the previous BAE.

**ADV KENNEDY SC:** Yes. Thank you Chair there are no further questions from us.

**CHAIRPERSON:** I know that Mr Kennedy we have taken much longer with this witness than we thought.

**ADV KENNEDY SC:** We have.

**CHAIRPERSON:** Ja but I think that it was necessary and issues have been dealt with. We have done justice to the issues there – there were important issues that her evidence covered. Thank you very much Ms Malahlela for availing  
10 yourself and it – from what I am told it looks like you may have had to shift your travelling arrangements in order to be able to give the commission adequate time. Thank you very much. We appreciate that. Thank you for coming to give evidence. You are now excused. Thank you. Mr Kennedy I am available for us to use whatever time we can with the next witness if that is – that is fine with you?

**ADV KENNEDY SC:** Yes may we proceed with the next witness?

**CHAIRPERSON:** Yes.

20 **ADV KENNEDY SC:** He has been waiting for some hours.

**CHAIRPERSON:** Yes. Yes.

**ADV KENNEDY SC:** So it would be useful if we could to at least start his evidence.

**CHAIRPERSON:** Ja at least we can use the hour and then we can talk about whether he is available tomorrow morning

to continue before we go to the next witness or whatever arrangements ...

**ADV KENNEDY SC:** Thank you Chair. May I then call to the witness stand Mr Mandla Denis Mlambo.

**CHAIRPERSON:** Yes thank you. The files for the witness? I think – I think nobody told Ms Malahlela that they should remain here – the bundles.

**ADV KENNEDY SC:** I am sorry I did not hear you Chair.

**CHAIRPERSON:** I am saying nobody seems to have told Ms  
10 Malahlela that the bundles should remain here.

**ADV KENNEDY SC:** Oh I am sorry.

**CHAIRPERSON:** Yes but she is still around.

**ADV KENNEDY SC:** Oh dear I am sorry about that Chair. The attorneys are also...

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

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

**MR MLAMBO:** Mandla Nkosi Denis Mlambo.

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

20 **MR MLAMBO:** No I do not.

**ADV KENNEDY SC:** Do you consider the oath to be binding on your conscience?

**MR MLAMBO:** Yes I do.

**REGISTRAR:** Do you swear that the evidence you will give will be the truth; the whole truth and nothing else but the

truth; if so please raise your right hand and say, so help me God.

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

**CHAIRPERSON**: Okay thank you; you may seated.

**ADV KENNEDY SC**: Thank you Chair. Perhaps for you Chair may I just ask the witness perhaps to remove his mask so that it will be...

**CHAIRPERSON**: Yes.

**ADV KENNEDY SC**: More comfortable for him and more  
10 audible for us.

**CHAIRPERSON**: Yes. Thank you. You may be seated.

**ADV KENNEDY SC**: Good afternoon Mr Mlambo.

**MR MLAMBO**: Good afternoon.

**CHAIRPERSON**: And I think just lower your microphone a little bit. Yes, yes. Are you comfortable?

**MR MLAMBO**: Yes I am.

**CHAIRPERSON**: Okay alright.

**ADV KENNEDY SC**: Can I suggest some guidance so that the Chair will be able to hear your voice clearly and the  
20 microphone will as well. I know normally when people ask you questions you will look at the person who is asking the question. I am going to ask you to act contrary to that for this afternoon. When you hear my questions will you please direct your face towards the Chair and the microphone so that he and the microphone pick up your evidence clearly?

**MR MLAMBO:** Hm.

**ADV KENNEDY SC:** If you could please try and remember that. Thank you Mr Mlambo. I know it is not all that comfortable but it will help.

**CHAIRPERSON:** Well I see that he is settling himself to look this side.

**ADV KENNEDY SC:** Indeed.

**CHAIRPERSON:** But let us see he will manage. I – it is important that I hear what you say Mr Mlambo, you  
10 understand?

**MR MLAMBO:** Yes.

**CHAIRPERSON:** Or it might be the chair. It looks like you are not very comfortable in that chair. You will manage?

**MR MLAMBO:** Ja I will – I will manage.

**CHAIRPERSON:** Yes okay alright.

**MR MLAMBO:** There is not much I can do.

**CHAIRPERSON:** Okay. So when you give answers try and look this side.

**MR MLAMBO:** Okay.

20 **CHAIRPERSON:** Okay.

**MR MLAMBO:** Okay.

**ADV KENNEDY SC:** Thank you. Mr Mlambo is it correct that you have consulted with us as the legal team for the commission dealing with Denel?

**MR MLAMBO:** Yes I have indeed.

**ADV KENNEDY SC:** And also with the investigators and you have produced an affidavit, is that correct?

**MR MLAMBO:** Yes that is correct.

**ADV KENNEDY SC:** May I ask you in the file in front of you. Do you have – do you have the document that bears your name? If I can ask you please to look at page numbers that are made on the top left of each page.

**CHAIRPERSON:** Just for the record Mr Kennedy you confirm that for this witness too we are using the same bundle that  
10 we were using for the previous?

**ADV KENNEDY SC:** That is correct so.

**CHAIRPERSON:** Witness which is Denel Bundle 01.

**ADV KENNEDY SC:** 01 that is correct.

**CHAIRPERSON:** Yes okay.

**ADV KENNEDY SC:** And it appears Chair as Exhibit W11. I will ask to have that admitted once I have had him confirm that it is his signature etcetera.

**CHAIRPERSON:** Ja. Hm.

**ADV KENNEDY SC:** Mr Mlambo do you have page 704? Mr  
20 Mlambo will you please just look at the page number on the top and see if you have got page 704?

**CHAIRPERSON:** The black numbers.

**MR MLAMBO:** Yes.

**ADV KENNEDY SC:** Right and is that the first page of what is referred to as a statement bearing your name, Mandla

Denis Mlambo?

**MR MLAMBO**: Yes that is correct.

**ADV KENNEDY SC**: Is this the affidavit that you signed as requested by the commission's investigators?

**MR MLAMBO**: Yes it is correct.

**ADV KENNEDY SC**: Thank you. Can I ask you please now to turn to the end of that affidavit at page 733. Do you have that?

**MR MLAMBO**: Yes I do.

10 **ADV KENNEDY SC**: Is that your signature that appears there above the signature of the Commissioner of Oaths?

**MR MLAMBO**: Yes it is indeed.

**ADV KENNEDY SC**: Do you – do you confirm Mr Mlambo that this is your affidavit and that its contents are true and correct?

**MR MLAMBO**: Yes I do.

**ADV KENNEDY SC**: Thank you. Chair may we then formally ask for the admission of this exhibit that is Exhibit W11 in Denel Bundle 01 as an exhibit of this commission.

20 **CHAIRPERSON**: Thank you the statement or affidavit by Mr Mandla Denis Mlambo starting at page 704 is admitted as Exhibit W11. Is that right?

**ADV KENNEDY SC**: W11 that is correct Chair.

**CHAIRPERSON**: Ja okay.

**ADV KENNEDY SC**: Thank you Chair. Mr Mlambo I am



going to take you through some parts of your affidavit and the annexures that require particular focus. Now you were previously employed by Denel, is that correct?

**MR MLAMBO**: Yes that is correct.

**ADV KENNEDY SC**: When did you start there?

**MR MLAMBO**: In 2004.

**ADV KENNEDY SC**: If I can take you to page 706 you have referred to your various qualifications which include a Bachelor of Commerce Degree from Unisa.

10 **MR MLAMBO**: Yes.

**ADV KENNEDY SC**: And various diplomas and other qualifications, Correct?

**MR MLAMBO**: That is correct.

**ADV KENNEDY SC**: And now are you still working for Denel?

**MR MLAMBO**: No I am not I am actually in the consulting business now.

**ADV KENNEDY SC**: Right when did you leave Denel?

**MR MLAMBO**: I left Denel in June 2019.

20 **ADV KENNEDY SC**: 2019?

**MR MLAMBO**: That is correct.

**ADV KENNEDY SC**: And what position did you hold at that stage that when you left?

**MR MLAMBO**: When I left I was still Group Supply Chain Executive.

**ADV KENNEDY SC:** And when did you take up that position?

**MR MLAMBO:** It was in 2012.

**ADV KENNEDY SC:** Now if I can take you to your paragraph 2.5 on page 706 you make reference to your role previously as Executive manager for Supply Chain and then you make reference to developing and implementing various systems. Did those systems relate to procurement in particular?

**MR MLAMBO:** No they actually relate to business systems  
10 and processes.

**CHAIRPERSON:** As Group Supply Chain – Group Executive Supply Chain Management were the people who would report to you be people who were in different divisions or subsidiaries of Denel but those who were Supply Chain Management positions in Supply Chain Management – like managers.

**MR MLAMBO:** Yes it was essentially the Supply Chain Head at the various divisions.

**CHAIRPERSON:** Yes.

20 **MR MLAMBO:** In Denel.

**CHAIRPERSON:** And – so in the context of the evidence of Ms Malahlela would that have been Mr Teubes who would have reported to you?

**MR MLAMBO:** So there was actually a dotted line. It – the Supply Chain divisional heads actually reported either to the

CEO or the COO or the CFO at the division and there was a dotted line to..

**CHAIRPERSON**: Oh to you? Okay.

**MR MLAMBO**: That is to my position.

**CHAIRPERSON**: Okay alright.

**ADV KENNEDY SC**: So your position was that of Group Supply Chain Executive for the group as a whole.

**MR MLAMBO**: Yes.

**ADV KENNEDY SC**: Is that correct?

10 **MR MLAMBO**: Yes.

**ADV KENNEDY SC**: And then the group comprised various entities head office and a whole lot of divisions.

**MR MLAMBO**: That is correct.

**ADV KENNEDY SC**: And was DLS one of those divisions?

**MR MLAMBO**: Yes it was.

**ADV KENNEDY SC**: And DVS another?

**MR MLAMBO**: And yes DVS as well.

**ADV KENNEDY SC**: And did each of those have their own procurement section as well?

20 **MR MLAMBO**: Yes each of the divisions had a supply chain function from the people prepared to call that a procurement function.

**ADV KENNEDY SC**: And would you liaise with those people?

**MR MLAMBO**: Yes we had regular meetings and they were

also at liberty to consult with me if they had challenges.

**ADV KENNEDY SC:** Right. Now – so was – did you have contact with Ms Malahlela who gave evidence before you today?

**MR MLAMBO:** Yes I did probably more so than with other divisions. I suppose that would have been because of the Hoefyster contract.

**ADV KENNEDY SC:** Right. Now let us get immediately to that Hoefyster contract and you deal first with the Hoefyster  
10 contract it was specifically for the production of 217  
armoured hulls. Is that right?

**MR MLAMBO:** Yes that is correct.

**ADV KENNEDY SC:** And you deal with that in your affidavit from – in paragraph 3 from the top of page 708. Now you refer first to the procurement policy; were you involved in a formulation of that procurement policy once you were appointed as Group Executive?

**MR MLAMBO:** No the 2008 version I was not involved in the drafting thereof and giving inputs to that. I actually inherited  
20 it.

**ADV KENNEDY SC:** Inherited that?

**MR MLAMBO:** That the 2008 version.

**ADV KENNEDY SC:** Was that then revised?

**MR MLAMBO:** Yes it was revised.

**ADV KENNEDY SC:** When was that?

**MR MLAMBO**: In 2014. Well if the process actually started in 2013 but it was ultimately approved in 2014 in November.

**ADV KENNEDY SC**: Right.

**MR MLAMBO**: Because it had to be ultimately approved by the Denel board.

**ADV KENNEDY SC**: Okay. Can I take you please in this bundle to page 742. Do you have that?

**MR MLAMBO**: Yes.

**ADV KENNEDY SC**: Just tell the Chair please what this  
10 document is?

**MR MLAMBO**: This is a Delegation of Authority that was issues in November 2012 but that was for the whole group of Denel.

**ADV KENNEDY SC**: So would that have to be followed and applied in a division such as DLS and DVS?

**MR MLAMBO**: Oh, yes across the group with the provision that divisions were actually given the right to customise, so long as they did not deviate from ensuring that there was alignment with the group delegation of authority.

**ADV KENNEDY SC**: Right. Now I may I ask you please to  
20 refer to page 757. I apologise, Chair.

**CHAIRPERSON**: [No audible reply]

**ADV KENNEDY SC**: Now may I draw your attention to paragraph 5.1? Just explain to the Chair very briefly what this provides, 5.1?

**MR MLAMBO:** 5.1 essentially stipulates ...[intervenes]

**CHAIRPERSON:** I am sorry. 5.1 at what page?

**ADV KENNEDY SC:** Page 757, Chair.

**CHAIRPERSON:** 757. Yes, okay.

**MR MLAMBO:** This deals with the normal procurement of product and services. And of course, it also stipulates approval levels associated with this delegation of authority depending on the value of the transaction.

Then there is a certain executive or individual  
10 authorised to approve. If you look at the first one. Anything  
below 50 million and equal to 50 million would have had to  
be approved.

The transaction would have had to be approved by the  
divisional CEO. And then between 50 million and  
200 million, the Group CEO and anything above 200 million  
had to be approved by the board.

But in all instances, I had to be consulted to satisfy  
myself that the processes were followed were consistent with  
the policy and the relevant legislation.

20 **ADV KENNEDY SC:** And where do we find that in reference  
to that in this table?

**CHAIRPERSON:** I am sorry, Mr Kennedy.

**MR MLAMBO:** It is in the remarks, the last columns.

**ADV KENNEDY SC:** Right.

**CHAIRPERSON:** One second. I am sorry Mr Kennedy. I

just want us to connect this with what we were dealing with earlier.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** You remember when we were dealing with Ms Malahlela that reduced price of the ...[intervenes]

**ADV KENNEDY SC:** I am sorry?

**CHAIRPERSON:** That reduced price of VR Laser. You know, they reduced the price and we were wondering whether the reduction of the price meant that the deal could  
10 be approved by the GCO, GCE or by the board.

It appears now that we have gone back to these delegations that if it was 200 or more than 200, it should have gone to the board.

I am under the impression that the reduced price was still over 200. I may be mistaken but I thought it was 200 and something million, the one that VR Laser used after reducing it. It was ...[intervenes]

**ADV KENNEDY SC:** [microphone not switched on]

**CHAIRPERSON:** Yes. Okay, okay. No, that is fine. It is  
20 just that I remembered that we were not sure when Ms Malahlela was given evidence and I was interest in seeing whether it was an amount should have gone to the board or the Group CEO. Okay alright. Continue.

**ADV KENNEDY SC:** Mr Mlambo, so you have dealt with who has to approve it in a case of a contract with over

200 million. Only the board could approve that, correct?

**MR MLAMBO**: Yes, that is correct.

**ADV KENNEDY SC**: And then you were just taking... starting to take the Chair to the final column of this table and you said that in all three categories, your approval – you are the Group Supply Chain Manager referred to in that last column. Is that right?

**MR MLAMBO**: That is right.

**ADV KENNEDY SC**: And ...[intervenes]

10 **CHAIRPERSON**: I am sorry. Is Group Supply Chain Manager the same as Group Supply Chain Executive or something?

**MR MLAMBO**: Yes, it is.

**CHAIRPERSON**: Oh, I thought the manager would be lower. Executive would be higher. [laughing]

**MR MLAMBO**: Ja, unfortunately, I did not proofread this delegation of authority before it was issued.

**CHAIRPERSON**: Ja, okay alright.

**ADV KENNEDY SC**: You did not demote yourself  
20 Mr Mlambo.

**CHAIRPERSON**: [laughing]

**MR MLAMBO**: No, I was not party to the drafting.

**ADV KENNEDY SC**: Oh. But it seems that from the item that starts with less or equal to 50 million, in the last column, we see Group Supply Chain Manager prior



consultation on procurement above 20 million.

So am I right in understanding that if it is less than 20 million, the Provisional Procurement people do not need to consult you prior to giving... to recommending for approval by their CEO but if it is between 20 million and 50 million, they do?

**MR MLAMBO**: Yes, anything from 20 million had to go through my office.

**ADV KENNEDY SC**: Right. And then the same point is in  
10 the next item in that last column.

“And then for contract above 200 million, a report outlining the process followed to invite a shortlisted of suppliers and evaluation of scores of the shortlisted supplies and recommendations of the Tender Committee must also be tabled to the board for approval.”

**MR MLAMBO**: Ja, that is correct.

**ADV KENNEDY SC**: And so for those contracts  
...[intervenes]

20 **CHAIRPERSON**: I am sorry again Mr Kennedy. I just want to make sure that I understand what I talked earlier about the title. Is the position that where it says Group Supply Chain Manager, it is correct? Or is the position that there is something wrong, it should have said executive?

**MR MLAMBO**: It should have said executive but

...[intervenes]

**CHAIRPERSON**: So the correct position is that the person who was supposed to be referred to here is Group Supply Chain Executive. It was a mistake that it was said manager?

**MR MLAMBO**: Ja, because I was the only one in the group in that position.

**CHAIRPERSON**: Yes. Okay alright. So if I make a note to say executive, it is actually correct?

**MR MLAMBO**: Yes, it is correct.

10 **CHAIRPERSON**: Okay. Thank you, Mr Kennedy.

**ADV KENNEDY SC**: Thank you, Chair. Just to complete that with you, Mr Mlambo. Which Divisional Procurement and other officials such as Ms Malahlela have understand this delegation, when they read it, if still Group Supply Chain Manager, would you expect them to understand that to mean you as Group Supply Chain Executor?

**MR MLAMBO**: Yes, because this was actually at group level and there could not be any other Group Supply Chain Executive or Manager except me at the time.

20 **CHAIRPERSON**: In terms of the titles, at group level, would you have anybody that could be referred to as manager?

**MR MLAMBO**: Yes.

**CHAIRPERSON**: You could have?

**MR MLAMBO**: Ja, you could still find that.

**CHAIRPERSON**: Yes. But certainly, within Group Supply

Chain at group level, there was no person who was manager. There was just the executive which was you.

**MR MLAMBO**: Well, there was a Group Supply Chain Support Manager.

**CHAIRPERSON**: Manager.

**MR MLAMBO**: That was reporting to me.

**CHAIRPERSON**: Oh, okay.

**MR MLAMBO**: Ja.

**CHAIRPERSON**: So this Group Supply Chain Manager  
10 could actually cause confusion?

**MR MLAMBO**: Yes.

**CHAIRPERSON**: Because the other one would not know whether they left out supply, to say Group Supply Chain Manager or whether they meant Group Supply Chain Executive?

**MR MLAMBO**: Ja, it could definitely.

**CHAIRPERSON**: Yes, ja.

**MR MLAMBO**: I think the people were just not meticulous enough in drafting and putting a document like this.

20 **CHAIRPERSON**: Yes, okay alright. Okay Mr Kennedy.

**ADV KENNEDY SC**: Thank you, Chair. Now your affidavit then refers to a submission that you received from the DLX Exco. I just want to get the page for you. May I just have a moment, Chair?

**CHAIRPERSON**: [No audible reply]

**ADV KENNEDY SC:** In the same bundle, if you can turn please to page 772?

**MR MLAMBO:** Ja, 772?

**ADV KENNEDY SC:** Yes.

**MR MLAMBO:** Yes, I have found that.

**ADV KENNEDY SC:** Now what is that document? It is headed: Group Chief Executive Offices Supply Chain Submissions. And it is dated the 1<sup>st</sup> of July 2014. And it is a note addressed to Exco. Would that be Group Exco or DLS  
10 Exco?

**MR MLAMBO:** This was actually from DLS and it was a submission for approval of VR Laser for the supply 217 platform house. Although, here it refers to 183 platform house.

**ADV KENNEDY SC:** Yes, we have... The Commission has already heard evidence of a previous witness. If I can just take you to page 774. There is an explanation for how the 217 was reduced to 183.

**MR MLAMBO:** H'm.

20 **ADV KENNEDY SC:** And was it sent to you simply to give your views or to approve it or reject it?

**MR MLAMBO:** Well, this one, if I look at the signature, it is on the last page. It actually bypassed my office and what should have happened before it went to the Group CEO, it should have gone through my office so I could actually verify

whether the process that was followed was clean and compliant with our policy and relevant pieces of legislation.

**CHAIRPERSON**: I am sorry. Where... on what page are you looking at, what you are saying, you say it had bypassed your office? I assume that is because you see somebody's signature or what?

**MR MLAMBO**: Well, this one is not signed. I think there is one that has got my name but that is the one we will probably talk about later that I rejected later.

10 **ADV KENNEDY SC**: Yes.

**CHAIRPERSON**: But what makes you say it has bypassed your office? What is that you see that makes you say that?

**MR MLAMBO**: Ja, the Group CEO could not possibly have known that the process was compliant and for a big transaction like this one, it was a huge risk for him to simply append his signature because that entire transaction could be deemed irregular.

**CHAIRPERSON**: Yes, but I would understand if you say that when we see where he has already signed before without  
20 you signing. So I am looking and I wondering whether there is a page like that where you say: I can see it bypassed me because on this page there is Group CEO's signature but there is my signature.

**MR MLAMBO**: Ja, okay this one is not signed ...[intervenes]

**CHAIRPERSON:** But you say there is another one that is signed.

**MR MLAMBO:** Yes.

**CHAIRPERSON:** Which is basically the same thing?

**MR MLAMBO:** Yes, that is the same thing.

**CHAIRPERSON:** Okay alright.

**MR MLAMBO:** Yes, Chair.

**CHAIRPERSON:** Okay so you... so that is why you say, bypassed your office?

10 **MR MLAMBO:** H'm.

**CHAIRPERSON:** Okay alright. Mr Kennedy.

**ADV KENNEDY SC:** Thank you. Now Mr Mlambo, your affidavit indicates that you had difficulties with this proposed transaction and you raise some of the reasons in your affidavit and you refer to a number of emails that we will come to in a moment. May I take you... Yes, let me take you immediately to page 787.

**CHAIRPERSON:** Did you say ...[intervenes]

**ADV KENNEDY SC:** 787.

20 **CHAIRPERSON:** 787.

**ADV KENNEDY SC:** In fact... No, it starts at 788. It is an email from Reenen. Is that Mr Reenen Thebus?

**MR MLAMBO:** Yes.

**ADV KENNEDY SC:** At the top. In fact, let us start in the middle. That seems to be your first email. It comes from

you on the 2<sup>nd</sup> of September to Celia and Reenen. Is that Celia Malahlela and Reenen Thebus?

**MR MLAMBO**: Ja, that is correct.

**ADV KENNEDY SC**: And then you refer to LMT having a valid BBBEE certificate.

“I am baffled as to why it was not submitted as per your claim at this evening’s meeting. I will request details from Stephan Nel about the pricing and proof of shareholding of VR Laser as issued.”

10 So there are two issues that you raise here in this brief email and that is LMT whether it has a valid BBBEE certificate.

And then, the second issue is the shareholding of VR Laser. And you... that seems to have been raised in a meeting that you held with your colleagues from DLS. Was there such a meeting?

**MR MLAMBO**: Yes, there was a meeting.

**ADV KENNEDY SC**: And what was the purpose?

**MR MLAMBO**: The purpose was actually to convince me to  
20 approve this transaction to award the contract for 183 platform house to VR Laser. And after having looked at the entire submission, the scoring.

The way the entire process was handled, I was actually not just angry but I felt that this is a process that is being manipulated in order to favour VR Laser. There were two

critical things that I was actually angry over.

The first one was that this should not have actually even gone out to external parties or companies to quote because we had acquired LMT in particular to actually design and manufacture the same products so that we could meet our contractual obligations on the Hoefyster contract. So it baffled me.

And the other issue is that Mr Burger – because I was actually sitting on the board of DLS at the time. He was  
10 actually at pains to convince the DLS Board about the importance, the strategic importance of LMT.

And he pointed out that if we did not save LMT because it was going through some financial difficulties.

And there were also some governance lapses as well which we could address as a group. He pointed out that we would not be in a position to execute the Hoefyster contract without LMT. So this really shocked me.

But the same person now was actually punting the importance of VR Laser to actually be a strategic supplier,  
20 replacing a company that is 51% owned by Denel.

**CHAIRPERSON:** So in other words, the job that VR Laser was being asked to do was going to be asked to do it, all of these was approved, was a job that could be done by a company that is 51% owned by Denel?

**MR MLAMBO:** Yes, that is correct.



**CHAIRPERSON**: That was one of your points?

**MR MLAMBO**: That is correct, Chair.

**CHAIRPERSON**: Ja. Okay.

**ADV KENNEDY SC**: Mr Mlambo, can I take you there. There are a whole number of paragraphs. Oh, sorry. Emails. And I am not going to take you through them all but I just like to take you now to the one at page 787.

**MR MLAMBO**: H'm.

**ADV KENNEDY SC**: In fact, on top of page 788, Mr Reenen  
10 Thebus was responds to you, to your earlier email that we  
have just looked at. And then you reply to him, it seems, on  
the 3<sup>rd</sup> of September on page 787.

And you say the following:

“Hi, Reenen. Thanks for the prompt response. As I did not have an opportunity to do a thorough study of all the tender submissions, I cannot categorically claim that the process was sufficiently objective and the confidence level is high enough to place it beyond reproach.

20 Nonetheless, the following are key-issues that merit a serious review of the adjudication process and outcome.

1. The capability assessment of the three tenderers.  
Although LMT is the only one of the three tenderers that has manufactured the same hulls

under contract from Patria, it obtained the lowest score. DCD has never manufactured the same hulls and yet it obtained a higher score. The Score Adjudication Team came up with these, based on the manufacturer of a different project. VR Laser will be manufacturing this type of hull for the first time and yet it has the highest score.”

Was that concern you raised, was it raised as part of your duties as Group Supply Chain Executive?

10 **MR MLAMBO**: Yes, Chair. It is true.

**ADV KENNEDY SC**: Then you raise in paragraph 2 the price difference between the VR Laser and LMT office being almost 100 million.

“In my investigation, I was informed by Stephan that the LMT quote was based on factual figures since LMT has manufactured the hull before.

If Stephan is right, it would not make business sense to pay so much more since LMT is a sister company.

20 I believe someone at DLS should have demanded supporting evidence before assuming that LMT under-quoted.

I believe this anomaly warrants further investigation and validation.”

Now, who had referred to LMT as having under-quoted?

**MR MLAMBO**: Well, this is captured in some of the emails that are here and it was also raised during the meeting that we have had that evening.

**ADV KENNEDY SC**: When you ...[intervenes]

**MR MLAMBO**: Or the evening before.

**ADV KENNEDY SC**: In the meeting?

**MR MLAMBO**: Yes.

**ADV KENNEDY SC**: Right. And then you deal with BBEE credentials which were also referred to in the emails you  
10 mentioned. Paragraph 3.

“LMT was given a zero score on transformation due to its expired certificate. The two elements of transformation, namely ownership and EE (Employment Equity) could have been assessed without a valid BBEE certificate.

Such data should be readily available from the HR department.”

Would HR department be the HR department of Denel Group head office?

20 **MR MLAMBO**: LMT HR Department.

**ADV KENNEDY SC**: LMT HR Department?

**MR MLAMBO**: Yes.

**ADV KENNEDY SC**: And LMT, as you described it, was a sister company.

**MR MLAMBO**: That is right.

**ADV KENNEDY SC:** In fact, the Commission has heard evidence that it was 51% owned by Denel.

**MR MLAMBO:** That is correct, Chair.

**ADV KENNEDY SC:** So you refer to that being readily available from the HR. And then you continue.

10 “BBBEE certificate. Unless a company by a detailed report do not give enough detail to be able to score the two elements accurately, if the transformation aspects of LMT were considered in the evaluation, it could have been rated number 1.”

So it could have gone up if it had been given some BBBEE points? Is that your point here?

**MR MLAMBO:** Ja, that is why... that is correct, Chair. That is why I suspected that there was something amiss here. It was just a deliberate action on the part of DLS to simply disregard the BBBEE certificate of LMT.

**ADV KENNEDY SC:** Yes.

20 **CHAIRPERSON:** Well, now how would LMT’s people BE profile or points have been assessed in the absence of a valid BE certificate? How does that happen? How does that work?

**MR MLAMBO:** Well, in our evaluation, the focus was on ownership. And ownership had actually improved by virtue of the fact that it was a majority owned by a state owned company that is an added benefit that it increases its score.

Prior to us acquiring LMT, it was a BBEE Level 4 company. So it was definitely going to be better than a BBEE 4, Level 4.

**CHAIRPERSON**: Well ...[intervenes]

**MR MLAMBO**: And then we would also look at the employee profile, which is the Employment Equity, a breakdown of the organisation.

**CHAIRPERSON**: Well, if a valid BEE or BBEE certificate is a requirement, what is the effect if a company does not  
10 have a valid BBEE certificate in terms of scoring.

**MR MLAMBO**: Well, if the company is not in the process of being verified, then you would score that company a zero. But if a company has already communicated that they are in the process of being verified for BBEE, as a potential client, you are actually expected to give that company an opportunity to complete that verification process provided that it is not going to be a prolonged process. Normally, it is something that is done within a week.

**CHAIRPERSON**: But is the position not when you do these  
20 things in terms of processes that the closing date that is given where you now going to talk generally, that closing date means each bidders, where you were talking about bidders, is supposed to ensure that its bid, that its bid is in and it satisfies all the requirements that it is supposed to satisfy?

Therefore, if one of the requirements is a valid BE certificate and you do not file it, and by the closing date, that means you do not meet those requirements unless you move as a company. You extend the closing date for everybody, I would imagine.

**MR MLAMBO**: Ja, that is correct Chair. That is what typically happens. And the standard practise is that you do not start with the evaluation until such time that – if you have given a company five days to submit that BBEE certificate or a tax clearance certificate for that matter, then  
10 you only start after the company has failed to submit that on time. If your ...[intervenes]

**CHAIRPERSON**: Yes.

**MR MLAMBO**: ...be given a zero score for ...[intervenes]

**CHAIRPERSON**: But my point is this. Is it not the effect of a closing date that you want to see those who complied with the requirements by the closing date and those who do not comply and they are all going to be judged according to whether as at the closing time they complied or time?

20 In other words, if I put in my bid by four o'clock today and today is the closing date, four o'clock. And I have put in my tax certificate and you have put in your bid but you left out the tax certificate, you do not comply with the tax certificate requirement and therefore, you should be disqualified.

**MR MLAMBO**: Ja ...[intervenes]

**CHAIRPERSON**: Is it not how it works? Because you are all given the same amount of time to comply.

**MR MLAMBO**: Yes.

**CHAIRPERSON**: From the time the invitation is issued to or the request for proposals or whatever, from that date to the closing date, you all have the same amount of time to comply.

Now I complied. I make sure that I do my job, my  
10 homework timeously. I am able by four o'clock to put in my bid that complies with everything.

You do not take this whole process seriously. You do other things when you are supposed to do your homework and put your bid together. And then at the last minute, you run around.

By four o'clock, there is still something that you have not put in. Therefore, you put in a bid that does not meet all the requirements. You should be disqualified and I should go in. Is it not?

20 **MR MLAMBO**: Well, National Treasury has actually incorporated this into an instruction note that if a company claims that it is in the process of being verified for its BBBEE status, it has to be given an opportunity. If it is in the process of rectifying its tax issues with SARS, it should be given an opportunity.

By the time you actually do your evaluation, if you have given them ample time which is reasonable and they have not complied, then you have got the right to disqualify them.

**CHAIRPERSON:** So you are saying National Treasury has issued an instruction that says if by closing date they are – a company says they are in the process of obtaining verification for BEE or they are in the process of obtaining a tax clearance certificate you should give them an opportunity after the closing date?

10 **MR MLAMBO:** Ja, but the proviso is that you shall not, for instance, contract a company that is not tax compliant but now will be the time when you in the process of contracting. So if the company does not have or has not sorted out its tax issues with SARS then you cannot actually contract that company.

**CHAIRPERSON:** No, I understand that part.

**MR MLAMBO:** But with BBBEE, if you have given them an opportunity and they have not actually presented their BBBEE certificate as per given time then you can give  
20 them a zero. There is ...[intervenes]

**CHAIRPERSON:** Ja but are you saying National Treasury has issued an instruction that says if the company has failed by the closing date to include its BEE certificate or tax clearance certificate and says to you they are in the process of getting that, you should allow them time after



the closing date to bring that in? Is that what you are saying.

**MR MLAMBO:** Yes but that does not apply to other aspects like ...[intervenes]

**CHAIRPERSON:** Yes only ...[intervenes]

**MR MLAMBO:** ...the technical requirements, those are nonnegotiable.

**CHAIRPERSON:** Yes but these two there is room, a period of grace can be given to them.

10 **MR MLAMBO:** Ja.

**CHAIRPERSON:** But that is because of a special instruction from National Treasury, is that right?

**MR MLAMBO:** Ja because an opportunity could actually arise at the time when you are in the middle of a BBEE verification process and you should not be penalised because you are going through that process. It does not take long to actually get your BBEE.

**CHAIRPERSON:** Well, Mr Mlambo, if it is official, it is part of policy or it is part of the regulations that that can  
20 be done, that is fine, you know? But if you ask me, there is nothing wrong if you say well, you have a month or three months, all of you, to bring – to meet the requirements. If you meet the requirements you will be in, if you do not meet the requirements you will be out but next time we issue another one, you might be ready and then you will be

in but for now - you are in if you meet the requirements, you are out if you do not meet the requirements but if there is a special statutory or regulatory provision or policy that says in regard to these specific requirements there will be some period of grace but not others. I can understand that because maybe the idea is that, you know, they do not want to be too harsh in regard to those particular ones.

**MR MLAMBO:** Yes.

**CHAIRPERSON:** Ja, okay. No, that is fine.

10 **MR MLAMBO:** Thanks Chair, may I have some water please?

**CHAIRPERSON:** Mr Kennedy?

**ADV KENNEDY SC:** Thank you, Chair. If we can return to the emails that we were looking at. We have looked at the one at 787. Then, as I understand it, the email on page 786 is the response to you from Stephan Burger.

**MR MLAMBO:** Yes. Ja, that is correct.

20 **ADV KENNEDY SC:** And then you – and I am not going to go through it, he raises various points and arguments as to why you should not be concerned about certain things and you reply to him – I would like to take you to page 785. That is your email of the 4 September and that is addressed to Stephan where you were also copying in Celia Malahlela, Fikile Mhlontlo. Just remind us please who Mr Mhlontlo was?

**MR MLAMBO:** He was the Group CFO.

**ADV KENNEDY SC:** Right.

**MR MLAMBO:** Jan Wessels was the Group COO and Reenen Teubes was DLS' COO and Riaz Saloojee was the Group CEO.

**ADV KENNEDY SC:** Yes. Now if you compare that list that you have just read out with the list of people who were copied in earlier email correspondence from you between you and initially Mr Teubes and then it seems to escalate  
10 to Stephen Burger. This seems to be the first time that you were coping in Riaz Saloojee, the Group Chief Executive. Why did you copy Mr Saloojee in on this?

**MR MLAMBO:** I realised that the issue was actually far from being resolved and it was serious enough to warrant his attention as the Group CEO.

**ADV KENNEDY SC:** Right. Now if I may refer you to the body of your email addressed primarily to Mr Burger, you say:

20 "We are clearly not aligned in terms of the analysis of the data and information that I saw for the first time on Tuesday at the meeting I had with Reenen and Celia."

Was that the same meeting you mentioned earlier?

**MR MLAMBO:** That is correct, Chair.

**ADV KENNEDY SC:** "I certainly think we should not

exchange anymore emails on the issue in question as the resolution may be easier to find around a table. However, the following issues have definitely not been addressed by your response.”

And here you raise a number of issues in paragraph 1, you refer again to the huge price differential in the offers made by both LMT and VR Laser. Now you have referred earlier to LMT being a 100 million – approximately a R100 million cheaper than VR Laser and then you refer to information  
10 you had from Stephan Nel from LMT talking about the fact that they had produced the hull earlier and that is why their lower prices were reliable and VR Laser’s quote, on the other hand, was not based on past performance.

So did you feel that the price differential that you had referred earlier in an earlier email was not properly resolved?

**MR MLAMBO:** Yes and it just did not make sense why people would be so anxious to pay R100 million more which would actually erode the bottom line of DLS. It just  
20 was preposterous to me.

**ADV KENNEDY SC:** Then you deal in the second paragraph, number two, with the conflict of interest. Just explain to the Chair please what was your concern about the conflict of interest issue?

**MR MLAMBO:** I was actually here referring to the

submission in terms of the ownership and the adjudication team that had actually accepted the fact that VR Laser was hundred percent black-owned company and yet they did not interrogate the fact that their individuals were not specified, but it was just companies and the document that was also submitted that was supposedly a list of the directors, it was not a valid CIPC document. In my view it was a fake document and the people that had actually submitted the conflict of interest declarations were not  
10 really the entire team of directors of VR Laser, it was the COO of VR Laser that had submitted and I think Mr Aurora as well but the other people that were actually critical, people like Salim Essa, had not submitted any declaration of interest.

**ADV KENNEDY SC:** At this stage that you sent this email were you aware that Mr Salim Essa in fact had an interest?

**MR MLAMBO:** I think it was probably shortly after getting a response from Mr Aurora because I followed that up to verify exactly who are the individual shareholders of VR  
20 Laser because in terms of the documentation that I had seen that was evaluated by the evaluation team at DLS there was not a single name, it was just Elgasolve and Craig Shaw(?) Investments and I had to prod or push Mr Aurora to disclose that 74.9% shareholding of VR Laser was actually owned by Salim Essa but the 25.1%, I could

not actually get any feedback on who owned that and yet there was this constant reference that VR Laser was 25.1% black women owned. On what basis? Because the evidence was not there.

**ADV KENNEDY SC:** Then if we can look at paragraph 3, that refers to the capability and how LMT was assessed to be the lowest on capability despite the fact that the two other companies, that is DMD and VR Laser, is they were successful, would be making this type of hull for the first  
10 time. Is there anything you want to add to that? It seems to be to be clear.

**MR MLAMBO:** Ja, it actually defied logic as far as I was concerned but companies that had never manufactured platform hull were actually given a higher score on the technical evaluation and the company that was contracted by Patria, the OEM to make a prototype was actually given the lower score and it later turned out that they had actually also relied on unrelated aspects to rate these two companies. DCD, for instance, was actually evaluated on  
20 a product that was totally different from what we have gone out on tender for, closed tender for.

And VR Laser had never manufactured this hull and it was actually given a score that was higher than the maximum. The maximum technical score that was actually supposed to be given to bidders was 45 points and I

remember seeing 50 point something points that was given to VR Laser and I said to myself this is a real farce.

**CHAIRPERSON:** Just remind me. You were now at this stage of this email at 785 you were dealing with this after the fact in the sense that this issue had not been brought to you on time but you got involved after it had bypassed your office.

**MR MLAMBO:** Ja, that is correct, Chair. In fact if they had come to me prior to taking the decision to go out to the  
10 market I would have said no, you are not going to do that, we invested money in LMT for the very reason that we wanted to do well financially and technically in the execution of the Hoefyster contract. So it just did not make sense.

And what has really even got me hot behind the collar was the fact that the leadership at DLS was prepared to pay almost R100 million more than what LMT was actually quoting.

**CHAIRPERSON:** Yes, maybe Mr Kennedy was going to  
20 deal with this later but it might be convenient. Were you ever told what - were you ever given an explanation how this bypassed your office, how your – or how it was not brought in your office or why it was not brought to your office before being sent to the Group CEO and it being approved?

**MR MLAMBO:** I think the reason – this is my speculation, the reason is that they knew that I would go through this because of the value of the contract with a fine toothcomb and there was a very slim chance or no chance at all that I would actually approve the transaction.

**CHAIRPERSON:** But did you not ask the relevant people how come you signed without seeing my signature on this thing or a question along those lines? Why was it not brought to me?

10 **MR MLAMBO:** At this stage in fact they had not signed the ...[intervenes]

**CHAIRPERSON:** Oh, they had not signed at that stage?

**MR MLAMBO:** Ja, this was September.

**CHAIRPERSON:** Oh, okay.

**MR MLAMBO:** The contract was actually signed the following month.

**CHAIRPERSON:** Oh.

**MR MLAMBO:** But I had no clue that the contract was going to be signed or had already been signed at that time.

20 **CHAIRPERSON:** Oh, okay.

**MR MLAMBO:** Because of the exchanges that I did with the responsible – in fact the person that was supposed to ultimately sign this, if it was below 200 million was the group CEO Mr Riaz Saloojee. That is why I made sure that he was aware of my concerns about the issues.



**CHAIRPERSON:** But now if it was not brought to you, you were being bypassed, how did you become aware and you started sending emails? How did that happen?

**MR MLAMBO:** It was after the meeting that we had had the night before.

**CHAIRPERSON:** You heard at some meeting about it?

**MR MLAMBO:** Ja, that was the meeting that we had because the idea was actually to sell the approval of this transaction to me in that meeting.

10 **CHAIRPERSON:** Oh.

**MR MLAMBO:** That was the purpose of the meeting.

**CHAIRPERSON:** Oh, okay, okay. Alright, Mr Kennedy?

**ADV KENNEDY SC:** Chair, may I ask for the Chair's direction please? I see it has already gone five o'clock and you have indicated to me you have other pressing matters to attend to.

**CHAIRPERSON:** Yes, I think let us go up to quarter past.

**ADV KENNEDY SC:** That is fine, thank you, Chair.

**CHAIRPERSON:** Yes.

20 **ADV KENNEDY SC:** That will also enable us to finish this little section.

**CHAIRPERSON:** Ja, okay.

**ADV KENNEDY SC:** Thank you, Chair. Mr Mlambo, just to pick up the last question raised by the Chair about not going through you. You raise a problem in that regard,

right at the end of your email, just before you end off with regards, do you see there is an unnumbered paragraph that starts: My contention? Do you see that?

**MR MLAMBO:** Yes, yes, yes.

**ADV KENNEDY SC:** I am going to go back to that sentence in a moment but the second line you say:

“It is also worth mentioning that you flouted the delegation of authority by not presenting the file for review to me before engaging Fikile and Jan.”

10 Presumably that Mr Mhlontlo and Mr Wessels.

**MR MLAMBO:** That is correct, Chair.

**ADV KENNEDY SC:** “Any transaction above 20 million must go through my office first. I am beginning to have doubts that this was an oversight.”

What did you mean that you are having doubts it was oversight.

**MR MLAMBO:** I actually thought that was deliberate because they knew that the submission was not going to be approved by myself or go beyond my office and they felt  
20 that it would be better rather lobby the Group CEO to approve it without me being involved.

**ADV KENNEDY SC:** Okay.

**MR MLAMBO:** There seemed to be an element of desperation of wanting to get this finalised as quickly as possible so that VR Laser would get the business.

**ADV KENNEDY SC:** Now if we can go back just to complete the remaining portions that we have not yet touched on. Paragraph 4 refers to BBBEE certificates again. You say:

10 “I received evidence that that the two week grace period for the submission of the BBBEE certificate by LMT was met and yet you claim that they could not be considered as it was after the deadline. It is standard practice that a supplier that is being verified for BBBEE level cannot be penalised for that especially if the critical data used in the assessment is readily available. What makes this even more unacceptable is the fact that we have unhindered access to data and information at LMT.”

The last sentence, is that again the point that because LMT is majority owned by Denel you would have access?

**MR MLAMBO:** That is correct, Chair.

**ADV KENNEDY SC:** Now I just want you to clarify the next sentence below paragraph 4. You say:

20 “My contention is that despite being convinced of a fair and objective that was followed by the adjudication team, let us appoint an independent assessor to corroborate your claim.”

Who are you referring to as the person being convinced that it was a fair and objective process, are you talking

about yourself or others?

**MR MLAMBO:** Well, Mr Teubes and Mr Burger were actually of the view that – expressed that a number of time that the process was robust and fair and I just could not understand that because there was no evidence than looking at the submission that this was a fair process.

There are other things that I did not include here that I should have mentioned. The engagement of one of the bidders, whilst the process is still on is an absolute no-  
10 no in supply chain. If you engage any of the bidders you engage them simultaneously and if there are questions that are raised you give those answers to all of them, even those that had not raised those issues and before the actual final approval of the transaction, they were already engaging with VR Laser on the pricing.

**ADV KENNEDY SC:** May I take you now to the next email which appears at page 791? Now this time it is not an email to Mr Burger who was copying in other ...[intervenes]

**CHAIRPERSON:** What page, 700 and...?

20 **ADV KENNEDY SC:** 791, Chair.

**CHAIRPERSON:** 791, okay. Continue.

**ADV KENNEDY SC:** This is an email dated the 9 September 2014 so it was a few days after the last email we saw a moment ago, correct?

**MR MLAMBO:** H'm.

**ADV KENNEDY SC:** Just say yes if you agree.

**MR MLAMBO:** Yes, Chair, I do.

**ADV KENNEDY SC:** And this time the email is addressed not to Mr Burger or Mr Teubes to Riaz Saloojee, Mr Mhlontlo and Johan Wessels, whose titles you have given us already and am I right in saying that this – you are now escalating to the top executive of Denel, the Group CEO, CFO and the COO?

**MR MLAMBO:** That is correct.

10 **ADV KENNEDY SC:** And you say:

“I have managed to review DLS’ submissions pertaining to the abovementioned subject, the subject above is awarding of hull manufacturing contract to VR Laser. Following issues paint an unacceptable picture from a process fairness and objective point of view:

The tender documents were not sent to all the bidders simultaneously as per normal tender process.”

20 Then secondly:

“Prior to the adjudication process there was still engagements or clarification sessions with individual bidders. The process requires that such engagements be held with all bidders at the same time. Information that is requested by one of the

bidders must be sent to others even if they did not ask for it.”

Is this related a point you mentioned a moment ago that they were being dealt with separately?

**MR MLAMBO:** Ja, that is correct, Chair.

**ADV KENNEDY SC:** Paragraph 3:

“Despite the fact that LMT’s BBEE status was disregarded on grounds that it was still being verified and the deadline was the 25 June 2015, the  
10 VR Laser certificate was accepted and rated on the 27 June two days after the closing date.”

In your submissions you say:

“It is claimed that LMT’s quote is too low and unrealistic. The difference between LMT’s quote and VR Laser quote is almost R1 million. After questioning Stephan Nell on the accuracy of his quote...”

That is LMT’s quote, is that right?

**MR MLAMBO:** That is correct, Chair.

20 **ADV KENNEDY SC:** “...he offered to come and present the facts, demonstrated it was based on realistic quotes. He claimed LMT had made the hull before under Patrias quote.”

And then in paragraph 5 you refer to your meeting with Stephan Burger yesterday. So was there a meeting with

him on the 8 September which followed the earlier emails?

**MR MLAMBO:** Yes, that is correct.

**ADV KENNEDY SC:** You say:

“He indicated VR Laser had offered to reduce the quote from around 262 million to 195 million! Does that not tell a disturbing story about the initial offer? On the basis of these findings and other facts it is my considered opinion that the submission from DLS be rejected. Since LMT has  
10 the capability to make the hull, this issue should have been discussed before going out on tender. Good night.”

Now just comment if you would, please, specifically on paragraph 5 how you found it disturbing that firstly there was about 100 million difference between the initial quotes or offers, paragraph 4.

And then you were disturbed by the fact that Burger then tells you he has found that VR Laser is offering to reduce the quote from 262 million to 195 million. What was  
20 the points of concern that you had in relation to that?

**MR MLAMBO:** In the normal business world I cannot imagine a company that is well-run and it does proper costing just simply lopping off 67 million from a 262 million quote in one fell swoop. It just did not make sense it means the quote was inflated in the first place and that

suggested that something anomalous was actually happening with this transaction. I can understand if the quote is reduced by 0.5% or 1% but this is far too significant to reduce a price on.

**ADV KENNEDY SC:** In your view based on procurement law and policies, was it permissible to allow tenderers such VR Laser changing their bids in this manner?

**MR MLAMBO:** No. The only time you accept a bid that has been reduced is when that bidder has already been approved and awarded and once it has been awarded then you can start the negotiations but in this particular instance the announcement had not even been made and they were already negotiating.

And secondly, people outside supply chain are not supposed to get involved or dabble with procurement processes. This is the terrain of the supply chain people because they understand the process better. You cannot have everyone negotiating with suppliers. I mean, that is simply messes up the process.

**CHAIRPERSON:** So if Mr Burger was to have gone to VR Laser to negotiate with them to reduce the price, one, because he was outside of supply chain he should not do that. Two, he would have been acting in breach of policy because the policy allowed the negotiation of prices only under certain circumstances and by certain people.



**MR MLAMBO**: Ja, precisely, Chair.

**CHAIRPERSON**: Yes.

**MR MLAMBO**: Ja. This process had not been finalised.

**CHAIRPERSON**: Yes.

**MR MLAMBO**: And they were already negotiating which begs the question, was the outcome not something that was actually planned? The actual evaluation was simply to pull wool over our eyes, to give the impression that it was a fair objective and transparent process when it was not.

10           You will actually see later in some of the emails that were exchanged, Mr Burger himself saying that he was going to negotiate outside the normal process.

**CHAIRPERSON**: Yes, we saw that.

**MR MLAMBO**: And that he was going to fight to make sure that VR Laser got the business.

**CHAIRPERSON**: Ja, he said he would defend VR Laser. Ja, okay.

**MR MLAMBO**: Ja, precisely. So the process lost credibility right at the outset.

20   **ADV KENNEDY SC**: Chair, may I ask one final question before the take the adjournment?

**CHAIRPERSON**: Yes.

**ADV KENNEDY SC**: Do you – can you recall ever receiving any response from Mr Saloojee, Mr Mhlontlo or Mr Wessels to this email where you raised these concerns?

**MR MLAMBO:** I never received any response from Mr Saloojee on the issue. But what happened, the is a position paper that is in my file.

**ADV KENNEDY SC:** Yes.

**MR MLAMBO:** That we actually had a meeting, that was Mr Wessels, Mr Mhlontlo and myself ...[intervenes]

**ADV KENNEDY SC:** Sorry, Mr Mlambo, sorry to interrupt, may I suggest subject to the guidance of the Chair that we leave that until you resume your evidence hopefully  
10 tomorrow morning, if you are available, to deal with that because that is going to take a bit of time and we need some detail from you on the position paper.

**MR MLAMBO:** I am okay with that.

**CHAIRPERSON:** You are available to continue tomorrow?

**MR MLAMBO:** I will have to cancel my appointments. I do not want to be screamed at, but behaving like a good citizen.

**CHAIRPERSON:** No, we are sorry that we have messed up your plans but we appreciate it if you can rearrange and  
20 be able to continue tomorrow.

**MR MLAMBO:** Ja, I will certainly make myself available.

**CHAIRPERSON:** Yes. Okay, alright. Now, Mr Kennedy, you and I spoke I think yesterday and maybe last week about the possibility that some of the days we could start at nine.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** And I think you indicated that you would appreciate it if we could start at nine tomorrow.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** That was even before this situation arose which is a reason we have taken – we took much longer with Ms Malahlela.

**ADV KENNEDY SC:** Ms Malahlela, yes.

**CHAIRPERSON:** But I suspect that I might not be able to  
10 start earlier than ten tomorrow.

**ADV KENNEDY SC:** As you please, Chair.

**CHAIRPERSON:** But if my situation changes I will let you know and then maybe somebody can then advise Mr Mlambo and then if I am able then we can start at nine but as things presently stand I think we might not be able to start earlier than ten.

**ADV KENNEDY SC:** As you please, Chair.

**CHAIRPERSON:** That may or may not affect Thursday as well but let us play it by ear.

20 **ADV KENNEDY SC:** Thank you.

**CHAIRPERSON:** And we will see how we manage the situation in terms of the ripple effect on other witnesses.

**ADV KENNEDY SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV KENNEDY SC:** Thank you, Chair.

**CHAIRPERSON:** Okay, alright. We are going to adjourn then until tomorrow ten o'clock. We adjourn.

**INQUIRY ADJOURNS TO 28 OCTOBER 2020**